

Strategic Litigation Impacts



ROMA SCHOOL DESEGREGATION

OPEN SOCIETY JUSTICE INITIATIVE

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James A. Goldston, Erika Dailey, and David Berry edited the report. The opinions expressed herein are solely those of the author. The Open Society Justice Initiative bears sole responsibility for any errors.

Methodology

This study seeks to contribute to the burgeoning field of strategic litigation, which is also referred to as public-interest or impact litigation. Using a hybrid of legal analysis, academic research, and quantitative and qualitative methodologies, this report aims to assess the varied impacts of strategic litigation and related advocacy efforts on one issue (Roma school desegregation) in the comparative framework of three European countries (Czech Republic, Hungary, and Greece), all of which fall under the jurisdiction of the European Court of Human Rights. In doing so, the study seeks to catalyze mutual learning among activists, legal practitioners, and affected individuals, communities, and affinity groups. The study is intended primarily as an analytical resource for litigation practitioners and advocates who may consider strategic litigation—among other tools—as a means to advance human rights protections.

The research seeks to contribute to emerging thinking about strategic litigation in several ways. It is, to the best of our knowledge, the first multi-country study of the impact of strategic litigation designed to curb educational discrimination and segregation on grounds of race. While appreciating the rich and helpful literature on quantitative justice measurements, this largely empirical study does not rely significantly on quantitative data or attempt to survey the field as such. Nor does it pretend to apply rigorous scientific techniques, or claim a fully objective perspective. Rather, this study seeks to explore the complexity of strategic litigation. In doing so, it acknowledges that strategic litigation may not be the most appropriate tool to secure change—and that in certain contexts it may even be counter-productive. It is hoped that this study will prove its value through its sensitivity to nuance and detail, and the judiciousness of the research approach.

With that aim in mind, this report hopes to add value to the ongoing discourse by offering an unprecedented 360-degree assessment of the impact of each case described herein. Over the course of about six months (May–November 2014), a research team of lawyers, sociologists, and Roma rights advocates sought out the views of a wide range of interlocutors, asking them to respond to normative questions. (Please see Appendix A for a list of those questions.) The research team conducted over 100 interviews with litigants, members of affected communities, government officials, litigators, judges, rights advocates, teachers, donors, academics and others. The primary research was conducted principally in July and August 2014 in the Czech Republic by Lucie Fremlová; in Greece by attorney Dani Maniou; and in Hungary by Roland Ferkovics, a graduate student and Roma rights advocate. Lead researcher and author-attorney Adriána Zimová participated in most of the interviews.

In most cases, interviews were conducted in real time, in situ, without outside observers present, and in the language of the respondent, although sometimes simultaneously interpreted into English. Some additional interviews were conducted by telephone, Skype, and email.

The manuscript was completed in November 2014 and the information is current as of that date.

Below are some essential questions—and brief answers—relevant to this study:

- **What is strategic litigation?**

Strategic litigation, often also referred to as public interest litigation, impact litigation, or cause lawyering, can be many things. But for the purposes of this study it may be used to refer to bringing a case before a court with the explicit aim of positively impacting persons other than the individual complainants before the court.

- **What indicators measure impact?**

Knowledge of the impacts of strategic litigation—both real and perceived—is evolving rapidly, thanks to growing interest in strategic litigation’s role in advancing human rights. Benefitting from this discourse, this study is framed around three principal impact indicators: changes in policy, practice, and mobilization. Quantitative indicators include the number of Roma students who are attending special (i.e. segregated) schools before and after relevant judgments, and the number of segregated schools closed. But much of the relevant data are either flawed or absent, so qualitative indicators have been used to help shed light on real and perceived impacts.

- **Who is considered Roma in government data?**

Efforts to collect reliable data about the authentic experience of Roma are profoundly complicated by the pervasiveness and severity of anti-Roma discrimination in Europe—and sometimes by explicit government policy. Fearing discrimination, ethnic Roma commonly identify themselves as “Hungarian” or “Czech” in public censuses, leading to substantial under-counting. This poses a fundamental challenge to attempts to quantify the impacts of court-centered action. For example, since the Greek government does not officially recognize the existence of ethnic minorities (apart from migrants, such as those fleeing the war in Syria), it is nearly impossible to measure the number of Roma children attending mainstream Greek schools before and after judgments.

To the greatest extent possible, this study seeks to adhere to principles of impartiality, even-handedness, intellectual integrity, and rigor. To be sure, the study’s co-sponsor, the Open Society Foundations (OSF), are avowed advocates of the use of strategic litigation as a vehicle for social change. Moreover, both OSF and the Roma Education Fund financially support grassroots efforts to assist Roma communities in exercising their rights. Some might reason that this study is therefore inherently biased toward conclusions favorable to the sponsors’ missions.

The study was structured to mitigate any such misperceptions. It was researched and written by independent experts, rather than staff, and overseen by an advisory group whose members are unaffiliated with the co-sponsors. In addition, the research process was designed to garner input from the widest possible spectrum of stakeholders and observers, including those who have been publicly critical of using strategic litigation to desegregate Roma schools. This study is born of an authentic desire to understand the complexities and risks of—rather than platitudes about—the use of strategic litigation to advance social justice. A lack of impartiality would only thwart that goal.

Foreword

When do we turn to the courts for strategic redress? When other efforts to right a wrong have failed? To force acknowledgment of an injustice? As a pre-emptive strike against future abuse? What contributions to social, political, and legal change has strategic litigation made on particular issues and in particular places? What are the risks and trade-offs involved in bringing a case strategically to advance a specific rights agenda? What conditions, circumstances, and tactics (in conjunction with other tools) seem to be most effective? To what extent are any insights from those particular experiences of use to advocates working on other issues and in other places?

These are among the questions that the Open Society Justice Initiative seeks to address through a multi-year inquiry into the impacts of strategic litigation. This report, the first of four related studies of the issue, was commissioned jointly by the Open Society Justice Initiative, the Open Society Foundations' Roma Initiatives, and the Roma Education Fund. It probes concrete instances of strategic litigation—in three European countries—aimed at securing equal educational opportunity for Roma children. Other studies will examine strategic litigation impacts on equal access to quality education beyond Europe, torture, and land rights.

Rather than looking through the lens of the litigator, the point of departure for this comparative, qualitative inquiry is that of the social-change agent. The study's principal concern is the role that law—and specifically, strategic litigation—has played as part of wider historical, political, and/or social struggles to expand protection for specific rights, and the rule of law more generally, in particular places. Even within the realm of litigation itself, judges' rulings are only one component of court-centered action. What transpires outside the courthouse can be at least as powerful as what happens at the bench.

The inquiry proceeds from the recognition that the outcomes of strategic litigation can be unpredictable, paradoxical, and difficult to measure. As the field research makes clear, “impact” is often in the eye of the beholder. In some cases, victories in court fail to translate into victories in practice. Conversely, losses in court can lead to advances of various kinds, including greater public recognition or focus, political embarrassment, social mobilization. There may be inherent value in bringing a public-interest case—such as discovery and legal capacity-development—irrespective of the judicial outcome. And there may be strategic value in deciding not to bring a claim, pursuing alternative remedies instead. Through strategic litigation, lawyers, activists, and judges can lead social change by force of their own agency; but courts can also react to cases once social changes are already underway.

Strategic litigation is just one of the tools that the Open Society Foundations (OSF) utilize to pursue their mission; other approaches include institutional and strategic funding to institutions, grants to individuals, research, institutional and human capacity development, and out-of-court advocacy. OSF has brought all these tools to bear on Roma rights in particular, investing more than \$200 million over 20 years.

While limiting itself to exploring the rights of a single group—the Roma—this study cannot be insensitive to the related issues of segregation that affect other discriminated constituencies, such as pupils with disabilities. The judgments examined in this report underscore the need to dismantle segregated settings not only for Roma, but for all groups who are disadvantaged through isolation, segregation, or other forms of separate and almost invariably inferior treatment.

The principal segregating mechanism at the heart of the cases here is diagnosis-based segregation: roughly speaking, the misuse of diagnoses of “mild intellectual disability” for all Roma children. The label is pernicious, often pitting marginalized groups against one another. In attempts to challenge wrongful placements, Roma, people with disabilities, and other discriminated groups have in some instances been driven to imply that those with the “real” difference belong in separate settings. Indeed, inspiring and important as they are, the argumentation and legal reasoning in some of the cases analyzed in this study have been questioned by some as seeming to justify—even if unintentionally—the exclusion of others. They thus invite consideration of difficult questions concerning the most effective forms of advocacy aimed at ending discrimination and segregation of all children in European schools: Has desegregation litigation chipped away at the common segregating mechanism—the basic ground of “difference”? Do points of contact exist between deconstructing concepts of difference, ethnicity, and race as grounds for segregation, or are these wholly separate endeavors? What is gained and lost by separate advocacy tracks for each concept, both in terms of how the issue is understood by the public and how policy responses are ultimately framed?

Apart from the Open Society Foundations' institutional interests in this research, interrogating the impacts of strategic litigation on Roma rights holds particular interest for me. I served as counsel for the plaintiffs in a European Court of Human Rights judgment that this report examines closely, *D.H. and Others v. the Czech Republic*, and in a second case, *Oršuš and Others v. Croatia*, that this report briefly touches on. And the organization I lead, the Open Society Justice Initiative (which is part of the Open Society Foundations), has advocated for robust implementation of these and other, related judgments, and litigated or intervened in dozens of others around the world.

I would like to believe that these judgments have had positive impacts on Roma rights and struck a blow against educational segregation for all in Europe. And yet, I have heard repeated complaints from Roma advocates, community members, and international monitors that segregation and discrimination continue unabated. So the complex conclusions of this report, and the effort to tease out the different kinds of impacts that have resulted, are of keen interest. I hope that those struggling for more equal opportunities for Roma and other children find this study of value.

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Autumn, 2015

Executive Summary

Strategic litigation is complex, time-consuming, and uncertain—and those are some of the kinder things one can say about it. It is also expensive and, in the eyes of some, elitist.

And yet it can also be stunningly effective, capable of breaking down longstanding injustices and opening new paths of human rights protection and enforcement. It is an underappreciated tool of empowerment and social change that arguably should be used more often.

There are many extant studies of strategic litigation, often written from the perspective of its practitioners (who can be overly enthusiastic), or its critics (who can be needlessly negative). Their conflicting and occasionally overstated claims do little to present a comprehensive picture of strategic litigation's impact. What is missing from the field, then, is a balanced and nuanced examination that places strategic litigation within a broader context.

This study seeks to fill that gap by looking at strategic litigation as a social change agent. It examines the impacts of strategic litigation, with an emphasis on the social, political, and legal change it can generate. It also seeks to consider the context in which the litigation took place, and the factors that propelled or hindered it.

Six significant cases lie at the heart of this study. Those cases are taken from three countries—the Czech Republic, Greece, and Hungary—that have adjudicated these rights at the domestic level and are obligated by decisions of the European Court of Human Rights. All six cases focus on Roma school desegregation. Strategic litigation on the six cases has resulted in groundbreaking judicial rulings and significant changes in policy and practice. But it has also led to resentment and backlash, including from some of the very people who—at least in theory—stand to benefit from the judgments.

This study begins with a brief overview of strategic litigation and its effectiveness. It then seeks to place the six cases in context by examining the conditions from which the litigation arose and into which the judgments eventually entered, including a look at the education systems and anti-discrimination frameworks of the Czech Republic, Greece, and Hungary. This section makes clear one key lesson: that context matters, and that conditions on the ground affect a judgment's implementation.

Next, the study looks at the impacts of strategic litigation on the educational policies and practices of the Czech Republic, Greece, and Hungary. It shows how difficult it can be to change longstanding policies, and that even when policies do eventually change, that does not necessarily translate into changes in practice and in attitudes. But at the same time, one can see how some policy changes—such as the decision to collect ethnically disaggregated data in the Czech Republic—can serve as catalysts that lead to much bigger changes and provide an unprecedented opportunity to measure government compliance with the rulings. A similar catalyst can be found in examining the impact of strategic litigation on the Court itself. In this case, the European Court of Human Rights was changed by its contact with Roma school desegregation litigation, resulting in the Court's significantly expanding its Article 14 protections—an expansion which, in turn, will bear positively on subsequent rulings.

The effects of strategic litigation can ripple outward, from the courthouse to changes in policy to changed practices. And those effects can go further, still, altering how people see themselves and their situation in society. In an effort to capture that, this report looks at the response of some Roma to the strategic litigation in question, finding that while many are supportive, others oppose the closure of Roma-only schools. It also examines how the judgments affected civil society, domestic human rights bodies, and international institutions.

At its most successful, strategic litigation is part of an ongoing cycle in which successful litigation leads to a judgment and the execution of the judgment, which can further galvanize and mobilize the effected group or individual. Success in court can lead to greater rights awareness, which in turn spurs further litigation, as the cycle continues. This phenomenon can be seen in the way the cases at the heart of this study led to follow-on litigation.

But the judgments at issue in this report also led to a backlash. Politicians, civil society leaders, and members of the Roma community have, for various reasons, fought the implementation of these judgments. Although some of their opposition has been neutralized, much of it remains—a potent reminder that strategic litigation is rarely straightforward.

The persistence of the backlash against the strategic litigation featured in this study should serve as a caveat. As this study explores, strategic litigation can be path-

breaking but also frustrating, powerful but also marred by unintended consequences. Above all, this study shows that strategic litigation is neither a panacea nor an invitation to disaster. Rather, it is one tool among many, a tactic that—under the right circumstances and in combination with other efforts—can contribute to positive social change.

I. Introduction: Roma School Desegregation Litigation—Viable Tool for Social Change or Set of Pyrrhic Victories?

“The morning after a court victory I am frequently left wondering just what we have won. For individual applicants, victories can be, at best, symbolic. . . For the broader human rights agenda, victories can also seem hollow. . . [T]he morning after a European Court judgment is the time when the real work of the human rights defender begins.”¹

—Robert Kushen, former executive director, European Roma Rights Centre

The late 1990s marked the first time that Roma in Eastern and Central Europe asked the courts to denounce the policies and practices that for generations had left them in segregated public schools. Such segregation usually took one of two forms: either Roma students were sent to “mainstream” classes or schools that were almost entirely Roma and had inferior facilities and materials, or they were labelled “mentally disabled,” and shunted into “special” classes or schools. Either way, the effect was the same: Roma students were given a separate, inferior education.

Tiszavasvári, Hungary, became the site of the first legal challenge to segregated schooling, in 1997. Fourteen minors sued a mainstream school for holding segregated graduation ceremonies, “the ultimate expression” of a policy that sent 98 percent of

Roma to decrepit Roma-only buildings and banned their use of non-Roma facilities.² Litigation became more systematic in 1999 when a case from Ostrava, in the Czech Republic—later known as *D.H. and Others v. Czech Republic* (hereinafter “*D.H.*”)—challenged an entire state-run education system as discriminatory. The Ostrava case took on a particularly invidious form of discrimination prevailing in some European countries, the practice of placing many Roma children into special schools for pupils with mild mental disabilities. A diagnosis of mental disability was applied disproportionately to Roma to create and build upon a pernicious stereotype of Roma supposedly having inferior mental abilities. The official “diagnosis” of mental disability made it possible to force many Roma into segregated schools, in accordance with segregating practices applied to children with disabilities.

In 1999, *D.H.* became the first case in Czech history to seek an end to this nationwide practice. In 2007, after a series of rulings and appeals, the European Court of Human Rights (ECHR) responded, calling the practice by its proper name: racial discrimination. In five cases since its *D.H.* ruling, the ECHR denounced racial discrimination against Roma in public education. The court denounced discrimination in access to education as well as segregated schools and classes in three Greek judgments (*Sampanis and Others v. Greece*, *Sampani and Others v. Greece*, and *Lavida and Others v. Greece*); refused to accept language-based justifications for segregated classes in mainstream schools in *Oršuš and Others v. Croatia* (which is not examined in depth in the present study); and reaffirmed that special education systems cannot discriminate against Roma in *Horváth and Kiss v. Hungary*.

In less than two decades, the European Court emerged as a force for the desegregation of Roma in public schools. The ECHR’s judgments in this area, combined with dozens of rulings from the domestic courts of Hungary, Romania, Bulgaria, Slovakia, and the Czech Republic, have attacked school segregation and discrimination of Roma.³

And yet many claim that nothing has changed. Roma rights advocates continuously warn that these judgments have failed to generate lasting social change. This dismal assessment invites an important question: Is the pursuit of strategic litigation justified if its impact is limited, or even negligible?

With the implementation of the Roma education judgments still unfolding, history will be the final arbiter of their impact. This study seeks to map out an initial response. It is difficult to assess the impact of these judgments and particularly difficult to disentangle the effects of the judgments from other societal forces. To help in this task, a broad cross-section of interlocutors and historical annals were enlisted in this inquiry. In pursuit of the most detailed assessment possible, this study provides an in-depth examination of five European Court of Human Rights judgments related to Roma education: *Sampanis and Others v. Greece*, *Sampani and Others v. Greece*, and *Lavida and Others v. Greece*; *D.H. and Others v. Czech Republic*; and *Horváth and Kiss v.*

Hungary. It also considers one example of domestic school desegregation litigation from Hungary, known as the Nyíregyháza litigation. To guide the analysis, this study looks at different types of impacts, including changes in state education policy, changes in practice regarding educational placement of Roma students, and changes in support for and opposition to Roma school desegregation.

Section II provides a brief background on the Roma minority; an overview of the Czech, Greek, and Hungarian education systems, and synopses of the strategic litigation cases under consideration. Section III assesses the impact of the litigation on policy, practice, and the ECHR itself. Section IV looks at the effects of the litigation on mobilization, counter-mobilization, rights awareness, and the prospects for sustaining change. Finally, Section V analyzes the impact of the strategic litigation.

II. Background

A. The Roma in Europe Today

The Council of Europe (COE) characterizes the Roma as “the most persecuted minority in Europe.”⁴ Discrimination against them spans European countries and takes numerous forms, including forced sterilizations, neo-Nazi attacks and hate crimes, forced deportations, forced evictions, segregated schooling, and employment discrimination.⁵ “The Roma population is worse off than any other group in Europe when it comes to education, health, employment, housing and political participation,” notes the Council of Europe’s Commissioner for Human Rights.⁶

Outcomes are dire. A recent survey of Roma in 11 European countries revealed that more than 90 percent of Roma households live below the poverty line. Nearly half of Roma live in households that lack a kitchen, bathroom, or electricity (or a combination thereof).⁷ Only 15 percent have completed secondary education. One-third of Roma are unemployed. Roma across Europe have an average life expectancy 10 years below the rest of the population.⁸

Of the three countries being considered in this study, Roma are estimated to account for two percent of the population in the Czech Republic, two-and-a-half percent of the population in Greece, and seven percent in Hungary.⁹

In a 2011 multi-country survey, the Greek Roma fared worst in levels of adult literacy and school attendance rates. Over 40 percent of Roma school-age children in Greece were not attending school in 2010–2011, compared to seven percent in the Czech Republic and five percent in Hungary.¹⁰ Among adults, over half of Roma in Greece identified themselves as illiterate, while four percent in the Czech Republic and six percent in Hungary did.¹¹

The same survey found that 45 percent of Roma respondents in Hungary, 35 percent in Greece, and 33 percent in the Czech Republic reported attending segregated mainstream classes.¹² In addition, 23 percent of Roma respondents in the Czech Republic, 15 percent in Greece, and six percent in Hungary indicated that they attended special classes intended for those with mental disabilities.¹³

B. The Education Systems and Anti-discrimination Frameworks of the Czech Republic, Greece, and Hungary

In order to fully understand the impact of strategic litigation on the education of Roma in the Czech Republic, Greece, and Hungary, it is necessary to review the education systems of those three countries. Their approach to centralization, school choice, financing, and tracking are germane to the current discussion. For example, highly decentralized systems may make it easier for local authorities to create segregated classrooms, whereas more centralized systems may make it easier for the state to implement a judgment. It is also necessary to examine the conditions in the three countries prior to strategic litigation, and the elements that could hasten change, including the presence (or absence) of organizations willing to challenge segregation and the presence (or absence) of strong anti-discrimination laws.

The Czech and Hungarian education systems have certain features that in the literature have been associated with a higher potential for perpetuating inequality and segregation. One such characteristic is the early “streaming” or “tracking” of children into different educational tiers; another is free school choice, under which parents have some discretion over which school their children attend.¹⁴ In Greece, students are generally educated together until the age of 15, when they choose academic or vocational tracks.¹⁵ Further, in Greece, the school a child attends is strictly determined by the place of residence; legal guardians cannot place a minor into another state school even if capacity permits.¹⁶

The level of centralization of the education system varies across the three countries. The Hungarian education system was fairly decentralized until 2012, but has more recently undergone a process of centralization.¹⁷ The Greek education system has historically been one of the most centralized in Europe, but reforms to decentralize it have commenced, and municipalities now enjoy greater authority.¹⁸ The Czech system was shaped by a period of massive decentralization in the 1990s and remains decentralized.¹⁹

Segregated special education systems for children with disability have a long history in the Czech Republic and Hungary.²⁰ Greece, in contrast, has little history with special education, preferring to support students with disabilities in mainstream classrooms.²¹ Special education systems have become so interwoven into the fabric of Czech and Hungarian society that making changes is highly complex and involves far more than just the pupils. Throughout the Czech Republic and Hungary, these systems employ specialized educators as well as two sets of expert bodies. In the Czech Republic, the so-called Pedagogical-Psychological Counseling Centers and Specialized Pedagogic Centers (hereinafter “counseling centers”), each with different responsibilities, diagnose disability and recommend placement to segregated special schools.²² In Hungary, the so-called Educational Counseling Service refers pupils for diagnosis at a particular Rehabilitation Committee of Experts (hereinafter “expert panel”).²³ The systems are also financially supported by the state, and could potentially lose funding if special education were reformed. While Hungary has in the past decade sought to change the financial structure to encourage integration of pupils with special educational needs into the mainstream, in the Czech Republic, schools educating pupils with mild mental disability get on average 50 percent more per capita funding than schools that follow regular curricula.²⁴

One consequence of this financial structure may be that the systems are incentivized to maintain these segregated schools and inflate the proportion of pupils diagnosed with disability. For instance, in Hungary, some experts have said that increasing per capita funding for special education has led to more children being diagnosed as having special educational needs.²⁵ Other data suggest a similar pattern: as of 2008, the Czech Republic diagnosed nearly nine percent of pupils and Hungary nearly six percent of pupils as having special educational needs—compared to the European average of two percent.²⁶

One particular feature of the Czech special education system bears a brief mention. In 2005, the so-called “special schools” (*zvláštní školy*) that historically educated pupils considered to have mild mental disability renamed themselves “practical primary schools” or sometimes simply “primary schools.” Whereas before, special schools followed specialized curricula designed for pupils with mild mental disability and primary schools followed regular curricula; now, the school designation no longer connotes what education a pupil receives—only the curriculum is relevant. Today, the Czech Republic offers one curriculum for primary education, and a second curriculum for primary education plus an annex for those diagnosed with mild mental disability (hereinafter “regular curricula” and “curricula for pupils with mild mental disability,” respectively).²⁷

However, in considering the many factors that can hasten (or thwart) change, it is necessary to look beyond the education systems at broader conditions. It is reasonable to

expect that, in a given country, the level of attention to Roma issues (both in academia and the media), the number of NGOs focused on fighting Roma education segregation, and the domestic legal regime will all factor into the likelihood that strategic litigation will succeed or fail.

Hungary, for example, leads the three countries in academic mapping of the extent of school segregation and its causes. A number of Hungarian academics have studied Roma education, and some of their research served as evidence in domestic school desegregation litigation.²⁸ The Czech Republic, by contrast, appears to have the most widespread news coverage of Roma issues. In Greece, there is a dearth of both academic studies of Roma issues and media coverage of them.

Similarly, when compared to Hungary and the Czech Republic, Greece lags in the number of NGOs working on Roma issues. For example, the Chance for Children Foundation (CFCF), which brought the *Nyíregyháza* and *Horváth and Kiss* litigation (the latter together with the European Roma Rights Centre, ERRC), generally concentrates its work in Hungary.²⁹ Further, only Hungary and the Czech Republic are part of the so-called Decade of Roma Inclusion (the “Decade”), an effort of multiple European countries to promote the inclusion of Roma.³⁰

However, there are NGOs that work across borders, including the ERRC, which is active in the three countries under examination. The ERRC, which brought *D.H.* and *Horváth and Kiss*, is a pan-European Roma rights organization that utilizes strategic litigation to seek systemic change for the Roma across a spectrum of fields.³¹ The Greek Helsinki Monitor (GHM), which brought *Sampanis, Sampani*, and *Lavida*, advocates on behalf of Roma and other vulnerable groups in Greece.³²

While all three countries have domestic antidiscrimination legislation on the books, only in Hungary has it been greatly utilized as a tool of social change. Hungary also has a longer tradition of domestic school desegregation litigation, starting in 1997.³³ Hungary’s antidiscrimination legislation, in place since 2004, is also fairly robust. For instance, the legislation prohibits discrimination as well as “unlawful segregation,” defined as a conduct that separates individuals or groups of individuals because of “ethnic origin” or “social origin.”³⁴ The legislation also allows public interest organizations to bring *actio popularis* claims in discrimination cases.³⁵

It seems reasonable to link Hungary’s greater attention to Roma issues and stronger antidiscrimination legislation with its superior record in the use of strategic litigation to fight Roma education segregation. Hungary’s CFCF, founded in 2004 “with the express purpose of fighting structural discrimination against Roma and impoverished children in public education through collective legal action coupled with community organizing and local actions,” has heavily utilized domestic litigation.³⁶ Hungarian cities and towns with sizeable Roma populations—including Miskolc, Nyíregyháza, Győr, Hajdúhadház, Jászládány, Kerepes, Kaposvár, Gyöngyöspata, Tiszavasvári, and Tak-

taharkány—have all been the sites of legal challenges to anti-Roma discrimination. And the track record of that litigation has been exceptionally good: the desegregation side has won of all the cases that are final.³⁷ The bench has declared segregation of Roma in separate schools, buildings, and classes unlawful.³⁸ (The courts have found municipalities liable even for omission, not only commission, but have been less inclined to order a strong remedy.)³⁹

In contrast to Hungary’s experience, it seems fair to argue that less propitious conditions in the Czech Republic and Greece have limited the impact of strategic litigation efforts. Some of those efforts are examined in the next section, and their impacts explored further after that.

C. Roma School Desegregation Litigation under Examination

Strategic litigation has been used many times and in many places to pursue school desegregation. This study looks closely at five cases resulting in ECHR judgments, plus one domestic school desegregation case. The ECHR cases were chosen to represent an array of countries, approaches, and outcomes. The domestic litigation—the so-called Nyíregyháza litigation from Hungary—was chosen to enable a representative deep dive into one particular example of domestic litigation related to Roma school desegregation.

The litigation under examination addressed the segregation of Roma into special schools (*D.H. and Horváth and Kiss*) as well as segregation in mainstream schools (*Sampanis, Sampani, Lavidá, Nyíregyháza*). At the time of writing, the execution of the ECHR judgments—apart from *Sampanis*—continues to be subject to the supervision of the COE Committee of Ministers, the body tasked with monitoring the execution of ECHR judgments. Below are brief synopses of the cases under consideration, each of which is described in greater detail later in this report.

D.H. and Others v. the Czech Republic (ECHR). In 2007, the Grand Chamber of the ECHR found the Czech Republic liable for racial discrimination of Roma in education under the European Convention on Human Rights (the “Convention”). Eighteen Roma applicants from the Czech city of Ostrava alleged that they were assigned to special schools for pupils with mild mental disability because they were Roma. Their evidence derived from statistics, including research showing that Roma pupils in Ostrava were over 27 times more likely to be placed into special schools than non-Roma pupils. Third-party comments from a number of organizations such as Human Rights Watch, the Roma Education Fund, and Interights, were submitted in support.⁴⁰

In 1999, the Czech Constitutional Court dismissed the appeal of a subset of the applicants who alleged segregation and racial discrimination in education. In 2006, by six votes to one, the Chamber (the lower ECHR body) found no violation of the Convention, in part because the Czech special education system was not introduced to cater solely to the Roma. In 2007, the Grand Chamber overturned the Chamber's ruling. It held, by 13 votes to four, that the Czech legislation had a disproportionately prejudicial effect on the Roma community, without objective and reasonable justification. The diagnostic assessment required prior to the placement of Roma in special schools was not accompanied by sufficient safeguards, and parental consent to the placement could not waive the right to be free from racial discrimination.⁴¹

The ECHR awarded each applicant EUR 4,000 in moral damages. It also stated that the Czech Republic had “a legal obligation” to adopt “general and/or, if appropriate, individual measures” to “put an end to the violation found by the Court and to redress so far as possible the effects.” The Czech Republic “remain[ed] free to choose the means” through which to do so.⁴²

Sampanis and Others v. Greece (ECHR). In 2008, a unanimous Chamber of the ECHR held that Greece breached the right to education of a group of Roma applicants, as protected by the European Convention on Human Rights. Eleven Roma applicants from the Psari neighborhood in the town of Aspropyrgos alleged that because of their Roma origin, they were not allowed to enroll at a mainstream primary school one year, and were then placed in special preparatory classes located in an annex to the regular school the next year. Their relegation to the annex followed a series of protests by non-Roma parents, who objected to the applicants' enrollment at a mainstream primary school.

The court held that the failure to provide education for the applicants and their subsequent placement in special classes located in an annex amounted to discrimination. The court also found a violation of Article 13 of the Convention, because the applicants did not have an effective domestic remedy available to them. The court awarded each applicant EUR 6,000 in moral damages.

In 2011, the Committee of the Ministers closed its examination of the *Sampanis* execution, after finding that the measures Greece took—including the abolition of special preparatory classes and the enrollment of the applicants into a newly-built school, the 12th School of Aspropyrgos—were sufficient.⁴³

Sampani and Others v. Greece (ECHR). In 2012, the Chamber of the ECHR unanimously held that Greece breached the Convention again because of racial discrimination against Roma applicants in their right to education. In something of a continuation of the *Sampanis* case, a group of 140 Roma applicants (98 minors plus 42 legal guardians) from the Psari neighborhood of Aspropyrgos alleged that the minors had been discrimi-

nated against by being placed into a Roma-only school: the newly-built 12th School of Aspropyrgos. The applicants included some of the original applicants from *Sampanis and Others v. Greece*. While the school was supposedly established following *Sampanis* to educate Roma and non-Roma alike, in reality no non-Roma pupils attended it. The 12th School of Aspropyrgos became a classic “mainstream” school that was in fact a segregated, Roma-only institution.

The court held that the operation of the 12th School as a Roma-only school resulted in discrimination against the applicants. The court noted, among other findings, that the Greek government failed to supply a convincing explanation why no non-Roma pupils attended the 12th School. It also observed that the plan to merge the segregated 12th School with the nearby 11th School had been rejected by local and regional authorities. The court awarded each applicant family EUR 1,000 in moral damages. It also proposed concrete measures to put an end to the violation, including transferring the school-age applicants to other schools and enrolling those applicants who had reached the age of majority into “second chance schools.”

Horváth and Kiss v. Hungary (ECHR). In a unanimous 2013 ruling, the Chamber of the ECHR held Hungary liable for discrimination against Roma regarding their right to education. Two Roma applicants alleged that they had been directly—or alternatively, indirectly—discriminated against by being placed into schools designated for pupils with mental disabilities because they were Roma.

In 2009, the first instance Hungarian court found that the expert panel and the local county council had violated the applicants’ right to equal treatment and awarded each one million HUF (about EUR 6,000).⁴⁴ A Hungarian appellate court subsequently dismissed the applicants’ claims but noted that to prevent the segregation of Roma in special schools, a diagnostic system that would account for minors’ cultural, linguistic, and social backgrounds needed to be developed.⁴⁵ In 2010, the Hungarian Supreme Court upheld the first-instance court’s award of damages, but failed to find local authorities at fault for a systemic flaw.⁴⁶ In 2013, the ECHR held that the Hungarian special education system, even if neutral in theory, discriminated against the Roma applicants in practice. The court also noted that in the context of public education, the state has a positive obligation to avoid perpetuating discrimination against members of a group that has suffered such discrimination in the past.

Lavida and Others v. Greece (ECHR). In 2013, a unanimous Chamber of the ECHR held that Greece breached the Convention for the third time because of racial discrimination against Roma applicants regarding their right to education. Twenty-three Roma applicants (15 minors, 8 legal guardians) from the Greek town of Sofades alleged they had been discriminated against because of ethnic school segregation in Sofades.

The court held that the continued operation of the 4th School (which most of the applicants attended) as a Roma-only school and the decision of the authorities not to take effective desegregation measures resulted in discrimination against the Roma applicants. The court awarded each applicant family EUR 1,000 in moral damages.⁴⁷ It also stated that Greece had “a legal obligation” to adopt “general and/or, if appropriate, individual measures” but it remained free to choose the means through which to put an end to the violation.⁴⁸

The Nyíregyháza litigation (Hungarian domestic courts). The Nyíregyháza litigation, an *actio popularis* (claims in the interest of the public) before Hungarian domestic courts, occurred in two stages. In late 2006, the Chance for Children Foundation (CFCF) filed a claim against the municipality of Nyíregyháza and the Roma-only School No. 13 for segregating Roma pupils. Following the closure of the school in 2007, CFCF withdrew its claim.

In 2011, CFCF filed a fresh *actio popularis* after former School No. 13 reopened as a faith-based Greek-Catholic school. In February 2014, the first-instance court held that by leasing a school property to the Greek-Catholic Church free of charge, terminating the school bus service, and providing additional annual financial allocations, the municipality of Nyíregyháza unlawfully segregated Roma pupils.⁴⁹ It also held the church and the faith-based school liable for unlawfully segregating its pupils.⁵⁰ In November 2014, a Hungarian appellate court affirmed the lower court’s judgment and ordered that the Greek-Catholic School should not admit any new pupils starting in the 2015–2016 school year. At the time this report was written, it was not yet certain whether the case would be taken up for appeal to the Hungarian Supreme Court.

III. The Impacts of Strategic Litigation on Policy, Practice, and Jurisprudence

A. Conditions Prior to Strategic Litigation

To understand the impact of strategic litigation, it is necessary to first examine the policies and practices of the Czech Republic, Hungary, and Greece in regard to Roma education prior to the Roma school desegregation litigation under examination.

1. The Czech Republic

Prior to the *D.H.* case, the disproportionate placement of Roma into special schools was the norm in the Czech Republic. Starting in the 1960s, Czech authorities pushed for the mass enrollment of Roma students; the overrepresentation of Roma in special schools quickly followed—and then increased over the next 40 years.⁵¹

Despite sporadic efforts to limit special schools to students with true mental disability, by the early 1970s Roma children were nearly *seven* times more likely than non-Roma to end up in special schools;⁵² and by the late 1980s, it was *twenty-eight* times.⁵³ This situation was so widely accepted that by the 1990s, overrepresentation of Roma in special schools was considered “proper,” “natural,” and “a problem of the Roma” rather than of the system.⁵⁴

During the EU accession process at the turn of the century, mounting outside pressure led the Czech government to focus on the segregation of Roma students. How-

ever, the seemingly most significant change it introduced prior to *D.H.*—the renaming of special schools as primary schools—was largely pro forma in its intent and result.⁵⁵ On paper, former special schools disappeared; in practice, they continued operating as they always had, albeit under a different name.⁵⁶ Notably, the Ministry of Education official who oversaw special education during the name change would later leave the ministry and become one of the leading voices mobilizing against the reform efforts that followed the *D.H.* judgment.

Thus, the *D.H.* ruling entered an environment where the overrepresentation of Roma in special schools was an established and accepted practice and had been so for over 40 years.

2. Greece

The Greek ECHR Roma education judgments, unlike *D.H.* and *Horváth and Kiss* (discussed in the next section), did not come on the heels of decades-long, nationwide, institutionalized discriminatory education practices. This is because, historically, Roma students were largely absent from Greek schools. Until 1955, Greek Roma were officially stateless, and it was not until 1978 that all Roma in Greece were formally recognized as citizens.⁵⁷ Only in late 1980s and 1990s did the Greek government turn to the issue of Roma education.⁵⁸

Prior to the Roma education judgments, the Greek Ministry of Education focused on encouraging Roma enrollment, including by reducing the requirements for admission for Roma children, who often lacked the necessary registration paperwork, such as official proof of residence.⁵⁹ The ministry also instituted an attendance card for itinerant Roma children to enable their education in different schools throughout a single school year.⁶⁰ In the late 1990s, with the support of EU funds, the first phase of a program titled “Education of Gypsy Children” (later “Education of Roma Children”) was launched. The program, which is ongoing, aims to increase primary school enrollment and retention of Roma in primary schools.⁶¹ In 2002, the government also instituted a financial incentive to encourage enrollment: a EUR 300 annual benefit for families with household income below EUR 3,000 for each child enrolled in primary school.⁶²

Given the historical dearth of Roma students in Greek classrooms, segregation has not been a hot-button issue—but it has still surfaced. In the 1990s, the Ministry of Education indicated that providing education to Roma students in prefabricated classrooms located within Roma settlements was permissible, but it later revised its policy so that this practice could only be used in exceptional circumstances. Similarly, although the ministry’s goal is to educate all Roma in mainstream classrooms, it has allowed, under some circumstances, the existence of temporary segregated classes to smooth the integration of Roma into the mainstream.

Thus, with over 40 percent of Roma children not attending school,⁶³ the Greek Roma education judgments entered an environment where discriminatory norms and practices were not yet entrenched, at least to the same degree as similar practices in the Czech Republic or Hungary.

3. Hungary

As in the Czech Republic, the onset of mass Roma school enrollment in Hungary was quickly followed by their disproportionate placement in special schools intended for students with mental disability. By the 1970s, this phenomenon was well documented: Roma were 15 times more likely than non-Roma to be diagnosed with mental disability.⁶⁴ Although the disparity lessened somewhat over time, by the early 2000s Roma were estimated to be *ten* times more likely to be placed into special classes than non-Roma.⁶⁵

Separately, in the 1990s, a distinct form of Roma segregation emerged when Hungary's education policy sought to combat the disadvantages Roma pupils faced by emphasizing their need to "catch-up with the majority."⁶⁶ Additional funding was offered to primary schools if they provided "catch-up" education.⁶⁷ The stated intent was for the separate education to be temporary until Roma children could be integrated into mainstream classrooms.⁶⁸ But the effect was the creation of segregated, Roma-only classrooms within mainstream schools. By 2002, an estimated 50,000 Roma pupils were in catch-up programs, which in practice "resulted in separate classes organized for Roma on an ethnic basis," where their sub-par education was incentivized by state funding.⁶⁹

The start of the century in particular represented a line of demarcation for Hungary. It was then that a series of progressive governmental reforms commenced to "preven[t] non-disabled children becoming labeled as having mild mental disability" and to "eliminate Romani children's segregation in education."⁷⁰ To that effect, the Hungarian Ministry of Education (later renamed the Ministry of Human Resources), especially under the tenure of Bálint Magyar (2002–2006), spearheaded legislative reforms, special education reforms, and financial reforms. As a result, segregation in education became prohibited under the main education legislation and antidiscrimination legislation.⁷¹ Further, misdiagnosis of Roma and disadvantaged pupils with mild mental disability became a clear focus that translated into a set of new legislative amendments, as well as changes to the diagnostic processes and financial structures. Other reforms helped to dismantle the "catch-up" system that had served as a key driver of Roma segregation. Notably, one of the key proponents of these reforms was the Roma activist Viktória Mohácsi, who later laid the groundwork for the *Horváth and Kiss* case and negotiated the closure of the segregated Nyíregyháza school.

The *Horváth and Kiss* and Nyíregyháza litigation should be seen in the context of Hungary's halting progress toward desegregation—changes driven by reforms in government policy that did not originate in the courtroom. Specifically, the *Horváth and Kiss* judgment came in the wake of several governmental reforms aimed to eliminate the misdiagnosis of Roma with mental disability. However, the political environment in Hungary shifted dramatically in 2010 with the landslide victory of the conservative Fidesz party. Today, the reform agenda has stalled and the minister responsible for education is no longer perceived to be at the vanguard of progressive school desegregation policies. Rather, as the Nyíregyháza II litigation suggests, the opposite may be the case: the minister in charge of the education sector is now perceived to be seeking to revive Roma segregation practices.

B. Impact on Domestic Policies

Although the *Horváth and Kiss* judgment followed the introduction of government reforms, there are also many instances where ECHR judgments led to new policies. For example, following ECHR judgments, both the Czech Republic and Hungary committed to collecting ethnically disaggregated data about students in special education. The two countries have also adopted certain legislative changes aimed at providing further safeguards to prevent the diagnostic processes from being used as an engine of segregation. Similarly, the Greek Roma education judgments have helped strengthen the stated ministerial policy of increasing Roma enrollment, while at the local level one judgment caused the closure of a segregated school. In Hungary, the first claim filed by CFCF in the domestic Nyíregyháza litigation played a role in a closure of segregated schools. Subsequent litigation (known as Nyíregyháza II) has thus far helped keep a new, potential discriminatory policy at bay.

This section examines changes in education policy stemming from the six cases under consideration, such as those mentioned above, while the subsequent section will then look at changes in education practice.

1. The Czech Republic

In the decade before the ECHR Grand Chamber's *D.H.* ruling, the Czech Republic adopted several legislative changes regarding the placement of Roma into special schools.⁷² The most discussed one, mentioned explicitly in the Grand Chamber's *D.H.* ruling, concerned a single sentence in the 2004 Schools Act: "A special school . . . is a primary school under this Act."⁷³ What appeared at first sight to be the elimination of an entire segment of separate education for pupils with mild mental disability was not so. The legislation only removed special schools as a separate "kind" (*druh*) of school

but permitted the ongoing separate education of pupils with disability.⁷⁴ In fact, the instructions of the Ministry of Education were very explicit that the change was a matter of labeling: special schools would have to be renamed primary schools but “in no event does that mean that [these schools] will become ‘regular’ elementary schools” or that they “would even be abolished.”⁷⁵

In the period before the *D.H.* judgment, even seemingly well-meaning legislation was changed so as to actually reinforce the segregation of Roma pupils. For example, the 2004 Schools Act stated that a student’s placement in a separate special school or class with a modified curriculum should only result from the actual *diagnosis* of a disability (including mild mental disability).⁷⁶ But a subsequent ministerial decree modified that, permitting pupils without a diagnosis of disability to be placed in segregated classes or schools with modified curricula so long as a legal guardian requested it.⁷⁷

Finally, before the *D.H.* judgment, the Czech Republic did not collect official ethnically disaggregated data that would have otherwise enabled monitoring of the actual proportion of Roma in special education. Even when presenting its *D.H.* argument before the Grand Chamber, the Czech government maintained that “no official information on the ethnic origin of the pupils exists,”⁷⁸ and failed to supply alternative data that would rebut the “unofficial statistics.”⁷⁹

Almost immediately after it was handed down, the *D.H.* judgment spurred the collection of ethnically disaggregated data. Over time, the *D.H.* judgment helped put the actual elimination of schools for pupils with mild mental disability on the political agenda, although thus far, only more modest legislation has followed in its wake.

Post-*D.H.*, the Czech government commissioned five ad hoc surveys regarding the proportion of Roma in special education between 2008 and 2012; amended its laws to provide for the pertinent data collection in 2013; and committed to conducting annual surveys (starting in 2013-2014) into the proportion of Roma students being educated as pupils with mild mental disability. It seems clear that the *D.H.* ruling—as well as the need to report on its execution—helped to engender this change.

After *D.H.* came down, collecting relevant data became “the first priority” for the Ministry of Education in addressing the judgment’s execution.⁸⁰ “It is not possible to skirt certain statistics due to a worry that they may be interpreted as racist,” declared the deputy minister of education in mid-2008.⁸¹ That year, even as some officials inside the ministry continued to oppose data collection,⁸² the Ministry of Education commissioned two external surveys that collected partial ethnic data in education. The justification for one such survey, conducted in 2008, was to document “[t]he continued segregationist practice . . . affirmed in the context of the judgment of the European Court of Human Rights” and corroborated by other sources.⁸³ The leader of that 2008 survey, the Czech academic and politician Ivan Gabal, noted the impact of *D.H.*, saying “Such surveys would never have had a chance without the judgment.”⁸⁴

In 2009, a Ministry of Education think-tank conducted the first nationwide—and at that time most comprehensive—survey into the proportion of Roma educated like pupils with mild mental disability, in segregated settings. At a press conference devoted to the second anniversary of the *D.H.* judgment, then-Minister of Education Miroslava Kopicová explained that nationwide data had been unavailable before “in part because the political courage to collect such data was lacking.”⁸⁵ Subsequently, the government commissioned the Czech School Inspectorate (the “Inspectorate”), the state’s official school inspection agency, to collect ethnic data on all students in special education. In 2009, citing a “high proportion of Roma” at former special schools, as well as the official *D.H.* execution plan, the Inspectorate surveyed nearly half of the former special schools.⁸⁶ In 2011, the Inspectorate again conducted a similar survey in over 200 former special schools.⁸⁷

Not until late 2012, however, did the Czech government commit to collecting ethnically disaggregated data on special education on a sustained rather than an ad hoc basis. The decision to do so was precipitated by an unfavorable Council of Europe decision on *D.H.* execution in early 2012. The decision, among other findings, “expressed concern on the absence of information to date on the impact of the measures adopted during the current school year.”⁸⁸ In November 2012 the Czech government pledged to annually collect relevant ethnic data, saying it was necessary “for the purpose of monitoring the fulfillment of the execution of the *D.H. and Others* judgment.”⁸⁹ In the summer of 2013, for the same reason, the Czech legal regime was amended to enable the collection of data on pupils in special schools for students with mild mental disability.⁹⁰ The plan now is to measure progress until the proportion of Roma being educated as pupils with mild mental disability corresponds to the proportion of Roma in the population as a whole.⁹¹

But achieving reforms beyond improved data collection has proven complex. In its *D.H.* judgment, the court did not specify what measures the Czech state ought to take to remedy the situation; instead, it left it to the state to “choose the means.”⁹² The Czech government oscillated between two approaches: first, effectively eliminate the entire segment of special education for pupils with mild mental disability (the former special schools); or second, strengthen the safeguards in the existing system that prevents Roma students without disabilities from being pushed into special schools. Both approaches made it onto the political agenda, but the first did not weather the backlash.

In 2011, four years after the *D.H.* judgment, the Czech government pledged to ban schools and eliminate curricula for pupils with mild mental disability by 2015.⁹³ Under the plan, the schools that formerly taught pupils with mild mental disability would close down or be transformed into regular schools. As the government’s Strategy for Combating Social Exclusion (“Strategy”) made clear, there was a systemic inability to

retain certain groups of pupils in the mainstream.⁹⁴ Abolishing schools and curricula for pupils with mild mental disability, as well as amending financial incentives, “in large part fulfills the obligations flowing from the [*D.H.*] judgment” and other international obligations, reasoned the report.⁹⁵ As the human rights commissioner who submitted the Strategy to the government stated at the time, the idea of eliminating the schools, curricula, and incentives for educating students with mental disability “was primarily a response by the Czech Government to the *D.H.* judgment and the first step to implement” it.⁹⁶ But the Strategy was never put into action. (This failure is discussed in the section on counter-mobilization later in this report).

Actual legislative changes in the wake of *D.H.* have been more modest and focused on providing additional safeguards to reduce discrimination within the existing system. In 2011, a ministerial decree strengthened informed consent provisions and instituted regular re-diagnostic tests. Specifically, the decree outlined what information counseling centers would need to provide to parents prior to a child’s placement in a school or classroom for students with mental disability. This reform was adopted “especially in relation to the content of the [*D.H.*] judgment.”⁹⁷ Further, the decree provided for an annual re-diagnosis of pupils with mental disability.⁹⁸ The aim of this reform was to “lowe[r] th[e] number [of disadvantaged and disabled pupils] in schools and educational programs where their assignment was unjustified according to the ruling of the [ECHR].”⁹⁹

In 2011, another ministerial decree sought to eradicate the vestiges of the practice whereby children without a diagnosis of mental disability nevertheless ended up being educated following a curriculum designed for pupils with mental disability. It provided explicitly that children without a disability could not follow curricula for pupils with disability.¹⁰⁰ It still permitted, however, the placement of such children into segregated schools or classes for pupils diagnosed with disability, on a temporary or limited basis.¹⁰¹

In 2012, the Czech government under the leadership of Minister of Education Petr Fiala went a step further, pledging to remove the possibility of temporary or limited placement of pupils without a diagnosis of mild mental disability into segregated special education. It also began to focus on improving diagnoses, including offering new diagnostic tests and seeking to create a “culture-free” diagnostic approach.¹⁰²

D.H. continues to inform current Czech education policy: it is described as one of the reasons for the proposed amendment on special educational needs in the main education legislation, which purports to further espouse the principles of inclusive education.¹⁰³ However, a proposed reform of the financial structure of the education system—which still provides financial incentives for separate education of pupils with mild mental disability—has not been enacted.¹⁰⁴

2. Greece

In Greece, the Roma education judgments helped reaffirm and strengthen the stated ministerial policy on increasing the enrollment of Roma. At the local level in the sites of legal challenges, the judgments also engendered administrative actions aimed at eliminating the segregation of Roma.

Prior to the Greek Roma education judgments, the Ministry of Education issued a set of directives (or “circulars”) that interpreted existing legislation and provided general guidance on the enrollment of Roma. Notably, in 1995, the Ministry of Education enabled Roma to be enrolled in a primary school without the previously-required paperwork.¹⁰⁵ In 2000, a general directive established that age “or another reason” should not be used to prevent primary education of a child.¹⁰⁶ Before the *Sampanis* judgment came down, the ministry had also asked that school principals not only admit Roma children, but also seek out Roma children to ensure their enrollment.¹⁰⁷

After the Greek Roma education judgments, the directives on Roma enrollment grew in their frequency and scope. One after another, they emphasized that Roma enrollment should be guaranteed. In a 2008 circular issued days after the *Sampanis* judgment became final, the ministry explicitly addressed the three most cited reasons for refusing to enroll Roma students: lack of vaccinations by Roma children, lack of requisite registration documentation of Roma children, and inadequate capacity of schools.¹⁰⁸ This directive reminded school principals that they are obliged to enroll Roma pupils, and that neither missing vaccinations nor lack of registration paperwork should prevent enrollment.¹⁰⁹ As to insufficient capacity, only after the Roma children were enrolled could concerns of capacity be raised with education officials.¹¹⁰

Later, in a span of a few weeks in 2010, the Ministry of Education issued three circulars that touched on various aspects of Roma education. Thalia Dragona, the secretary of special education at the time, noted that *Sampanis* provided “added value” for these directives, including the most comprehensive circular on enrollment to date, issued in August 2010. The language of that directive is especially direct, asking that school principals “not present obstacles to the enrolment of Roma children due to the lack of a permanent residence certificate,” and accept “any probative element” that attests to the pupil’s residence.¹¹¹ In 2013, in the wake of the *Sampani* and *Lavida* judgments, the guidance from 2010 was reaffirmed in another comprehensive circular.¹¹² “This is the first time that we gave directions of such quality on Roma school enrollment issues,” concluded senior Greek Ministry of Education official Kostas Papachristos, who personally issued a number of them.¹¹³

Although the Ministry of Education’s circulars were issued at the national level, the segregation of Roma—denounced in *Sampanis*, *Sampani*, and *Lavida*—took place at the local level. Thus, each judgment spurred the Ministry of Education and its regional

offices to take a number of locally-aimed administrative actions targeting the applicants and particular schools at the heart of the cases. The Greek Ministry of Education also heavily utilized soft measures in working at the local level, including site visits, informal negotiations, and gathering input from local and regional officials, the Ombudsperson, representatives of the “Education for Roma Children” program, school principals, and parents’ associations.¹¹⁴

In 2008, the ECHR’s *Sampanis* ruling denounced as discrimination the segregation of Roma into special classes held in an annex to the regular 10th School, but did not specify the measures the state ought to take to remedy this breach of the Convention. That year, the Greek authorities abolished special preparatory classes and established the 12th School to educate Roma and non-Roma.¹¹⁵

But in practice, the new 12th School was simply the same discredited annex of the 10th School, but now renamed.¹¹⁶ Only Roma pupils were enrolled there.¹¹⁷ The Ministry of Education and the regional authorities were aware of this and took a set of informal measures aimed at integrating Roma pupils from the 12th School into nearby regular schools. Meetings, site visits, and proposals to the municipality to merge the 12th School with the regular 11th School ensued.¹¹⁸ But these soft measures did not translate into changes at the local level. Yet, the authorities did not take firmer steps, such as issuing an order to transfer the Roma pupils to regular schools or closing the 12th School.

In 2011, the Committee of Ministers concluded that the Greek state executed the *Sampanis* judgment by, among other steps, abolishing special preparatory classes and establishing the 12th School to educate Roma and non-Roma alike.¹¹⁹ But, in late 2012, the ECHR in *Sampani* found Greece liable because the operation of the 12th School as a Roma-only school resulted in discrimination.¹²⁰ This time, the Court specified what measures the state ought to take: most importantly, the transfer of school age applicants to another state school.¹²¹

Post-*Sampani*, the national and regional authorities took not only soft measures but binding administrative acts as well. In the fall of 2013, the regional education authority issued an order giving the applicants and enrolled non-applicants the right to transfer to another school; automatic transfer would follow for the applicants who did not exercise this right.¹²² Further, “for the reasons mentioned in the *Sampani* Judgment,” the order stated that the 12th School could not admit new pupils.¹²³ That fall, as part of recommended school closures, the relevant regional head suggested to the Ministry of Education that the 12th School close down.¹²⁴

The Ministry of Education’s actions in the wake of *Sampani* also had teeth. In the spring of 2014, Roma applicants were automatically transferred to a regular school, following the ministry’s instructions calling for “immediate execution” of the *Sampani* judgment.¹²⁵ In May 2014, the 12th School was listed among the schools the government would close.¹²⁶ The ministry “decided [to close the 12th School] taking into account the

two [ECHR] decisions and the general policy of . . . not having ghetto schools,” confirmed Kostas Papachristos, a senior Ministry of Education official.¹²⁷

A similar pattern was followed with the *Lavida* case, with national-level efforts initially proving insufficient. Before the Court’s judgment in *Lavida*, the Greek government made failed attempts—especially after it became aware of the ECHR application—to encourage the transfer of Roma pupils from the Roma-only 4th School of Sofades to regular schools in the area. Its actions included site visits, meetings with several stakeholders, and memorializations of agreements reached. Most notably, in the winter of 2011, following a visit to Sofades, a senior Ministry of Education official proclaimed that “[n]o intention to exclude or segregate Roma children will be tolerated.”¹²⁸ The document that memorialized the agreement reached in Sofades provided that in the middle of the school year, Roma first-graders from the 4th School would be transferred to other schools in the area, a protocol to be followed going forward.¹²⁹ But neither this plan nor a subsequent, much more tempered plan, materialized.¹³⁰

Finally in the fall of 2013, after the European Court issued its *Lavida* ruling, the regional education authority, in its words, “decided to immediately implement and execute” the judgment: it issued an order authorizing transfers of Roma pupils from the 4th School to the regular schools if their legal guardians requested it.¹³¹ However, to date local authorities have not taken the more forceful steps of automatically transferring Roma to other schools (they cite a lack of capacity at what would be the two receiving schools), or redrawing of catchment area.¹³² At the time of writing, the 4th School was still operating.

3. Hungary

In Hungary, as in the Czech Republic and Greece, a ruling by the ECHR had a significant effect on education policy. However, in Hungary changes in policy were also shaped by the Nyíregyháza litigation, which is local and did not emanate from Strasbourg.

Before the first *Horváth and Kiss* judgment from a Hungarian court came down in 2009, the government had already adopted a broad range of policies to address the overrepresentation of Roma in special education. Changes to legislation, financial incentives, and diagnostic methods and processes all took place.

For instance, in 1999, in the wake of a report by the Ombudsperson for Minority Issues on the topic, an annual re-diagnosis of disability (bi-annual for older pupils) was mandated for pupils who had been found to have a mental disability.¹³³ Subsequently, the Ministry of Human Resources launched a specific “Program for preventing non-disabled children becoming labeled as having mild mental disability,” which lasted from 2002 through 2006.¹³⁴ Its hallmark was an extraordinary re-assessment of disability among 2,100 pupils, 11 percent of whom were subsequently recommended for transfer

to the mainstream.¹³⁵ The program also sought to change the financial incentives in place by offering additional funds for mainstream schools that took in pupils redirected from special education.¹³⁶ Further, it began revising diagnostic processes and tools, such as the diagnostic tests.¹³⁷ However, these steps did not directly challenge segregated education; rather, by only addressing misdiagnosis, they had the paradoxical effect of affirming segregation that was based on a disability diagnosis.

Starting in 2003, Hungary's main education legislation was amended almost annually. Most notably, a 2007 amendment introduced a distinction between special educational needs stemming from "organic" and "non-organic" causes (referring to disability-based and non-disability-based categories). Per the amendment, only pupils with organic disability could be educated separately. Pupils previously diagnosed with "psychological disorder" (a diagnosis mainly applied to Roma at the time) had to be re-examined and sent to mainstream schools if no organic disability was found.¹³⁸ A special re-examination of more than 30,000 pupils followed, with one-third of those re-diagnosed found to have no special educational needs under the law and another 20 percent deemed to have so-called non-organic special educational needs.¹³⁹ (Later, due to a backlash, the law was revised to allow children without "organic" disability to be educated in segregated special schools based on the opinion of an expert panel.)¹⁴⁰

Throughout this time, official ethnically disaggregated data on Roma with special educational needs were not collected; as in the Czech Republic, data protection laws were perceived to pose an obstacle to data disaggregation. The re-diagnosis of some of the Roma pupils, resulting in the extraction of some from the category of those diagnosed with disability, did not extend to questioning the disability-based segregation of those diagnosed with a mental disability.

The ECHR did not release its *Horváth and Kiss* judgment until 2013, making the ruling's direct impact on policy difficult to judge because it is so recent. Many policy changes commenced earlier, though, in the wake of messages that the Hungarian domestic courts were sending.

For instance, in 2009 the Hungarian appellate court—even as it dismissed the applicants' claims in *Horváth and Kiss*—emphasized that to prevent the segregation of Roma in the special schools, a diagnostic system needed to be developed that could account for minors' cultural, linguistic, and social backgrounds.¹⁴¹ In 2010, the Supreme Court cited "systemic errors of the diagnostic system leading to misdiagnosis" because the "creation of an appropriate professional protocol . . . is the duty of the State."¹⁴² Finally, in 2012, in connection with the *Horváth and Kiss* case,¹⁴³ the Hungarian Ministry of Human Resources launched an EU-funded project to develop a professional diagnostic protocol for diagnosing pupils with special educational needs.¹⁴⁴ The project is ongoing.

While this diagnostic test is being developed, the Hungarian government has reported that “[f]ollowing the facts of [*Horváth and Kiss*], significant legislative amendments were adopted which specified strict criteria and set forth a procedure for establishing that the symptoms perceived are really caused by mental handicap.”¹⁴⁵ In effect, in 2010 and 2013, the government further strengthened the safeguards within the existing system of diagnosing children with mental disability. For instance, the legislation provides that unless mild mental disability can be conclusively established, continuous monitoring needs to follow.¹⁴⁶ Further, in the case of multiply disadvantaged children (a category correlated with poverty and low educational attainment of parents), the law provides for the presence of a so-called equal opportunity expert during the diagnosis to help ensure that the diagnosis is proper.¹⁴⁷

One of the key changes in Hungarian policy stemming from the ECHR’s *Horváth and Kiss* judgment is the collection of ethnically disaggregated data. In July 2014, the Hungarian Parliament amended its main education legislation to mandate that expert panels (which diagnose pupils with disability) collect and record ethnically disaggregated data in a centralized database.¹⁴⁸ A Ministry of Human Resources official informally confirmed that this database was established in response to *Horváth and Kiss*.¹⁴⁹

However, not all recent policy changes in Hungary can be traced to Strasbourg, and not all have been positive for the cause of Roma school desegregation. Some policy changes in Hungary have come from domestic school desegregation litigation, originating from the city of Nyíregyháza, which is notorious for its segregated schools. Amongst them was School No. 13, located on the city outskirts in the midst of a housing estate inhabited largely by Roma.¹⁵⁰

In late 2006, the Hungarian NGO Chance for Children Foundation (CFCF) filed a claim seeking to close down school No. 13. The mayor of Nyíregyháza, Lászlóné Csabai, decided to close the school in 2007, stating that the claim CFCF had filed in court influenced her decision-making. “[T]heir lawsuit speeded it up,” explained the former mayor.¹⁵¹ In April 2007, the municipality made the formal decision to “clos[e] Elementary School No. 13.”¹⁵²

Starting in 2007–08, the children from the school were sent by bus to other schools in the city.¹⁵³ The formerly segregated school underwent a HUF 22 million (approximately EUR 100,000) overhaul that turned it into a social and cultural center.¹⁵⁴ For three school years, the arrangement continued unabated. But four years after the closing of School No. 13, the local political landscape shifted.

In the fall of 2011, at the initiative of a newly-elected mayor, School No. 13 reopened its doors again as an educational institution, this time as a Greek Catholic school.¹⁵⁵ The previous spring, the municipality and the Greek Catholic Church entered into a set of agreements whereby the municipality leased the property to the church free of charge and provided for additional annual financial allocations.¹⁵⁶ In addition, the municipal-

ity discontinued the free school bus program for the former students of School No. 13. Instead, the municipality promised to cover 30 percent of the cost of a monthly public bus pass.¹⁵⁷

In 2011, CFCF filed a fresh *actio popularis* claim (known as the Nyíregyháza II litigation), seeking to close down the faith-based school. But what was originally a local desegregation lawsuit quickly gained national prominence when it was caught up in national changes in educational policy. In early March 2013, the Hungarian Parliament passed an amendment to its constitution.¹⁵⁸ The amendment altered a provision on the promotion of “equal opportunities” to include “equal opportunities and *social catching-up*.”¹⁵⁹ Many observers argued that “social catching-up” was intended to again legitimize the segregation of Roma students. “This is the first time in the history of Hungary’s constitutionality that a government fiddles with the basic law with the clear intention of unlawful segregation,” warned the head of the Hungarian Civil Liberties Union.¹⁶⁰

Hungary’s current Minister of Human Resources Zoltán Balog has championed the catch-up concept and offered to testify in the Nyíregyháza II litigation on behalf of the Greek-Catholic School. The Ministry of Human Resources stated in a press release: “We . . . support every institution which enables students with disadvantaged backgrounds to close the achievement gap, even if the institution only educates Roma children.”¹⁶¹ In fact, Minister Balog has sought to push the catch-up concept beyond education policy, proposing that Hungary’s Equal Treatment Act be amended to explicitly allow such a system. Shortly before he was to give testimony in the Nyíregyháza II litigation, Minister Balog offered to drop the proposed amendment to the Equal Treatment Act if CFCF dropped its Nyíregyháza lawsuit.¹⁶² The CFCF board of directors voted not to take the settlement.¹⁶³

Thus far, the threatened amendment to the Equal Treatment Act has not materialized.¹⁶⁴ In February 2014, the first-instance court ruled in favor of CFCF. Importantly, it also held that neither the education legislation nor the antidiscrimination legislation “allow[s] catch-up education which happens in separate classes or separate school buildings.”¹⁶⁵ The appellate court affirmed the lower court’s judgment in November 2014. Following the appellate court ruling, Minister Balog has again signaled that legislation ought to change. At the time of writing, it was not known whether the case would be taken up to the Hungarian Supreme Court or what the proposed legislative changes may be.

Not all policy changes that are enacted or contemplated in the wake of strategic litigation are positive. The Nyíregyháza litigation has made clear that the current administration is seeking to enact policies that—under the banner of “catch-up”—again result in the segregation of Roma students. To date, Hungary’s courts have resisted these arguably discriminatory policy changes. But as one Roma activist from Nyíregyháza put it, without the Nyíregyháza II litigation, “the issue would have been hidden.”¹⁶⁶

C. Impact on Educational Practices

Changes in educational policy resulting from strategic litigation, however important—and however progressive or regressive—exist on paper. It is how those changes get translated into altered educational practices that actually affect students' lives. In regard to the Roma education judgments, changes in educational practices are still unfolding, making their impact difficult to assess. But while it is too early to take the full measure of the impact of these judgments, it is possible to make initial observations, including through examining data on the educational placement of Roma students in the Czech Republic, Greece, and Hungary.

1. The Czech Republic

[W]e have 10,000 illegally placed Roma children . . . When the children are there unjustly, someone stole their opportunities, their possibilities, their life! Who will give it back to them? Who will make this right?!¹⁶⁷

—Roma activist Edita Stejskalová

Throughout the years since the ECHR's *D.H.* judgment, a single phrase has come to summarize the ruling's impact: "nothing has changed." The former special schools disappeared in 2005 in name only.¹⁶⁸ Data have consistently shown a staggering disproportion of Roma in special education: in 2013, Roma accounted for well over a quarter of pupils educated in segregated settings.¹⁶⁹ Interlocutors in the Czech Republic interviewed for this report—including the *D.H.* applicants themselves, as well as members of civil society—have pointed out that change on the ground has not happened or has been inadequate at best.¹⁷⁰ Since 2007, the Office of the Czech Ombudsperson has issued two formal opinions where it identified ongoing education practices as a form of discrimination.¹⁷¹ The COE continues to examine the judgment's execution under its enhanced supervision track.¹⁷² Most recently, the European Commission launched infringement proceedings against the Czech state because of its ongoing discrimination against Roma in special education.¹⁷³

Did *D.H.* simply fail to affect the education of Roma? So long as the actual proportion of Roma amongst pupils educated in the same category as mildly mentally disabled (anywhere from 26 percent to 35 percent, based on available data¹⁷⁴) remains at odds with the proportion of Roma in the population at large (between 1.4 and 2.8 percent),¹⁷⁵ "success" cannot be the word to describe the impact of *D.H.* on the ground. Yet, the phrase "nothing has changed" may be an overstatement. The trend lines suggest, albeit cautiously, gradual improvement in the disproportionate placement of Roma into programs for children with mild mental disability.

Using official government data from 1986 through 1991 (when official data on the proportion of “Gypsies” in the special schools existed) as a proxy, Roma accounted rather consistently during that five-year period for around 40 percent of pupils at the special schools.¹⁷⁶ In 2009, a government-commissioned survey of all primary schools revealed that Roma accounted for approximately 35 percent of all students who followed curricula for pupils with mild mental disability.¹⁷⁷ In 2012, the Czech Ombudsperson found (using a more limited sample) that Roma comprised between 32 percent and 35 percent of pupils in the former special schools surveyed.¹⁷⁸ Still another source, the Czech School Inspectorate, found the proportion of students following curricula for pupils with mild mental disability to be 35 percent Roma in 2009 (based on data from a subset of the former special schools), approximately 26 percent in 2011 (based on data from a somewhat different subset of the former special schools), and approximately 28 percent in 2013 (based on data from schools with at least five pupils with a diagnosis of mild mental disability).¹⁷⁹

However uneven and incomplete, the data are grim. Yet three variables—both directly and indirectly intertwined with *D.H.* and its related advocacy—suggest the existence of a downward trend in the proportion of students following curricula designated for pupils with mild mental disability who were Roma. As becomes apparent in the following account of post *D.H.* developments, rather than chip away at all grounds for segregation in education, this downward trend has been accompanied by a reaffirmation of disability as a ground for segregation.

First, the Czech government has taken some actions to reduce the disproportion. In 2009, the Czech School Inspectorate found that Roma accounted for a quarter of the pupils placed in the former special schools without a diagnosis of mental disability, and, critically, noted that this could result in fines for the schools involved. In early 2010, the minister of education appealed to all schools to ensure that only children with true mental disability were educated as such, while a 2011 ministerial decree codified that children without mental disability could not be educated as if they were.

When, in 2012, Ministry of Education officials met with an OSCE field team, they reported that *D.H.* had made the placement of children outside the mainstream more difficult; poor grades no longer sufficed for placement into special education.¹⁸⁰ There is data to support the Ministry’s contention. In 2012, a professional association that represents counseling centers reported that “[t]he number of pupils admitted to practical primary schools has been significantly declining; after 2009, those placed there are only children with demonstrably diagnosed mental retardation (sic).”¹⁸¹

Second, the *D.H.* judgment and the policy changes that followed appear to have focused on the diagnosis of students. Certainly the new diagnostic standards, including the requirement of annual re-diagnosis, appear to have affected counseling centers.¹⁸² Several interlocutors remarked that counseling centers are less likely to recommend

placing Roma into schools for pupils with mild mental disability. A mother of a *D.H.* applicant noted that counseling centers today “are much more careful and cautious not to jump to conclusions and do not make recommendations for practical schools immediately.”¹⁸³ “They do not dare to just give out a mild mental disability [diagnosis],” said a Roma who wished to remain anonymous. “If it was shown that some child was unjustifiably assigned, they fear there will be a new *D.H.*”¹⁸⁴

Even opponents of the *D.H.* judgment concede that it has changed the diagnostic process. Jiří Pilař, who heads an association of special educators and is one of the leaders of the ongoing backlash, noted that “one of the negative results of this judgment is that counseling center members fear recommending children for placement in practical primary schools. Even children . . . who are 10 or 11 points under the [IQ] threshold are put into a regular primary school—of course in an environment where the teacher does not know how to work with [the child].”¹⁸⁵ On the floor of the Senate, another leader of the backlash remarked that under the pressure of the policy aimed at abolishing practical primary schools, “the pedagogical-psychological centers stopped putting pupils with borderline IQ into the practical schools.”¹⁸⁶

Government data, too, seem to signal that fewer Roma may be diagnosed with mild mental disability, whether due to different diagnostic approaches, different assessment tests, or another reason. Roma accounted for 23 percent of the pupils diagnosed with mild mental disability in 2009–2010 and, based on a somewhat comparable sample, for 13 percent two years later.¹⁸⁷ Non-Roma children also saw a drop in diagnoses of mental disability, though not as significant.¹⁸⁸

Third, the requirement of informed consent, which was strengthened in direct relation to *D.H.*, seems to have made the counseling centers more consultative. “Before, [informed consent] was a notice of just a few lines, we probably didn’t use to do it so carefully,” noted the head of one counseling center.¹⁸⁹ The mother of a *D.H.* applicant who was on the receiving end of such counseling center recommendations both before and after the *D.H.* judgment remarked:

These days, [counseling centers] really value the role played by the parent, who attends all the appointments and testing; they first work with the child and then the parent. The professionals tell the parent what they think and feel about the child. . . . [I]t is up to the parent to decide if the child will stay in mainstream school or attend practical school. In this respect, *D.H.* has had a definite impact on how the [counseling centers] work.¹⁹⁰

According to the government, the number of pupils with mild mental disability integrated into the mainstream seems to have risen from 782 to nearly 1,300 between 2008 and 2013, though it is unclear how many of those students were Roma.¹⁹¹ One

head of a counseling center also remarked that, “Practical schools no longer have as many pupils, they integrate more.”¹⁹²

Change on the ground—cautious, piecemeal, fragile—seems to be taking place. “The fact that there are children who before 2007 would have ended up in practical school and are now in mainstream schools is a major development,” said Martin Šimáček, an official responsible for the government’s Strategy for Combatting Social Exclusion who sought a legislative ban on practical primary schools. “[N]ow in 2014 we are certainly not in the same situation as in 2007.”¹⁹³ The statistics, though, remain alarming. The response that former Deputy Minister of Education Jiri Nantl gave to government officials when asked about the data is a reminder of all that is yet to be accomplished: “How can we debate whether it is 33, 28 or 25 percent when the Roma represent only 1.5 percent of the Czech population? It’s still a lot.”¹⁹⁴

It is important to note that the implementation of the *D.H.* judgment is far from complete, and its full ramifications far from clear. For example, it is unclear whether the Roma children who escape special education actually receive better instruction. Amnesty International has recently reported that “Children are now being placed in Roma-only classes, or studying a limited ‘practical’ curriculum, in schools identifying themselves as mainstream elementary schools.”¹⁹⁵ Roma activist Jolana Šmarhovy ová likewise remarked that “segregation persists, only in a different form,” while another Roma activist thought that *D.H.* “caused an increase in the number of segregated schools.”¹⁹⁶ Data on what happens to those who transfer away from special education is badly needed. It is possible that the segregation of pupils with mental disabilities became more entrenched through differentiating between racial/ethnic-based and disability-based motivations for segregation and leaving the disability-based one intact.

2. Greece

The impact of the Greek Roma education judgments on the enrollment of Roma across Greece is unknown. But at the local level, in Sofades and Aspropyrgos, some results are tangible. In the fall of 2013, seven *Lavida* applicant children were transferred from the segregated 4th School to two mainstream schools in Sofades.¹⁹⁷ In the spring of 2014, in advance of the closure of the Roma-only 12th School, 50 school-age *Sampani* applicant children were officially transferred to the mainstream 11th School.¹⁹⁸ In total, 64 registered pupils of the former Roma-only school were placed in the mainstream school in advance of the 2014–2015 school year.¹⁹⁹

However, continued attendance of these non-segregated institutions is not a given. In Aspropyrgos, the formal transfers—which took place not at the start of the school year but shortly before the school year’s end—did not result in any applicants actually attending the 11th School during the 2013–2014 school year.²⁰⁰ The attending

non-applicants likewise decided to continue their studies at the 12th School during the 2013–2014 school year.²⁰¹ Following the closure of the 12th School of Aspropyrgos in the summer of 2014, 20 children are reported to have started attending the mainstream 11th School out of 64 registered and probably over 100 potential Roma pupils.²⁰² Thus, while some progress has been made following the Greek Roma education judgments, it is not clear if that progress is lasting or evanescent.

3. Hungary

Discerning the impact of *Horváth and Kiss* on educational placement of Roma is elusive. The Hungarian government has registered a decline in the proportion of pupils with mild mental disability between 2003 and 2012 from 2.1 percent to 1.5 percent of the total pupil population.²⁰³ But whether and how this affects Roma students is not yet known, because official ethnic data collection did not take place until mid-2014. Disentangling and tracking any possible impact back to strategic litigation is difficult in general, but nearly-impossible in Hungary, where the *Horváth and Kiss* litigation came in the wake of several legislative changes, and where the ECHR did not rule 2013, meaning all implementation efforts are still nascent.

The impact of the ongoing Nyíregyháza litigation on placement of Roma from the Greek Catholic School into integrated schools is yet to be determined. In the past, after the school first closed in 2007, six “elite” mainstream schools in the city received 85 former pupils from the segregated school on its outskirts.²⁰⁴ Following the opening of the Greek Catholic School, reportedly, “more and more parents enroll their child [there].”²⁰⁵ (Some of the reasons for that are explored later in this report, in the section on Roma mobilization.) The recent November 2014 judgment, if not appealed or affirmed on appeal, would mean that the school will not accept any new pupils for the 2015–2016 school year.

D. Impact of the ECHR Judgments on the Court²⁰⁶

Strategic litigation, by design, does not just affect the applicants; rather, it is intended bring change to the broader society. But strategic litigation can also affect the courts themselves, as can be seen in examining the impact of the Roma education cases on the ECHR itself.

On November 13, 2007, 18 Roma secured that which motivated and justified the genesis of *D.H.*—“a judicial finding that the state of Roma education in at least one country amounted to unlawful racial discrimination.”²⁰⁷ After half a century of scarce protection from racial discrimination, the ECHR heralded in *D.H.* and soon thereafter

in five other Roma education judgments that it stands ready to protect the victims of racial discrimination. The judgments—*D.H.*, *Sampanis*, *Oršuš* (which is not a focus of this study), *Sampani*, *Lavida*, and *Horváth and Kiss*—built on one another and together advanced the Court’s antidiscrimination principles and jurisprudence.

Prior to 2007, no court in Europe had found an entire education system to be engaged in discriminating against Roma.²⁰⁸ That the ECHR would do so was far from certain: its track record of protecting the victims of racial discrimination was meager at best. For 50 years,²⁰⁹ the Court failed to find that Article 14, the prohibition of discrimination, was violated on the basis of race.²¹⁰ “Leafing through the annals of the Court, an uninformed observer would be justified to conclude that, for over 50 years democratic Europe has been exempted from any suspicion of racism,” remarked former ECHR judge *Giovanni Bonello* in 2002.²¹¹

The tide began to turn in 2004 and 2005 when the Court finally started to find Article 14 violations on the ground of race. Still, it was only in a few cases in the area of criminal justice and policing.²¹² Further, the Chamber’s unfavorable *D.H.* judgment in 2006 signaled that the protection from racial discrimination was sharply limited and would not reach the institutions and systems that produced disparate impacts on, but did not specifically target, a particular group. “Limiting Article 14 protection to those rare occasions where discriminatory intent is demonstrably provable would render it an empty shell,” warned *D.H.* counsel in its request to be heard by the Grand Chamber.²¹³ That the Grand Chamber would even hear the case was unlikely: 39 out of 40 applicant requests at the time were declined.²¹⁴ And, the idea that the Grand Chamber would for the first time in its history find racial discrimination in education was far from given. Yet the strategic litigation efforts documented in this report have had a major impact on the Court, and by extension on Europe’s human rights regime. In particular, their impact can be seen in jurisprudence that has strengthened protections against racial discrimination while broadening the Court’s understanding of what constitutes such discrimination.

1. Strengthening the Protection against Racial Discrimination

The ECHR’s *D.H.* ruling and other Roma education judgments rendered the protection from racial discrimination under the Convention real, not “theoretical and illusory.”²¹⁵ In fact, starting with the Grand Chamber’s *D.H.* judgment, the Court denounced racial discrimination in education six times in a span of six years. In 2007, in *D.H.*, a Grand Chamber majority found that the Czech special education system, even if neutral on its face, discriminated against the Roma.²¹⁶ In 2008, in *Sampanis*, a unanimous Chamber held that Greece’s failure to ensure school enrollment of Roma applicants and its subsequent assignment of the applicants to separate classes was discriminatory.²¹⁷ In

2010, in *Oršuš*, the Grand Chamber (in a vote of nine to eight) found Croatia liable because it placed Roma applicants into separate classes due to inadequate command of Croatian language but without sufficient efforts to ensure their subsequent integration into mixed classes.²¹⁸ In 2012 and 2013, in *Sampani* and *Lavida*, two unanimous Chambers found that Greece's operation of Roma-only schools in two Greek towns was discriminatory.²¹⁹ In 2013, in *Horváth and Kiss*, a unanimous Chamber held Hungary liable because its special education system, while neutral on its face, was discriminatory.²²⁰ The judgments significantly strengthened the once-meager protection against racial discrimination. Not only were four European countries held liable for discriminating in education, the judgments also denounced various distinct forms of discrimination. Neither segregation into separate facilities such as classrooms and schools nor entire nationwide, facially-neutral systems with disparate impact would be immune from the Court's reach.

2. Advancing ECHR Antidiscrimination Case Law

The Roma education judgments strengthened and revolutionized the ECHR's treatment of indirect discrimination, statistical evidence, and countries' positive obligations to ensure non-discrimination. They also moved the Court closer to a substantive model of equality, accorded Roma special protection under the law, and heralded a willingness to extend protection beyond the individual applicants to entire communities.

The *D.H.* judgment, hailed as historic and path-breaking,²²¹ stands out even amongst the nearly 20,000 judgments the Court has delivered since 1953.²²² One former ECHR judge explained that “[i]n terms of jurisprudence of the Court and Article 14, it was very much a landmark judgment” for five reasons.²²³ First, according to the former judge, *D.H.* was precedent-setting because it affirmed that ethnic discrimination was a form of invidious racial discrimination that required “special vigilance and reaction from the authorities,”²²⁴ and recognized that the Roma were a specific disadvantaged and vulnerable minority “requir[ing] this special vigilance.”²²⁵ Second, *D.H.* was important because it showed that when facially-neutral legislation had a disproportionate prejudicial effect on a particular group, examination of individual cases was not necessary.²²⁶ “This itself evoked the fury of at least one of the dissenting judges,” expounded the former judge, “because it was regarded as a new approach, to find not individual breaches but a breach . . . generally on the community.”²²⁷ Third, *D.H.* reaffirmed that the Court would protect the victims of indirect discrimination by recognizing that a facially-neutral policy with a disparate impact on a particular group could be discriminatory even if not specifically aimed at that group.²²⁸ Fourth, the former judge ascribed *D.H.*'s further significance to its reaffirmation that “it could be discrimination where unlike persons were treated alike just as in the case where like persons were

treated unlike.”²²⁹ A last important factor, according to the former judge, was “the role played by statistics, where the statistics are [as] clear and compelling as they were in this case. I think this was certainly the first judgment where it was very largely based on the evidence of statistics.”²³⁰

With the advent of the *D.H.* judgment, the ECHR’s discrimination principles finally resembled those of other European bodies.²³¹ The Court’s express espousal of indirect discrimination, intertwined with its treatment of Roma as a particular group worthy of special protection, thus solidified a move towards recognizing a substantive model of equality.²³² And, because the Czech education system discriminated against the broader Roma community, the Court’s protection could reach beyond the individual applicants.²³³

The later Roma judgments not only built on *D.H.* and on each other, but also further advanced the Court’s case law, especially in the area of remedies and a burgeoning duty to desegregate. The Court, generally loath to tell defendant states what specific remedial measures to adopt, did so in *Sampani* when it suggested that Greece transfer the Roma applicants into a non-segregated school.²³⁴ In the more recent *Horváth and Kiss* judgment, the Court went even further, proclaiming that the state has “positive obligations” to avoid the perpetuation of past discrimination in education.²³⁵ In *Lavida*, the Court found a violation of the Convention because the Greek state, while aware of continued segregation in education, “decided against effective anti-segregation measures.”²³⁶ The judgments thus indicate that past discrimination in education imposes a duty on the states to prevent such discrimination in the future, and that being aware of present segregation and “deciding against” effective measures to end it may result in liability.

Such judgments, with their broad understanding of discrimination and insistence on states’ duty to remedy and prevent it, were once unthinkable. But one clear effect of the Roma education strategic litigation has been changes in the Court itself.

IV. Agenda Change: Mobilization, Counter-Mobilization, and Rights Awareness

Assessments of the impact of strategic litigation should not be limited to changes in policy or practice, or even changes in jurisprudence. In some ways, those changes are just necessary precursors to the more important changes in people's lives.

But as this section will explore, there is rarely a straight line from changes in policy and practice to improvements in people's daily lives. Rather, there is the interceding factor of implementation—of how judgments are executed, and how politicians, state institutions, and regular people respond. Mobilization in favor of, or against, a judgment and its implementation can be every bit as important as the judgment itself.

At its most successful, strategic litigation is part of an ongoing cycle. That is, the litigation can be spurred by the rights awareness and mobilization of a wronged individual or group. If the litigation leads to a judgment and the execution of the judgment, that can further galvanize and mobilize the group or individual. And success in court can lead to greater rights awareness, which in turn spurs further litigation, as the cycle continues. This section looks at specific aspects of that strategic litigation cycle, with particular attention to the Roma response to the judgments in question, mobilization in favor of the judgments in question, and backlash against them. It concludes by considering changes in rights consciousness and prospects for ongoing change.

A. The Roma Responses

“It would be really good if Roma people could lead their own destiny.”²³⁷

—Roma interviewee

“Who went to court? Was it [the plaintiff] or [the counsel]? I think it is [the counsel] who went to court, trying to raise the issue. Is it us, the ones going to court? Is the impact on us, the Roma rights defenders? Or is it for all the others?”²³⁸

—Non-Roma interviewee

“Educational desegregation in Central and Eastern Europe is primarily about, and must be led by, Roma,” wrote Ivan Ivanov and James A. Goldston, a Roma and a non-Roma attorney, respectively, who were involved in the *D.H.* litigation.²³⁹ In fact, Roma applicants, lawyers, civil society leaders, NGO staff, and government officials in all three countries played a critical role in the strategic litigation on Roma school segregation—even before the litigation was filed. Their mobilization and advocacy helped to initiate the litigation. However, it must be noted that one resounding message from the research conducted for this study was that Roma are underrepresented (especially in the Czech Republic and Greece) in the debate over the litigation and its implementation.

In Hungary, Roma advocates played critical leading roles in negotiating with the Ministry of Human Resources. But high-level involvement of Roma in the debates regarding the Czech and the Greek cases appears scarce. Many Czech Roma activists interviewed for this study stated that Roma were missing from, or inadequately represented in, the struggle to desegregate schools. Edita Stejskalová, a Roma activist who followed the execution of the *D.H.* judgment from the start, said: “I am observing an unbelievable dwindling of Roma in the working monitoring groups, in various more formal meetings on [*D.H.* execution]. This mirrors not only the discussions at the national level, but also within the [NGO] sector.”²⁴⁰ Other Roma activists echoed that. A Roma community organizer, Magdaléna Karvayová, found that there are “extremely few Roma in monitoring groups, inspection groups, committees.”²⁴¹ A message from Roma activist Martina Horváthová was to “give more room to Roma participation.”²⁴² As the people most directly affected by discrimination, Roma ought to be the ones working on changing the education system, argued another Roma activist, Jolana Šmarhovyčová.²⁴³

In Greece, in connection with the judgments under examination, the Roma community leaders in Sofades and Aspropyrgos have been the most active. Yet Roma applicants and community leaders have generally not been invited to the informal multi-stakeholder meetings the Ministry of Education held on the execution of the

Greek ECHR judgments.²⁴⁴ Several interlocutors remarked that Roma mobilization as such is missing. A Roma lawyer reported knowing of only two other Roma attorneys in the entire country.²⁴⁵ “The Roma community has not been very active in the past,” noted former Ministry of Education official Thalia Dragona, “but that is slowly changing with the employment of mediators.”²⁴⁶ A COE official remarked that Roma in Greece “don’t have a high degree of advocacy” and noted she “would expect from [the Roma] to stand up for their rights themselves and not to have others stand up for their rights.”²⁴⁷ She cited fear and dependency on the state among the barriers to doing so.²⁴⁸

Another COE official noted that the debate on Roma desegregation cases is generally one of “non-Roma discussing Roma.”²⁴⁹ Organizations like Amnesty International and others, she thought, “should increase the numbers of Roma [staff].”²⁵⁰ In Hungary, “[t]he debate on this topic [school desegregation] is extremely restricted to a small part of the Budapest intelligentsia,” remarked András Bíró, former board chair of ERRC.²⁵¹

But if Roma leadership has been wanting in the debate over the judgments, it has been present in some grassroots mobilization efforts—although perhaps surprisingly, Roma mobilization has been both for and against segregated and special schools.

In recent years, Roma-led campaigns to desegregate schools from the “bottom up” have started to gain a foothold in the Czech Republic to address phenomena such as the lack of information made available to parents. In the current Czech education system, where the title of the school does not connote the education a school provides and a “primary” school may in fact follow a curriculum for pupils with mild mental disability, this is especially important. Roma activists reported that Roma parents (or anyone) could not always tell the difference.²⁵² The information campaign “Mami, Tati, Já Chci do Školy” (Mom, Dad, I Want to Go to School) led by Roma activists from the Czech NGO Slovo 21 seeks to address that and more.

Slovo 21 also holds workshops across the Czech Republic to inform Roma parents about the *D.H.* judgment, the differences between regular and practical schools, and ways to prevent placement in practical schools, including the parental consent requirement.²⁵³ Relatedly, Slovo 21 put out a popular video clip, where a group of young Roma rappers appeal to Roma parents “not to be stupid” (*Nebud’ dilino*), and to resist sending their children to practical primary schools.²⁵⁴

The clip was also used in another Roma-led campaign, called the *D.H.* Project, seeking to desegregate schools through grassroots efforts. The project grew from the recognition that “only a few parents systematically fight the entrenched practice that segregates their children into the practical schools.”²⁵⁵ The project educated Roma parents about *D.H.* and sought to empower them to fight for their child’s education in non-segregated regular schools. In its first year, “out of 44 parents, 38 did not enroll their child into [first grade at] a segregated school, and that is success,” remarked a Roma activist involved in the project.²⁵⁶

That some Roma would be galvanized by the ECHR's education desegregation litigation and mobilize in favor of implementation seems obvious. But in both the Czech Republic and Hungary, some Roma actually mobilized against the judgments and in support of segregated education. For instance, in the Czech Republic, when the Czech Ombudsperson conducted ethnic data collection, several thousands of parents signed a petition against such collection and against the abolition of practical primary schools. The head of the equal treatment division at the Ombudsperson's Office recalled that "Roma parents . . . also visited the Ombudsman and said they had a right to decide which school they would send their children to."²⁵⁷ In Hungary, during the court proceedings regarding the legality of the segregated Greek-Catholic School in Nyíregyháza, representatives of the local Roma Minority Self-Government testified in favor of retaining it.²⁵⁸

In addition, research in all three countries revealed that some Roma affirmatively decide to educate their children in segregated (special or mainstream) schools.

In the Czech Republic, the mother of a *D.H.* applicant who understood the dire consequences that special education had on her applicant son still felt compelled to agree to place another of her sons (who was not part of the case) into a special school. She explained: "Back in the mainstream school, the children and the teacher laughed at him, no one spoke with him." When they visited the counseling center where her son was tested, the psychologist gave her two options: "Either I keep [my son] in the mainstream school where his mental condition will keep getting worse and he will eventually explode, which could lead to violent behavior, or I have him transferred to a practical school where he will feel better."²⁵⁹ She chose the latter. Her case is not insular.²⁶⁰

In Hungary, a Roma mother who took her son out of an integrated school in the city and put him into the Greek Catholic School inside the Roma settlement noted why: "I thought my child would again be excluded because of his Roma origin."²⁶¹ The boy shared that, when he was at the integrated school, he was always put into the last row of chairs, even when there was room up front; he did not have friends there, but now, "everyone is [his friend]."²⁶² Another family member mentioned that costs played a role, too: to attend the city school, the family would need to pay for a monthly bus pass for both the child and the parent to accompany the child to school.²⁶³ "Here, they do not ask for class money [i.e. a monthly parental monetary contribution to a common fund] like in the city schools; we do not have to pay for anything here," continued the mother.²⁶⁴ The other family member noted: "[A]nd the children are here. They care about them."²⁶⁵

In Greece, local Roma in Aspropyrgos split over the closure of the segregated 12th School. "Why are you closing our school?!" asked two non-applicant Roma mothers in Aspropyrgos when they saw the principal of the 12th School.²⁶⁶ In an interview, the principal noted, "I saw many parents frustrated, and on my last visit in Sofos [where the Roma community lives], many children were crying because 12th School is clos-

ing.”²⁶⁷ Concerns about the closure of the 12th School reverberated almost uniformly throughout many interviews about Aspropyrgos. The fear was that the closure of the 12th School may lead not to an integrated education, but to no education at all. “I am personally afraid that the transferred children will be the victims of bullying and racist behavior that will eventually deter them from going to school,” remarked the acting regional education head—a sentiment he shared with a host of other interlocutors.²⁶⁸

Mainstream²⁶⁹ schools impose costs on Roma. Enrollment into such schools is generally full of obstacles, including the possibility of being refused admittance. Ostracism, bullying, and a hostile environment in mainstream schools appear to be a reality for Roma children across the board. Depending on their location, mainstream schools pose another hurdle: the cost of, the time needed for, and the separation from one’s neighborhood associated with transportation.²⁷⁰ And, mainstream schools often require additional financial expenditures, such as class fund contributions.²⁷¹

Segregated schools (whether regular or special), by contrast, offer additional benefits besides a relatively more inviting environment. Often situated inside Roma settlements, they eliminate the transportation hurdle. In the Czech Republic, where special schools receive additional funds per capita, some schools “recruit” Roma by offering free pens, pencils, and notebooks.²⁷² Reportedly, perks also came with the enrollment of pupils into the Nyíregyháza Greek Catholic School: first-graders were promised care packages, such as financial support for buying books and free toiletries.²⁷³ Many interviewees stated that a family’s poverty did not matter in the Roma-only schools, but was considered embarrassing in the mainstream ones.²⁷⁴

Finally, employment discrimination against Roma reduces the perceived benefits of education.²⁷⁵ Many Roma question the benefits of mainstream education if societal prejudices mean that education does not result in mainstream employment. Other concerns of Roma families—including evictions, placement of children into institutionalized care, and debt—compete with education for time and limited resources.²⁷⁶ Thus, for many reasons, the Roma response to the ECHR judgments has been complex and varied, not monolithic.

B. Impact on Mobilization

It is not surprising that Roma would engage with the judgments and their implementation, since they are the group most affected. But Roma are certainly not the only people to work for and against the judgments and their implementation; this section looks at mobilization by civil society, domestic human rights bodies, and multi-lateral institutions.

1. Mobilization by Civil Society

“We wanted a second conviction because we believed and were proven right that the situation wouldn’t change just with one conviction.”²⁷⁷

—Panayote Dimitras, Spokesperson for Greek Helsinki Monitor

“[D.H.] was certainly a breakthrough and now you have an X number of organizations here who fulfill the watchdog function . . . the state is pushed, and it is a topic that the [Ministry of Education] handles quite a bit.”²⁷⁸

—Martina Horváthova, Roma activist in the Czech Republic

a) Advocacy

Of the countries under examination, nowhere was advocacy by domestic and international NGOs in the wake of ECHR judgments as robust, widespread, and sustained as in the Czech Republic following *D.H.* In Greece and Hungary, the counsel for the applicants has utilized international advocacy, such as submissions to the COE on the execution of the judgments. But broad-based civil society advocacy directly related to the judgments has been scarce.

In the Czech Republic, one clear consequence of strategic litigation for Roma school desegregation has been increased advocacy by civil society groups. “[*D.H.*] was certainly a breakthrough and now you have X number of organizations here who fulfill the watchdog function,” remarked Roma activist Martina Horváthova of a Czech NGO Slovo 21.²⁷⁹ In November 2007, almost immediately after *D.H.* came down, ten primarily domestic NGOs working on Roma issues and human rights mobilized to form a coalition called “Together to School.” Its mandate was “to create targeted pressure on the Czech state authorities to enforce relevant changes within the Czech educational system after the ECHR judgment.”²⁸⁰ In its early years, the coalition was the main watchdog reporting on *D.H.* execution domestically and holding regular negotiations with the Ministry of Education.²⁸¹

Over time, the coalition increased to 17 member organizations, and its mission broadened to encompass the pursuit of inclusive education.²⁸² In 2012, for instance, the coalition organized a set of roundtables on inclusive education across the Czech Republic and a seminar on the same topic in the Czech Senate.²⁸³ Yet, just as the backlash in the Czech Republic grew most potent around late 2012 and early 2013, the coalition dissolved, reportedly due to lack of funding and differing visions of its mission. Several of the coalition’s former members, such as the ERRC (counsel for the *D.H.* applicants) and Slovo 21 (a Czech NGO focusing on Roma and immigrants’ issues), continue to monitor the *D.H.* execution.

The effects of strategic litigation can flow from the applicants, to members of affected groups, to NGOs working with them, and eventually to NGOs working on related issues. This can be seen in the *D.H.* case, where NGOs and donors promoting inclusive education for groups extending beyond the Roma have coalesced around the judgment. One such NGO, called ČOSIV, was founded by former Deputy Minister of Education Klára Laurenčíková, who spearheaded *D.H.*-inspired legislative amendments while at the ministry. Several groups have used *D.H.* to argue for greater access to education, especially for children with physical or severe mental disability.

A hallmark of the *D.H.* mobilization has been its international advocacy, especially appealing to the Council of Europe and the European Commission to apply further pressure on the state. The ERRC (counsel for the *D.H.* applicants), the Open Society Justice Initiative (OSJI—the publisher of this study), and Amnesty International have spearheaded these efforts. Regular reports on *D.H.* execution to the Committee of Ministers have been one tool: between 2007 and 2013, ERRC and OSJI sent ten submissions to the COE.²⁸⁴ Further, OSJI has regularly briefed foreign countries on the *D.H.* execution in advance of the regular Committee of Ministers meetings.²⁸⁵ Amnesty International's investigation and detailed documentation of the execution on the ground has garnered attention both internationally and domestically.²⁸⁶

The pinnacle of international advocacy efforts was a civil society briefing by Amnesty International, ERRC, and OSJI that led to the European Commission's decision to launch infringement proceedings against the Czech Republic.²⁸⁷ *D.H.* and the history of its execution featured not only prominently in the civil society briefing, but also in the European Commission's official letter of notice to the Czech Republic about the start of the infringement proceedings.²⁸⁸ The EU's anti-discrimination law is untested at the European level: it has thus far not been the subject of an infringement procedure on any grounds—race, gender, disability, or others.²⁸⁹ Of the many possibilities for what could become the “test case” for the EU's anti-discrimination infringement litigation, the EU has chosen to pursue racial discrimination in education against the Czech Republic. The civil society briefing that called on the European Commission to do so offers one possible reason why.²⁹⁰ The ECHR's *D.H.* judgment lent the civil society briefing credence for its allegations of discrimination, the official data procured in response to the judgment provided sound grounds for seeking European Commission action, and the findings of the Committee of Ministers and the Commissioner of Human Rights on *D.H.* execution provided a platform for arguing the inaction of the government.²⁹¹ The start of infringement proceedings against the Czech Republic is both a reflection and a continuation of mobilization around Roma education, and the pressure of the European Commission is yet another way to keep Roma education on the policy agenda and in the public consciousness.

In Greece, GHM, the representative of the *Sampanis*, *Sampani*, and *Lavida* applicants, has been the key mobilizer in the wake of the Greek judgments. While its main weapon of social change, follow-on litigation, is discussed in the next section, GHM also engages in domestic advocacy that has included letters to the Ministry of Education, complaints filed with the Ombudsperson's Office, complaints filed with prosecutors' offices, and civil actions against individual local officials.²⁹² One such effort resulted in an "urgent written order" of the Prosecution Office of the Greek Supreme Court to local prosecutors telling them to "take care of eliminating the phenomenon of exclusion of Roma from the public educational system of Greece."²⁹³ GHM has also briefed members of the Greek Parliament on the judgments. Following the briefings, several parliamentarians posed questions regarding the judgments' execution to the relevant ministry, and by virtue of Greek regulations, the ministry had to answer within 25 days.²⁹⁴ Thus, in 2014 alone, the Ministry of Education supplied one detailed answer after another on the execution of *Sampanis*, *Sampani*, and *Lavida* judgments, often with direct information from regional authorities.

Minority Rights Group-Greece and the ERRC have at times partnered with GHM, either for advocacy or for research on Roma in education across Greece. A Greek NGO, Antigone, has been reporting on key developments in the execution of the Greek Roma education judgments through networks such as the European Network of Legal Experts in Non-Discrimination. However, widespread coalitions as seen in *D.H.* did not surface in Greece.

Mobilization in Hungary in the wake of the ECHR's *Horváth and Kiss* judgment has been led by the counsel for the applicants, CFCF and ERRC, which have sought to further the impact of the judgment in part through submissions to the COE. The Roma Education Fund has likewise bolstered these efforts through its submission to the COE.

However, alliances with advocates of inclusive education—of the kind seen in the Czech Republic—do not appear to have materialized thus far in Hungary. In fact, in the wake of *Horváth and Kiss*, several disability-rights advocates publicly called both *Horváth and Kiss* and *D.H.* "a strategic mistake" because the judgments create "the impression that a segregated special education system is justifiable or even adequate [for children with disability]."²⁹⁵

Mobilization on the domestic Nyíregyháza judgments has been less equivocal, with deep involvement by civil society groups. In 2010, the Roma Education Fund offered to pay the transportation costs of Roma students to ensure their access to integrated education. While the litigation was still pending, the Ombudsperson's Office submitted an opinion (similar to an amicus brief) arguing that catch-up education was not permissible under the law. Several academics supported CFCF through their Nyíregyháza II submissions and testimony, demonstrating the harm of segregated education. And when CFCF spearheaded a petition to convince the members of the Hungarian

Parliament not to amend the existing legislation to allow catch-up education, Hungarian civil society groups helped to collect signatures.

b) Follow-On Litigation

One significant impact of strategic litigation is that it can give rise to follow-on litigation which seeks to strengthen and expand upon the initial judgment(s). Follow-on litigation has been used successfully as a tool to help ensure the execution of ECHR Roma education judgments in both Greece and Hungary. By contrast, in the Czech Republic, it has been underutilized.

In the Czech Republic, despite the class-action-like treatment of the Roma in *D.H.*, the judgment has generated only one follow-on case, which concerned historical circumstances from the pre-*D.H.* era. It was not designed to be a strategic litigation case to dismantle the current ongoing discrimination in the Czech special education system, but it did provide a key insight into the workings of the current Czech Supreme Court. Specifically, the court's interpretation of the pertinent ECHR case law is disconcerting: it suggests that the Czech Supreme Court may be placing obstacles to litigating statistics-based cases of racial discrimination.

In 2008, Jaroslav Suchý alleged that he, like the *D.H.* applicants, was a victim of ethnic discrimination in education because of his assignment to special school in the 1980s. In 2012, the Czech Supreme Court, like two lower courts before it, rejected his claim. But the most consequential portion of the judgment—largely unnoticed by the public—concerned the threshold for establishing a statistics-based prima facie case of indirect discrimination.

In its analysis, the Czech Supreme Court acknowledged that the ECHR case law, even if non-binding, was to be applied “in accordance with the interpretation provided by the ECtHR itself.”²⁹⁶ But the court interpreted *D.H.*, *Sampanis*, and in particular, *Oršuš*, to mean that “statistics in which the share of disproportion falls below 50 % are not sufficient to constitute prima facie evidence” of indirect discrimination.²⁹⁷ Thus, unless Roma accounted for more than half of all pupils in former special schools, the statistics would prove insufficient to shift the burden to the defendant.

The repercussions are potentially far-reaching. In practice, where historical nationwide data showed Roma to comprise 40 percent of the pupils in former special schools and more recent data suggests that proportion to be anywhere between 26 percent and 35 percent, a successful nationwide statistics-based prima facie case of discrimination is virtually impossible. The 50 percent threshold articulated by the Czech Supreme Court—which presumably the lower Czech courts would invoke in similar actions—thus has the potential to stymie future follow-on cases relying on statistical evidence. ERRC Legal Director Adam Weiss views this case as “a very worrying develop-

ment” because the Czech Supreme Court “read the Strasbourg judgments and reasoned around them.”²⁹⁸ At the time of writing, this case was pending on appeal before the Czech Constitutional Court.

Although the Czech Republic’s lone example of follow-on litigation is a cautionary one, in Greece, GHM has utilized follow-on litigation before the ECHR as a powerful tool. Specifically, GHM used the *Sampani* case as a way to enforce the spirit of the *Sampanis* judgment even after the Committee of Ministers prematurely closed its examination of the *Sampanis* judgment’s execution. Without follow-on litigation, the Greek government would have successfully turned the 12th School of Aspropyrgos into a segregated school and thus avoided the intention of the *Sampanis* judgment.

In Hungary, follow-on litigation has been the centerpiece of CFCF’s and ERRC’s strategies to force systemic change in the area of Roma misdiagnosis. Years before the *Horváth and Kiss* judgment came down, CFCF and ERRC engaged in fact-finding to prepare further domestic cases about the misdiagnosis of Roma children.²⁹⁹ As a result, in 2010, they brought a domestic *actio popularis* concerning Heves County (known as the “Heves litigation”), where, as of 2003, Roma children accounted for 98 percent of students in special classes and 80 percent of those in special schools. Although the case is still pending before the first-instance court, it has in some ways already borne fruit. Importantly, it recently led to settlement discussions with a defendant, the Ministry of Human Resources, and thus a platform to directly seek the implementation of *Horváth and Kiss*, including the amendment of legislation to provide for collection of ethnically disaggregated data for children diagnosed with mental disability.

A particular feature of the Hungarian mobilization lies in the use of both domestic and international litigation to further change. *D.H.* strengthened the Heves and *Horváth and Kiss* pleadings. The *Horváth and Kiss* judgment, which referenced the *D.H.* judgment, was being used as a negotiating lever during the Heves settlement discussions. And, the active Heves litigation in turn allowed CFCF and ERRC to get the ear of the Ministry of Human Resources—an access *Horváth and Kiss* alone did not secure. A little over a year after *Horváth and Kiss* came down, the Hungarian government committed to collecting ethnically disaggregated data in special education, something that the Czech government did not pledge to do on an ongoing basis until five years after the *D.H.* judgment.

2. Mobilization by Domestic Human Rights Bodies

In all three countries under examination, the Office of the Ombudsperson was mobilized by the strategic litigation to play a role in implementing the judgments. In Greece, the Ombudsperson monitored and proposed steps to execute the Greek Roma education judgments; in Hungary, the Ombudsperson is involved in the ongoing Nyíregyháza

litigation. The activities of the Czech Ombudsperson around *D.H.*, both domestically and internationally, have been rather prominent.

The Office of the Czech Ombudsperson, under the leadership of three different ombudspersons, has lent a hand at home and abroad to help ensure that *D.H.* is executed. In 2010, Ombudsperson Otakar Motejl issued an official opinion denouncing as discrimination the disproportionate placement of Roma *with* and *without* a diagnosis of mild mental disability into former special schools.³⁰⁰ In 2011, when the Ministry of Education was failing to act, his successor decided to collect ethnically disaggregated data at selected former special schools.³⁰¹ Subsequently, he co-convened a seminar on the topic and published a report where he denounced as discrimination the disproportionate placement of Roma into former special schools.³⁰² In 2012, the Ombudsperson's Office was part of a small working group that put together the operative *D.H.* execution action plan.³⁰³ In 2014, Ombudsperson Anna Šabatová made a submission to the COE regarding the execution of *D.H.*, in which she criticized a number of government measures and the progress of the execution.³⁰⁴

The power of strategic litigation to mobilize domestic human rights bodies is significant. As Patricia Ötvös, an official at the Office of the COE Commissioner for Human Rights, noted: “NGOs are often perceived as having their own agenda, so it gives a different perspective if a national human rights structure goes in the same or similar direction.”³⁰⁵

3. Mobilization by Multi-Lateral Institutions

The galvanizing effects of successful strategic litigation can transit from domestic NGOs to national human rights bodies to international institutions. The ECHR Roma education judgments have served to mobilize a set of multi-lateral organizations and international human rights institutions. As one observer noted, without the judgments, “there would probably be no discussion [of Roma education segregation] at the international level and no movement.”³⁰⁶ The involvement—or even potential involvement—of international institutions has become a means for those seeking to apply pressure to change discriminatory practices.

International actors mobilized around *D.H.* and to a lesser extent *Sampanis*. The Hungarian ECHR Roma education judgment is fairly recent, and at the time of the research, did not appear to have engendered significant mobilization by multi-lateral institutions.

In the Czech Republic, the *D.H.* judgment quickly led to a number of multi-national institutions mobilizing to report on the state of its execution. In 2010, for example, COE Commissioner for Human Rights Thomas Hammarberg inquired in great depth about *D.H.* execution during his field visit of the Czech Republic.³⁰⁷ In 2012, his successor, Nils Muižnieks, returned to the Czech Republic with *D.H.* imple-

mentation as one of his priority topics.³⁰⁸ That year, a team from the Organization for Security and Cooperation in Europe (OSCE) went to the Czech Republic to assess the execution of the “landmark” *D.H.* judgment,³⁰⁹ and in mid-2014, the OSCE co-convened a seminar in Prague to discuss progress since its field visit.³¹⁰ In-country visits translated into another form of advocacy: detailed reports that the Commissioner for Human Rights and OSCE produced on the state of *D.H.* execution.³¹¹ Most recently, the launch of infringement proceedings against the Czech Republic by the European Commission is a sign of mobilization by yet another entity.³¹²

D.H. also spurred inquiries from foreign governments. The U.S. and Norwegian ambassadors have probed into *D.H.* during their country visits.³¹³ Another platform for foreign governments to learn and inquire about *D.H.* execution has been the Committee of Ministers supervision mechanism.

Current and former Czech government officials confirmed that mobilization by international bodies helped keep the issue of Roma overrepresentation in special schools on the government’s agenda. Czech Minister of Human Rights Jiří Dienstbier stated that legislative changes would have been less likely “without the pressure, including international pressure.”³¹⁴ Former Deputy Minister of Education Jiří Nantl remarked that the inquiries of foreign ambassadors “helped to affirm [for the Minister of Education] that something had to be done about [the issue].”³¹⁵

In Greece, it was shortly after the first Greek education judgment, *Sampanis*, came down, that certain international entities inquired into its execution. Although, the Greek education judgments have not spurred the same level of in-depth monitoring by international bodies as the *D.H.* has, there are still examples of how international mobilization helped put and keep the desegregation of Roma in Greece on the government’s agenda. Soon after the UN Independent Expert on Minority Issues Gay McDougall raised the issue of *Sampanis* execution with the Ministry of Education,³¹⁶ a regional education official proposed to the municipality that the activities of the Roma-only 12th School be suspended.³¹⁷ Shortly thereafter, the Ministry of Education issued a circular on “Enrollment and Schooling of Roma,” where it recommended that “in each class, the percentage of students from another culture should not exceed 50%.”³¹⁸ In addition, the Ministry of Education has noted that the implementation of *Sampanis* was being “followed by European institutions as a result of complaints lodged against Greece.”³¹⁹

C. Backlash

The full ramifications of strategic litigation are unpredictable, and can include various setbacks and negative outcomes. In the Czech Republic and Greece, a backlash movement has been the most potent factor in stymying change in the wake of the Roma

education judgments. The counter-mobilization by opponents of the ECHR judgments and their impact on policy are described here.

1. The Czech Republic

Proponents of the pre-*D.H.* status quo have retained significant numbers and influence, and some of them have mobilized against the judgment.³²⁰ A Ministry of Justice official explained that when announced, the *D.H.* judgment was a shock, and not “an affirmation of a thought evolution” in the Czech Republic.³²¹ Many who “felt directly or indirectly affected by it”—special educators, counseling centers, non-Roma parents—did not accept it.³²² In interviews, regional officials, special educators, and counseling centers generally found *D.H.* and its finding of discrimination to be flawed.³²³ The view of a local government official from Ostrava, where the case originated, highlights a broader response: “[I feel] proud of the Czech education system, and the judgment seemed to discredit the Czech education as such.”³²⁴

In the Czech Republic, the history of *D.H.* execution is intricately interwoven with the rise of an organized nationwide backlash about two years after *D.H.* came down. The public backlash started in January 2010 with an open letter that two school principals sent to Minister of Education Miroslava Kopicová (2009–2010). The open letter came on the heels of a government-commissioned collection of ethnically disaggregated data, the inspection of nearly half of the former special schools, and a letter from the minister to schools.³²⁵ In the letter, the minister confronted school principals with the results of a survey which showed that over 26 percent of Roma were educated in the category of “pupils with mild mental disability” compared to two percent of non-Roma.³²⁶ The minister proclaimed, “We will surely agree that it is highly unlikely that the number of children of Roma origin with mental disability would be that high.”³²⁷ She also appealed to school principals to “thoroughly monitor whether only children with true mild mental disability are placed into practical primary schools.”³²⁸

One of the school principals who responded to the minister’s letter described it as “the last straw.”³²⁹ The message to the minister was: “stop looking at problems with certain social groups through the lens imported from Strasbourg and finally start solving problems by common sense, not from consequences but from causes.”³³⁰ So many agreed with this opposition that the idea of creating a professional association to represent the interests of special educators gained an immediate foothold. In March 2010, the Association of Special Pedagogues (ASP) was formed. Within weeks, its membership reached over 700, and at its peak, 1,200.³³¹ Jiří Pilař, who led the special education sector at the Ministry of Education while the *D.H.* litigation was pending, was elected its head.

The ASP is “the most sizeable, motivated, grassroots group” involved in the issue, according to former Deputy Minister of Education Jiří Nantl.³³² They “cannot be under-

estimated,” he added. “Many politicians have succumbed to [the ASP’s] conviction, which is based on their own experiences, sometimes of 30 years, which is at the heart of their conviction and which is pouring out of them.”³³³ The ASP has not been acting alone, but has found allies amongst other professional associations.³³⁴ Further, many teachers’ unions, counseling centers, mainstream educators, non-Roma parents, local politicians, and the members of the Parliament have at times joined forces with the ASP.³³⁵

The techniques of the backlash have included petitions; letters addressed to the Ministry of Education; news releases and public appearances; open letters to, and meetings with, Ministry of Education officials and the Prime Minister; lobbying of, and organized visits to, practical primary schools for members of Parliament; and a key Senate hearing.³³⁶

The backlash was the strongest in late 2012 and early 2013. The actions that engendered the strongest opposition were government data collection and the government’s announcement of its plan to effectively eliminate segregated special education for pupils with mild mental disability. Public outcry followed as soon as the government made it publicly known in September 2011 that it was planning to ban schools and abolish the curricula for pupils with mild mental disability. In the fall of 2011, nearly 18,000 people signed one petition to retain practical primary schools and about 26,000 signed another.³³⁷ By November, the then-Minister of Education issued a press release reassuring the public that “nothing like [a closure of the practical or specialized schools] will happen.”³³⁸ In 2012, the government made its first concession to the backlash when it moved the execution date for the abolition of practical primary schools from 2015 to 2017.³³⁹ In the fall of 2012 came another concession: the practical primary schools would not be banned, but would stop accepting new pupils in 2017.³⁴⁰ The grassroots mobilization against *D.H.* only strengthened and culminated in a petition that requested the Minister of Education to “retain the activity of practical primary schools” and to accordingly “rework [the *D.H.* execution plan].”³⁴¹ In a mere six weeks, over 76,000 people signed the petition.³⁴² Every minister of education since has pledged not to abolish the practical primary schools.³⁴³ The struggle for full implementation of the *D.H.* ruling continues to this day.

2. Greece

In Greece, while no national backlash followed *Sampanis*, *Sampani*, or *Lavida*, the sites of the legal challenges—the Greek towns of Aspropyrgos and Sofades—witnessed a fierce local backlash to Roma enrollment and school desegregation efforts.

Powerful alliances took shape between the local non-Roma electorate and those responsive to it, especially non-Roma parents (acting often through parents’ associa-

tions) and the mayors. Together and independently, they lobbied, and sometimes utilized legal action against, the regional and national authorities. On several occasions, they managed to block access to, and close down, regular schools for several weeks in protest. Stereotypes about Roma fueled much of the backlash.

The backlash was most powerful in 2008 (post-*Sampanis*) and in 2011 (post-*Lavida* application to the ECHR). By contrast, in 2013–2014 (post-*Sampani*), the backlash did not stop the closure of the segregated school. In fact, in 2013 and 2014, post-*Sampani*, Roma students were transferred to regular schools despite what was described as “the very pronounced opposition of the Local Authority of Aspropyrgos and the local parents’ association.”³⁴⁴

3. Hungary

In Hungary, our research did not unearth an organized non-Roma mobilization in connection with the *Horváth and Kiss* judgment or the ongoing Nyíregyháza litigation.³⁴⁵ This is not to indicate that Hungarian domestic school desegregation litigation as such never ignited a backlash—it did, especially with mass enrollment of Roma in formerly non-Roma schools.³⁴⁶ But this opposition preceded the *Horváth and Kiss* judgment, and so should not be viewed as a result of strategic litigation.

But even in Hungary, where the backlash has been comparatively mild, there have still been objections. And in the Czech Republic, the backlash is ongoing. At the time of writing, the Czech Republic remains under the scrutiny of the European Commission in connection with Roma in special education. However, as the next two sections consider, it may be that the Roma education judgments unleashed a wave that cannot be rolled back.

D. Impact on Validation and Rights Consciousness of the Roma Community

*“Someone finally believed us. An ordinary person was able to make it to Strasbourg and tell the truth.”*³⁴⁷

*“I would [use courts again] . . . because they must accept our children the way they accept the other children.”*³⁴⁸

The Roma education judgments had an observable impact on education policy, practices, and mobilization both in favor of and against their execution. The judgments have led to new policies, changed practices, and follow-on lawsuits. But they have also

had a less tangible impact on the rights awareness and sense of agency of the people on whose behalf the strategic litigation was filed.

The 18 Roma children represented in *D.H.*, the 11 in *Sampanis*, and the two in *Horváth and Kiss* were blazing the trail for the education of all Roma across Europe at a time when the litigation appeared unlikely to yield results. Prior to *D.H.*, no ECHR precedent existed that could be used to counter racial discrimination of Roma in education. Still, the plaintiffs and their representatives partook in strategic litigation—to seek justice, to be declared “mentally sound” against a racially motivated (mis)diagnosis of disability—to obtain quality education. “We were fighting to know whether we are disabled or not,” explained a *Horváth and Kiss* applicant.³⁴⁹ “I don’t know how to read,” the mother of a *Sampanis* applicant told us. “I wanted my children to be with the other children, to be able to learn better Greek, and to learn to read.”³⁵⁰ The experience of injustice also fueled the applicants’ impulse to seek recourse in courts. “Our children were rejected by the teachers and non-Roma parents. We Roma parents got together and decided to go to court,” noted a mother of two *Lavida* applicants.³⁵¹

For many plaintiffs and Roma activists interviewed for this study, the import of the judgments stemmed from the judicial decision to validate the Roma rather than the state. “Someone finally believed us,” remarked one of the *D.H.* applicants.³⁵² A mother of two other *D.H.* applicants—who was accused during the litigation process of lying—recalled that she nearly fainted when she found that the Court sided with her children and the other applicants.³⁵³ For the parents, *D.H.* was “a proof of the truth,” said the Czech Roma activist Edita Stejskalová, who helped solicit *D.H.* applicants.³⁵⁴ One father of a Greek applicant said he “was pleased, because the court recognized that what I wanted to do, to enroll my child into [mainstream, non-segregated] school, was right.”³⁵⁵ For Hungary’s István Horváth, the judgment finally ended his years-long quest to learn whether he indeed had a mental disability: “I was glad that we won the case and it came to light that I am not disabled.”³⁵⁶

Others noted that the impact of *D.H.* went beyond the applicants to affect average Roma. “*D.H.* was an impulse that they really can fight back, because [placing non-disabled Roma in the special schools] is something wrong,”³⁵⁷ remarked one Roma activist. For the average Roma who “doubt the whole time that what they think or what is happening to them is the truth,” noted another Roma activist, the experience that “someone will see the truth” was of immeasurable value.³⁵⁸

As described earlier in this report, the ECHR’s Roma education judgments resulted in follow-on litigation, reflecting the continuing belief among at least some Roma that the courts are an appropriate avenue for defending their rights. Determining whether the judgments provided a sense of validation to the Roma community at large, or empowered the community as a whole to use the courts as a weapon of social change, is beyond the scope of the present inquiry. Interviews with Roma and non-Roma inter-

locutors, though, suggest that the sense of validation and rights awareness may be less than universal at present. A broad-based awareness of the judgments within Roma communities appears limited, and, as noted earlier, the response of Roma communities to the practical repercussions of the judgments has sometimes been split.

E. Igniting and Sustaining Change

“[T]here is no more discussion on the lawfulness of Roma segregation. Everybody knows it is unlawful.”³⁵⁹

“[The litigation] introduced the thought that what appeared to be the natural state of affairs and therefore not worth discussing, might actually be illegal.”³⁶⁰

One major contribution of the Roma education judgments, according to a number of interlocutors, stemmed from the judicial proclamation that the status quo was impermissible under the law. An ECHR judge interviewed for this study puzzled at the question of impact precisely because the judge viewed the very message of the Court’s judgments to be significant. The judgments affected “the self-understanding of society,” of what is right and wrong.³⁶¹ At a European level, the judicial holding that segregation of Roma in education is impermissible translated into a European norm; at domestic level in the three countries, the refusal to legitimize the existing or prior state of affairs seems to have set the conditions for moving to a new status quo.

At the European level, thanks to the Roma education judgments, “there is no more discussion on the lawfulness of Roma segregation,” stated Wolfram Bechtel, a lawyer at the secretariat of the European Commission against Racism and Intolerance (ECRI). “Everybody knows it is unlawful.”³⁶² The head of the COE Roma and Travellers Division, Michaël Guet, echoed that, stating “Countries can no longer use the argument that segregation of Roma has not been found to be in breach of the Convention—that debate stopped.”³⁶³ The Roma education judgments helped establish a European standard: the systems and practices that segregate the Roma are unlawful.³⁶⁴

And, once the Court ruled, it empowered other European entities to denounce the practices as discriminatory and gave greater credence to those who had criticized those practices in the past. For example, in 2010, COE Commissioner for Human Rights Thomas Hammarberg denounced school segregation and substandard education of Roma as “not only unacceptable but also illegal,” in reference to the recent *D.H., Sampanis*, and *Oršuš* judgments.³⁶⁵ This marked a shift from 2003, when his predecessor, upon visiting the Czech Republic, spoke of the “drasti[c]” overrepresentation of Roma in special schools and its effects as “alarming” and “unfortunate.”³⁶⁶ It also signaled

a change from 2006, when the commissioner—following the lower *D.H.* judgment, which found no breach of the Convention—called on the Czech Republic “to pursue efforts in th[e] direction” of replacing segregated education with integration.³⁶⁷ After the Grand Chamber judgment in *D.H.*, the commissioner not only referred to the practice as discriminatory, his office became a key watchdog of *D.H.* execution.³⁶⁸

At the domestic level, the courts’ declaration of what is impermissible seems to have helped set the bounds for domestic political and administrative leaders, especially in the Czech Republic and Greece. And, having the courts delegitimize the status quo (or refuse to legitimize the status quo ante) appears to be setting the conditions for igniting, fueling, or re-affirming a move to a new status quo.

In the Czech Republic, “*D.H.* is one of those judgments that determined what is no longer permissible,” according to academic and politician Jiří Zlatuška.³⁶⁹ By refusing to give judicial imprimatur to the decades-long status quo and declaring it illegal instead, *D.H.* seems to have sparked change. Czech academic and politician Ivan Gabal thought that the precondition for change can be found in the judgment’s recognition of the problem: “It named [the problem], to some degree measured it, and recognized it. If you do not recognize it, you have no reason to deal with it.”³⁷⁰ Change followed. “The fact is that all activities of the state in this area are inspired by the Strasbourg judgment about discrimination of Roma pupils in former special schools,”³⁷¹ noted an article in *Teachers News*, a newspaper for Czech educators that has reported in detail on government policies in the wake of *D.H.*, in 2012.³⁷² Many interlocutors agreed that *D.H.* either jumpstarted, boosted, or sped up change. A Czech Ministry of Justice official likened *D.H.* to “a pebble that paves the road for certain changes.”³⁷³

To many interlocutors, *D.H.* shifted the debate. The judgment established the “limits or lines that cannot be crossed,” in Mr. Zlatuška’s view, and thereby helped set the bounds for those in power who craft and influence legislation.³⁷⁴ That reverberated and translated into legislative changes. In the view of some, it also led to the acknowledgment of the problem by the authorities. Roma activist Edita Stejskalová observed that after *D.H.*, the Ministry of Education “started to use the word ‘discrimination’ and they were not as afraid of it anymore; they acknowledged it.”³⁷⁵ Recently, the Czech Ombudsperson similarly remarked that with *D.H.*, “[t]he silence which persisted until 2007, when the authorities regularly denied any discrimination, has ended.”³⁷⁶ Perhaps the most consequential recognition came in 2010, from the then Minister Miroslava Kopicová, who publicly acknowledged the high proportion of Roma in special education and attributed it to a systemic flaw.³⁷⁷

Looking toward the future in the Czech Republic, it appears that *D.H.* has equipped those seeking to change the status quo with an ongoing, powerful argument. In the views of the former Minister of Education Ondřej Liška and the current Minister

of Human Rights Jiří Dienstbier, the judgment is “a major tool” for civil society and government officials pushing for change because it gives them “an argument which is not easily refutable.”³⁷⁸

Finally, several interlocutors suggested that *D.H.* has helped support the opening up other structures, as the judgment inevitably shed light on the segregationist character of the Czech education system as a whole. “The system places obstacles for anyone who is different than the average, Roma children or children with disability in particular. And the *D.H.* judgment helped us name that,” said Štěpán Drahoukoupil of OSF Prague.³⁷⁹ In other words, strategic litigation has led to reforms in one area (Roma education), that in turn create the possibility of reforms in other areas, such as inclusive education.

As in the Czech Republic, in Greece the Roma education judgments provided additional tools to those seeking change. For instance, Eleni Tsetsekou of the COE remarked that she felt grateful for the existence of the judgments. “This is the only way in which we can open discussions, negotiations with the government on that issue.”³⁸⁰ Similarly, in Sofades, a regional head of the Education of Roma Children program explained that with the judgment, “the message came across to the school that they cannot deny access to all Roma children.” In turn, this gave the program “an opportunity to talk to the teachers . . . to really engage with teachers and parents and try to find a common ground” to help enroll Roma children.³⁸¹

In Hungary, where *Horváth and Kiss* came in the wake of government policies seeking to reduce the overrepresentation of Roma in special schools, the judicial proclamation that the special education system discriminates was not a shock. When *Horváth and Kiss* came down, “it was not a very new opinion or attitude to this problem,” stated one Hungarian government official.³⁸² “[T]he structure of the education system had some problems, which were scrutinized by the civil society in Hungary, by journalists and newspapers,” he added. “Public opinion or one part of the public opinion was similar to the opinion of the court.”³⁸³ Yet even if *Horváth and Kiss* did not arrive as a revolutionary idea, the judgment has helped sustain the momentum for change, even in the face of a radically altered political environment (following the elections of 2010) that bears little resemblance to the one at the start of the century.

Hungary’s current Minister of Human Resources voluntarily testified in favor of a segregated “catch-up” school in what appears to be a broader effort of the current administration to re-legitimize the formerly discredited “catch-up” system. In such a political milieu, a key contribution of the judgment, in the view of CFCE’s founder András Ujlaky, is its holding. It spells out “that catching-up means segregating.”³⁸⁴ “And to have a judge who stands up and actually makes a ruling against the minister’s statement that he made in court,” he added, “is a big thing.”³⁸⁵ Journalist András Becker

remarked that the Nyíregyháza litigation was “very important,” adding, “it would have opened the floodgates if the court had not stopped this process.”³⁸⁶

Thus, while strategic litigation may be seen as opening up new avenues in the Czech Republic and Greece, in Hungary it has proven critical to holding the line against reactionary forces.

V. Analyzing Impact

Assessing and measuring the impact of strategic litigation for Roma school desegregation remains elusive. The layers of complexity—including how to define and articulate impact, how to evaluate more recent judgments that have had less time to be implemented, how to disentangle the impact of the litigation from the effect of other forces—belie a single, let alone a definitive, conclusion. Still, the Roma school desegregation judgments seem to suggest some lessons.

First, the significance of the judgments is tethered to their ability to spark, fuel, or reinforce change. Second, successful execution of the judgments—including their impact on policy and outcomes—is a function of many factors, from the social context into which they arrive to the strength of any backlash. And third, lasting social change may require not only that a court judgment be fully executed but also that additional targeted actions accompany the judgment's execution.

A. The Roma Education Judgments and Change

The importance of a judicial proclamation of what is impermissible can be seen not only in immediate changes, but also in its potential to affect the future.

A judicial refusal to legitimize the existing status quo had the greatest meaning in *D.H.*, the first case that challenged a practice that—through its 40-plus years of existence—had become entrenched in Czech society. By finding the status quo illegal and by giving those seeking to dismantle it a powerful arsenal, the Court helped create conditions for change. By contrast, for *Horváth and Kiss*, which came on the heels

of both *D.H.* and existing Hungarian government policies aiming to stop the practice, the judicial proclamation reinforced, rather than jumpstarted, a move towards a new equilibrium.

In the Nyíregyháza litigation, the judicial declaration that segregation in separate schools in order to “catch-up” is impermissible was also momentous, for it (so far, at least) has helped thwart the possibility of using current laws to revert to a past discriminatory system.

In the Greek judgments, the judicial refusal to condone segregation in education carried a great potential significance to stop discriminatory practices from becoming the prevalent and accepted norm (especially as over 40 percent of Roma are not yet in school). The Roma education judgments concerning Greece helped solidify the country’s move toward a stated commitment to anti-segregation. Because they affected local circumstances, however, their ability to encourage nation-wide change appears more limited.

B. Successful Execution of the Judgments

The execution of the Roma education judgments continues to unfold. The final judgments came down at different times, which accounts in part for their differing effects on policy, practice, and outcomes. Still, some impact already seems visible. Both *D.H.* and *Horváth and Kiss* helped secure a commitment to collect hitherto sensitive ethnic data in special education. A segregated school in Aspropyrgos closed down because of *Sampani*. In the Czech Republic, the trends of enrolling Roma into special education, albeit uncertain, seem to be sloping downwards.

The Roma education judgments also suggest what tools and factors have proven particularly important in ensuring that the judgments stay on the policy agenda and engender policy changes.

- **Policy Agenda.** International and domestic mobilization, twined with mobilization by actors other than civil society (such as the Ombudsperson, multi-lateral institutions, foreign ambassadors) have in the case of *D.H.* helped influence the policy agenda. Of the ECHR judgments under examination, *D.H.* features most prominently on the government’s agenda, in part thanks to the pressure that mobilization seemed to create.
- **Policy Changes and Administrative Orders.** Several factors helped bolster the impact of the judgments under examination. To name a few:
 - *Specific remedy:* A concrete measure the state ought to take enhances the likelihood that such a measure will be adopted. Of the ECHR judgments

under examination, this happened only in the *Sampani* judgment, where the Court suggested a transfer of pupils to a non-segregated school. A government administrative order to that effect followed.

- *Allies within the government:* In Greece and in the Czech Republic in particular, allies within the government helped spearhead progressive policies, often using the judgments to strengthen their arguments. The former Czech Deputy Minister of Education Klára Laurenčíková, for instance, became a key actor advocating for the *D.H.* judgment's execution upon leaving her ministerial position.
- *Follow-on litigation:* In both domestic courts and before the ECHR, follow-on litigation helped engender tangible results even when political allies were not in the government. In Hungary, domestic litigation contributed to securing otherwise sensitive ethnic data collection; in Greece, repeated litigation before the ECHR secured the closure of a segregated school.
- *International monitoring:* The COE monitoring mechanism appears to have been useful in both Hungary and the Czech Republic in ensuring the collection of ethnically disaggregated data.

Backlash movements proved to be a powerful factor, limiting progress in both the Czech Republic and Greece. But follow-on litigation helped to overcome local backlash, at least in part, in Greece. And the sense of validation, increased rights consciousness, and grassroots mobilization flowing from successful strategic litigation may further help secure implementation.

C. The Judgments and Lasting Social Change

One of main results of these cases and their judgments is establishing what violates the law: the existence of a segregated class, school, or education system. At the litigation stage, that is a prerequisite. At the implementation stage—if lasting social change is the goal—an exclusive focus on remedying that which violates the law, (i.e., the elimination of a particular segregated class, school, or an education system), may not be enough. For instance, the *Sampani* case, where some feared that closing the segregated school would lead to no education for Roma students at all, suggests that lowering the costs of attending non-segregated institutions may well need to accompany closing the segregated ones.

To create lasting social change, there may be a need to identify and address other structures that help prop up the existing segregationist systems. For instance:

- *Financial structures:* The education systems, such as the Czech one, may be financially incentivized to perpetuate structures (such as the segregated special education) that disproportionately affect the client. Coalescing around financial reform may be a part of the solution.
- *Other discrimination against the client community in a complementary field:* Discrimination and other hurdles for the client community in a complementary field (e.g., regular schools) can bear on the potential success of eliminating the discrimination at hand (e.g., segregated schools). For instance, difficulties surrounding enrollment in, or bullying at, a regular school may lead a legal guardian to opt for segregated or even no education. Understanding the links between the two and seeking ways to lower the costs of attendance at the regular school may prove helpful in creating a long-term solution.
- *Discrimination against a broader community in the same field:* Discrimination of the client community may at times be a subset of a different discrimination against a larger community. For instance, segregation of pupils on the basis of mental disability in the Czech Republic and Hungary in particular helps prop up the discrimination of Roma in special education. Seeking ways to help dismantle the broader discrimination (while not losing sight of the racial dimension) may in turn benefit the client community.
- *Discrimination against the client community in a related field:* Discrimination of the client community in a related field, such as employment, affects the perceived benefit of education. Understanding the links between the various forms of discrimination and seeking ways to eliminate those that bear the most on the issue at hand might need to be emphasized.

VI. Conclusions

Has strategic litigation for Roma school desegregation generated an impact? The aspiration is that this study, through its detailed examination of the impacts of these strategic cases as a social-change agent, will enrich the ongoing debate on the impact of strategic litigation as such and help spark other quests to explore much that remains uncharted.

“I am surprised [by the question],” remarked an ECHR judge when asked whether the Roma education cases had an impact. “Of course there was impact,” the judge added, “it is important to tell people what is right and what is wrong.”³⁸⁷ The simple proclamation of Europe’s supreme human rights arbiter that discrimination against Roma in education “is no longer permissible,”³⁸⁸ was momentous. By deciding not to give an imprimatur to the existing status quo, the Court (and the Hungarian national courts in the case of the Nyíregyháza litigation) made a pivotal contribution: “[They] introduced the thought that what appeared to be the natural state of affairs and therefore not worth discussing, might actually be illegal.”³⁸⁹ By standing behind the Roma, the judiciary heralded that it wanted to end racial discrimination against Roma in education.

That resonated, reverberated, and produced a ripple effect. The judgments validated the applicants, and encouraged many to view litigation as a weapon against discrimination. They also set the conditions for change.

In *D.H.*, by holding as a fact that the disproportionate placement of Roma into special schools amounts to discrimination, the Court unsettled entrenched, largely insulated, and longstanding structures and practices. With the *D.H.* judgment, change was “set in motion.”³⁹⁰ In response to *D.H.*, and subject to the monitoring of its execution, the government produced ethnically disaggregated data, and jumpstarted certain legislative changes. Civil society at home and abroad mobilized around the judgment,

pressuring the government to do more. In terms of results on the ground seven years later, the headlines remain alarming; nevertheless, the trends of enrolling Roma into special education seem now to be sloping downwards.

In Greece, the Roma education judgments left an imprint on a stated ministerial policy of anti-segregation. In *Aspropyrgos* and *Sofades*, they delegitimized the incumbent practices. And, the recent closure of the segregated school in direct response to the ECHR *Sampani* ruling is a testament to the power of the Court and follow-on litigation.

In Hungary, the still nascent *Horváth and Kiss* judgment helped sustain change for Roma pupils, including by helping to secure sensitive ethnically disaggregated data in special education. The *Nyíregyháza* litigation was momentous for two reasons. The judicial refusal to interpret existing laws to allow what in the past has proven to be a discriminatory system against Roma has stopped (at least for now) a reversal to a discredited status quo. And, by highlighting the intended education policy of the present administration, the litigation entered in a concrete way into a debate on proposed legislative amendments that would have likely legitimized segregation.

That discrimination and segregation of Roma in education persists is indisputable. Roma are still disproportionately placed into special schools in the Czech Republic and Hungary, a segregated school in *Sofades* continues its operation even as the one in *Aspropyrgos* has closed its doors, and the once-closed segregated school in *Nyíregyháza* is teaching pupils again. Backlash remains a powerful force in the Czech Republic and in Greece. A shifting political environment raises the fear that hitherto-secured victories may be fragile. Roma are underrepresented in the debate. Some Roma even help sustain the same discriminatory structures that others seek to bring down.

These findings ought to be a call for action, not despair. Complex, systemic, multifaceted issues like the discrimination of Roma in education do not lend themselves to a simple solution that a single judgment or even a handful of judgments can deliver. Through strategic litigation, courts have added gravitas to the topic, prompted public debate at home and abroad, and increased the pressure to change the existing systems and practices. The quest for justice does not begin or end at the courtroom door, but strategic litigation can clearly be an important component of making lasting social change.

Appendix:

Normative Survey Questions

1. Impacts on clients

- a) Legal redress for the client(s) (whether in form of monetary compensation, authoritative judicial finding, overturning a wrongful lower court decision, etc.)
- b) What has happened to each of the children whose parents filed formal complaints and took their cases to court? What did they get from the court? How did their education change? How did their life possibilities change?
- c) What did clients expect from the litigation? How do clients today perceive the litigation? What impact has it had subjectively on them? How do they view the law and its impact on them?

2. Impacts on Roma communities

- a) Are they aware of the issue?
- b) Are they aware of the judgments?
- c) Are they aware of their rights to non-discrimination in access to education?
- d) What actions have they or others taken to enforce those rights?
- e) To what extent have the decisions prompted mobilization/organization among Roma?

3. Impacts on majority/non-Roma communities

- a) What are the attitudes of non-Roma majority about issue of discrimination in education?
- b) Are they aware of the issue?
- c) Are they aware of the judgments?

4. Impacts on policymakers

- a) What is their perception of the cases and how they have or have not impacted the issue of racial discrimination, access to education, perceptions of Roma and non-Roma?

5. Impacts on the judiciary

- a) Education of the judiciary about issues at stake and/or about their own role/responsibility to act. Domestic jurisprudence—to what extent have domestic courts been impacted?
- b) Number of references to any of the ECHR judgments?
- c) Number of cases decided at domestic level on issue of discrimination in education?
- d) National judges and judges at the ECtHR: What is their perception of the impacts of these cases to date?

6. Impacts on media

- a) What are media perceptions of the cases and of the broader issue of discrimination in education the cases addressed?

7. Impacts on education officials

- a) Ministry of education
- b) School administration
- c) Specialized Teachers Associations
- d) Teachers

8. Impacts on organized civil society

- a) Roma NGOs
- b) Human rights NGOs
- c) Bar Associations
- d) Teachers Unions and Associations

9. Changes in law/policy

- a) What changes in legislation/regulations governing access to education since the litigation at issue was launched?
- b) What changes in policy have resulted, if any? (for example, rules issued by Ministries of Education or statements issued by government officials).

10. Changes in reality “on the ground” in terms of practices

- a) How has Roma access to education before and since litigation launched?
- b) What are the numerical proportions of Roma/non-Roma in certain schools/classes before and since the judgments?
- c) How has the quality of education for Roma changed before and since the judgments, if at all, relative to those changes for the non-Roma population? (E.g. achievement scores and other outputs.)
- d) What is the extent of Roma advancement in education (primary/secondary/tertiary) before and since the judgments?

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21. European Agency for Special Needs and Inclusive Education, *Greece: Special Needs Education within the Education System*, available at http://www.romaeducationfund.hu/sites/default/files/publications/pitfalls-and-bias-screen_singlepages.pdf accessed Sept. 15, 2015.
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24. Interview with Martin Šimáček, Aug. 22, 2014; ČŠI, *Rovný přístup k vzdělání*, available at <http://www.csicr.cz/getattachment/808f9830-5b1f-49c8-a6c9-dbo19e69e0a2> accessed Sept. 15, 2015, p. 9.
25. Interview with Bálint Magyar, June 10, 2014.
26. Roma Education Fund, *Pitfalls and Bias: Entry Testing and the Overrepresentation of Romani Children in Special Education*, 2012, available at http://www.romaeducationfund.hu/sites/default/files/publications/pitfalls-and-bias-screen_singlepages.pdf, accessed Sept. 15, p. 6.
27. See No. 561/2004 Act on Pre-school, Elementary, Secondary, Tertiary Professional and Other Education § 185(3) (hereinafter the “2004 Schools Act”).
28. See, e.g., Gábor Kertesi and Gábor Kézdi, “The Roma/Non-Roma Test Score Gap in Hungary,” *American Economic Review*, 101(3): 519–25, 2011, available at <https://www.aeaweb.org/articles.php?doi=10.1257/aer.101.3.519> accessed Sept. 15, 2015.
29. Chance for Children Foundation, “About Us,” available at <http://www.cfcf.hu/rólunk> accessed Sept. 15, 2015.
30. Decade of Roma Inclusion, “Participating Countries,” available at <http://www.romadecade.org/decade-participants-decade-countries>, accessed Sept. 15, 2015.
31. European Roma Rights Centre, “Who We Are,” available at <http://www.errc.org/about-us-overview>, accessed Sept. 15, 2015.
32. Greek Helsinki Monitor, “Profile,” available at <http://www.greekhelsinki.gr/bhr/english/profile.html> accessed Sept. 15, 2015.
33. This joint strategic litigation project of the ERRC and Legal Defense Bureau for National and Ethnic Minorities resulted in a favorable ruling in 2004. ERRC, “School Segregation Declared Unlawful by Hungarian Courts, Hungarian Courts Condemn Segregation of Children with Learning Disabilities,” October 7, 2004, available at http://www.errc.org/popup-article-view.php?article_id=2024 accessed Sept. 15, 2015.
34. Act CXXV of 2003 on Equal Treatment and the Promotion of the Equality of Opportunities Art. 10, available at http://www.equalrightstrust.org/ertdocumentbank/Microsoft%20Word%20-%20Hungarian_Act.pdf, accessed Sept. 15, 2015.
35. As long as the claim was based on a characteristic that is an “essential feature of the individual” and affected “a larger group of persons that cannot be accurately identified,” a public interest organization can bring a claim. Act CXXV of 2003 on Equal Treatment and the Promotion of the Equality of Opportunities Art. 20. The Act was later amended to provide for the possibility of *action*

popularis even where there is an imminent threat of a violation. European Commission against Racism and Intolerance, *Report on Hungary: Fourth Monitoring Cycle*, Adopted on 20 June 2008, Section 32, available at <http://www.coe.int/t/dghl/monitoring/ecri/country-by-country/hungary/HUN-CbC-IV-2009-003-ENG.pdf>, accessed Sept. 15, 2015.

36. Chance for Children Foundation, *Handbook on Roma Segregation in Schooling, Part 2*, Section 5.3, available at <http://www.cfcf.hu/rólunk>, accessed Sept. 15, 2015.

37. Interview with András Ujlaky, July 14, 2014.

38. European Commission, *Report on Discrimination of Roma Children in Education*, 2014, available at http://ec.europa.eu/justice/discrimination/files/roma_childdiscrimination_en.pdf, accessed Sept. 15, 2015.

39. *Chance for Children Foundation v. City of Kaposvár*, Pfv.IV.21.568/2010/5., Supreme Court Final Judgment, November, 24, 2010, p. 9: “It can be established as fact—regardless its reason—in those schools being in the lawsuit the Cigany children, according to the Ebtv. 8§ b), c), e), p), q) points, were collected and unlawfully segregated based on their specified characteristics, from the group of persons (children studying in other schools in the city) being in comparable situation with them without that the law would specifically allow it.”

40. One of the litigators in the appeal to the Grand Chamber, James A. Goldston, later became executive director of the Open Society Justice Initiative, which co-sponsored this study.

41. European Court of Human Rights, “Press Release: Grand Chamber Judgment *D.H. and Others v. The Czech Republic*,” Nov. 13, 2007, available at [http://hudoc.echr.coe.int/sites/eng-press/pages/search.aspx?i=003-2176193-2313650#{"itemid":\["003-2176193-2313650"\]}](http://hudoc.echr.coe.int/sites/eng-press/pages/search.aspx?i=003-2176193-2313650#{) accessed Sept. 15, 2015.

42. European Court of Human Rights, “Grand Chamber Judgment: Case of *D.H. and Others v. The Czech Republic*,” Nov. 13, 2007, para. 216, available at [http://hudoc.echr.coe.int/eng#{"appno":\["57325/00"\],"itemid":\["001-83256"\]}](http://hudoc.echr.coe.int/eng#{), accessed Sept. 15, 2015.

43. Council of Europe, 1100th DH Meeting (December 2010), available at [http://www.coe.int/t/dghl/monitoring/execution/Source/Documents/Info_cases/Croatie/DD\(2010\)586.pdf](http://www.coe.int/t/dghl/monitoring/execution/Source/Documents/Info_cases/Croatie/DD(2010)586.pdf), accessed Sept. 15, 2015.

44. European Court of Human Rights, Application in *Horváth and Kiss v. Hungary*, para. 27, available at <http://www.errc.org/cms/upload/file/echr-application-Horvath-and-kiss-v-hungary.pdf>, accessed Sept. 15, 2015.

45. Judgment, Debrecen Appeal Court, Pf. II.20.509/2009/10, 5 November 2009, pp. 29-30; see also *Horváth and Kiss*, paras. 43, 45, available at <http://www.errc.org/cms/upload/file/echr-application-Horvath-and-kiss-v-hungary.pdf>, accessed Sept. 15, 2015.

46. *Horváth and Kiss*, para. 53, available at <http://www.errc.org/cms/upload/file/echr-application-Horvath-and-kiss-v-hungary.pdf>, accessed Sept. 15, 2015.

47. European Court of Human Rights, Chamber Judgment: *Lavida and Others v. Greece*, May 30, 2013, available at [http://hudoc.echr.coe.int/eng#{"languageisocode":\["FRE"\],"itemid":\["001-119974"\]}](http://hudoc.echr.coe.int/eng#{), accessed Sept. 15, 2015.

48. European Court of Human Rights, Chamber Judgment: *Lavida and Others v. Greece*, para. 82, May 30, 2013, available at [http://hudoc.echr.coe.int/eng#{\"languageisocode\":\[\"FRE\"\],\"itemid\":\[\"001-119974\"\]}](http://hudoc.echr.coe.int/eng#{\), accessed Sept. 15, 2015.
49. Nyíregyháza judgment, at 6, 23.
50. Nyíregyháza judgment, at 6, 23.
51. See Nina Pavelčíková, *Romové v Českých Zemích v letech 1945–1989* 81 (2004), available at http://www.vzdelavaci-institut.info/?q=system/files/Romove_v_ceskych_zemich-Nina_Pavelcikova.pdf, accessed August 11, 2014, pp. 48, 64–65, 81.
52. See Charter 77, *o-postaveni-cikanu-romu-v-ceskoslovensku*, (Ve školním roce 1970-71 chodilo v Čechách do těchto škol celých 20 % romských dětí proti 3% dětí z většinové populace), available at <http://www.romea.cz/cz/zpravy/historicke-okenko-dokument-charty-77-o-postaveni-cikanu-romu-v-ceskoslovensku-z-prosince-1978>, accessed Sept. 15, 2015.
53. See Nina Pavelčíková, *Romové v Českých Zemích v letech 1945–1989* 81 (2004), available at http://www.vzdelavaci-institut.info/?q=system/files/Romove_v_ceskych_zemich-Nina_Pavelcikova.pdf, accessed August 11, 2014, p. 129.
54. James A. Goldston, *The role of European anti-discrimination law in combating school segregation: the path forward after Ostrava*, Brussels, April 28, 2006, available at cms.horus.be/files/99935/MediaArchive/pdfevents/james_goldston.doc, accessed October 4, 2014.
55. “There was a desire to rename the school, rid it of outside pressure, and still retain this segment of schooling,” available at <http://www.ucitelskenoviny.cz/?archiv&clanek=6279&PHPSESSID=5451853d48d6f6693fe5dd60abe4doeb>, accessed Sept. 15, 2015.
56. European Roma Rights Centre and Open Society Justice Initiative, “Submission to Committee of Ministers of the Council of Europe,” Nov. 13, 2009, available at https://www.opensocietyfoundations.org/sites/default/files/czechrepublic_20091111.pdf, accessed Sept. 15, 2015.
57. European Roma Rights Centre, “Faces of Romani Statelessness in Greece,” Oct. 29, 2003, available at <http://www.errc.org/article/faces-of-romani-statelessness-in-greece/1076>, accessed Sept. 15, 2015.
58. European Roma Rights Centre et al., *Guide for Monitoring and Documenting School Segregation in Greece*, available at <http://www.dare-net.eu/cms/upload/file/guide-for-monitoring-and-documenting-school-segregation-greece-english-2014.pdf>, accessed Sept. 15, 2015.
59. Φ4/350/Γ1/1028/22-8-1995, available at http://rom-klimaka.blogspot.com/2010/01/blog-post_7495.html, accessed Sept. 15, 2015.
60. Roma Matrix, *Greece: Country Report*, July 2014, available at <https://romamatrix.eu/greece-country-report>, accessed Sept. 15, 2015; see also Ministerial Decision: Φ.4/155/Γ1/1237/11-9-1996 (ΦΕΚ 893, τ. Β'), available at http://dipe-a.thess.sch.gr/nomo/FEK-893_20-9-1996.pdf, accessed Sept. 15, 2015.
61. For more about the program, see <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2391961&SecMode=1&DocId=2074842&Usage=2>, appendix; see also [http://www.epasi.eu/\\$-project-study.cfm?PID=103](http://www.epasi.eu/$-project-study.cfm?PID=103) (first phase); [http://www.epasi.eu/\\$-project-study.cfm?PID=104](http://www.epasi.eu/$-project-study.cfm?PID=104) (second phase); [http://www.epasi.eu/\\$-project-study.cfm?PID=105](http://www.epasi.eu/$-project-study.cfm?PID=105) (third phase).

62. Roma Matrix, *Greece: Country Report*, July 2014, available at <https://romamatrix.eu/greece-country-report>, accessed Sept. 15, 2015; see also European Union Agency for Fundamental Rights, *Analytical Report on Education: National Focal Point for Greece*, 2004, p. 40, available at https://fra.europa.eu/sites/default/files/fra_uploads/285-R4-EDU-EL.pdf, accessed Sept. 15, 2015.

63. European Union Agency for Fundamental Rights, *Education: The Situation of Roma in 11 EU Member States*, 2014, p. 19, available at http://fra.europa.eu/sites/default/files/fra-2014_roma-survey_education_tko113748enc.pdf, accessed Sept. 15, 2015.

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66. For a discussion of the catch-up system and its connection to minority education, see Orsolya Szendrey, “Roma School Desegregation Policies in Hungary,” in *Ten Years After: A History of Roma School Desegregation in Central and Eastern Europe*, CEU Press, 2012, pp. 227–231.

67. Orsolya Szendrey, “Roma School Desegregation Policies in Hungary,” in *Ten Years After: A History of Roma School Desegregation in Central and Eastern Europe*, CEU Press, 2012, pp. 227–231.

68. Phone interview with Orsolya Szendrey, Nov. 21, 2014.

69. Orsolya Szendrey, “Roma School Desegregation Policies in Hungary,” in *Ten Years After: A History of Roma School Desegregation in Central and Eastern Europe*, CEU Press, 2012, pp. 227–231.

70. Iulius Rostas (Ed.), *Ten Years After: A History of Roma School Desegregation in Central and Eastern Europe*, CEU Press, 2012.

71. See, e.g., interview with Viktória Mohácsi from Hungary, in Iulius Rostas (Ed.), *Ten Years After: A History of Roma School Desegregation in Central and Eastern Europe*, CEU Press, 2012.

72. Some of the key measures taken included: requiring the consent of a legal guardian before placement of a child into special school in 1997; enabling special school graduates to pursue further education at regular secondary schools, not only at vocational centers in 2000; and conditioning placement into separate school or classroom that followed a modified curriculum on the existence of a health disability in 2004. See *D.H.*, at para. 46, 49; 2004 School Act § 16(8).

73. 2004 Czech Schools Act § 185(3).

74. See 2004 Czech Schools Act § 7(3), § 16(8).

75. The title of the document bears the date of 2004, but it is not certain when the guidance was actually made public. Also, please note that the document appears on the Ministry website, and is presumed to have been issued by the Ministry. See *Vzdělávání dětí, žáků a studentů se speciálními vzdělávacími potřebami podle zákona č. 561/2004 Sb. 1–2*, available at <http://www.msmt.cz/dokumenty/vzdelavani-deti-zaku-a-studentu-se-specialnimi-vzdelavacimi> (hereinafter “Ministry Guidance on the Act”), accessed Sept. 15, 2015.

76. *D.H.*, at para. 46, 49; 2004 School Act § 16(8).

77. See 73/2005 Decree §2(10); Decree No. 2007/62 amending Decree No. 2005/73 on Education of Children, Pupils, and Students with Special Educational Needs and Especially Gifted Children, Pupils and Students §6(10) & Attachment.

78. See European Court of Human Rights, “Grand Chamber Judgment: Case of *D.H. and Others v. The Czech Republic*,” Nov. 13, 2007, para. 216, available at [http://hudoc.echr.coe.int/eng#{"appno":\["57325/00"\],"itemid":\["001-83256"\]}](http://hudoc.echr.coe.int/eng#{), accessed Sept. 15, 2015.

79. See Ministry of Justice, “Press Release on *D.H. Judgment*,” 13 November 2007, available at <http://portal.justice.cz/Justice2/ms/ms.aspx?o=23&j=33&k=4176&d=195202>, accessed October 3, 2014.

80. See Kateřina Hrubá, “The Reaction of Relevant Czech State Authorities to the European Court of Human Rights Judgment in the Case *D.H. and Others v. the Czech Republic*,” *Roma Rights Quarterly*, No. 1, 2008, available at www.errc.org/cms/upload/media/03/65/mo0000365.pdf, accessed October 3, 2014, at page 38 (at a seminar in March 2008, Mr. Schorm stressed, amongst others, the importance of data collection).

81. See Ministry of Education, Youth and Sport: “Towards a more open education/MŠMT: Směrem k otevřenějšímu školství,” June 27, 2008, available at <http://www.ceskaskola.cz/2008/06/msmt-smerem-k-otevrenejsimu-skolstvi.html>, accessed Sept. 15, 2015.

82. Interview with Ivan Gabal, June 13, 2014.

83. See People in Need, “Analysis of Teachers’ Individual Approach to Pupils with Special Educational Needs/Analýza individuálního přístupu pedagogů k žákům se speciálními vzdělávacími potřebami,” 2009, p. 9, available at www.msmt.cz/file/8169_1_1/, accessed October 3, 2014.

84. Interview with Ivan Gabal, 13 June 2014.

85. See People in Need, “The Education of Roma Two Years after the Strasbourg Judgement/Vzdělávání Romů dva roky po Štrasburském rozsudku,” 25 November 2009, available at <http://www.msmt.cz/ministerstvo/novinar/vzdelavani-romu-dva-roky-po-strasburskem-rozsudku>, accessed October 3, 2014.

86. See Czech School Inspection, *Thematic Report: Compendium of Results from the Thematic Control Activity in Practical Elementary Schools/Česká školní inspekce, Tematická zpráva: Souhrnné poznatky z tematické kontrolní činnosti v bývalých zvláštních školách*, March 2010, available at: <http://www.csicr.cz/cz/85126-zprava-z-kontrolni-cinnosti-v-byvalych-zvlastnich-skolach>, accessed October 3, 2014.

87. Česká školní inspekce, *Tematická zpráva: Souhrnné poznatky z tematické kontrolní činnosti v bývalých zvláštních školách* (2012), p. 3, available at <http://www.csicr.cz/getattachment/641e60e-36b3-4ba3-af8f-e5bf939040e2>, accessed Sept. 15, 2015.

88. See Council of Europe, Case No. 9, 1144th meeting, 6 June 2012, *Case against the Czech Republic*, available at <https://wcd.coe.int/ViewDoc.jsp?id=1940455&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDBo21&BackColorLogged=F5D383>, accessed 3 October, 2014.

89. See Council of Europe, “Consolidated Action Plan for the execution of the judgement of the European Court of Human Rights in the case of *D.H. and Others v. The Czech Republic*,” Nov. 16, 2012, available at <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2186980&SecMode=1&DocId=1953724&Usage=2>, accessed October 3, 2014.

90. Council of Europe, “Updated Action Plan (25/04/2014), Communication from the Czech Republic concerning the case of *D.H. and Others against Czech Republic*,” (Application No. 57325/00), pp. 10-11. A long-term target is to educate pupils with a diagnosis of mild mental retardation based on regular curricula.

91. Council of Europe, “Updated Action Plan (25/04/2014), Communication from the Czech Republic concerning the case of *D.H. and others against Czech Republic*” (Application No. 57325/00), pp. 10-11. A long-term target is to educate pupils with a diagnosis of mild mental retardation based on regular curricula.

92. See European Court of Human Rights, “Grand Chamber Judgment: Case of *D.H. and Others v. The Czech Republic*,” (Application no. 57325/00), Nov. 13, 2007.

93. See “Strategy for Combating Social Exclusion 2011–2015,” available at <http://www.socialni-zaclenovani.cz/dokumenty/strategie-boje-proti-socialnimu-vyloucení>, accessed October 3, 2014, p. 26. The Strategy set out, by 2015, to ban the establishment of schools for pupils with mild mental disability, determine whether to close existing schools for pupils with mild mental disability, or transform them into standard schools, and eliminate the educational program (curriculum) for mildly mentally disabled, among others. The Strategy also sought to put in place a per-pupil financial bonus for socially disadvantaged children, and move the education system from a “diagnose to assign” model to “diagnose to determine the type of supportive measure” model.

94. See “Explanatory memorandum, Strategy for Combating Social Exclusion 2011-2015” / Duvodova zprava, Strategie boje proti socialnimu vyloucení, available at <http://www.socialni-zaclenovani.cz/dokumenty/strategie-boje-proti-socialnimu-vyloucení>, accessed October 3, 2014.

95. See “Explanatory memorandum, Strategy for Combating Social Exclusion 2011-2015” / Duvodova zprava, Strategie boje proti socialnimu vyloucení, available at <http://www.socialni-zaclenovani.cz/dokumenty/strategie-boje-proti-socialnimu-vyloucení>, accessed October 3, 2014.

96. Interview with Monika Šimůnková, June 12, 2014.

97. See Vyhláška č. 116/2011 § 1 odst. 3; see also Výklad vyhlášky č. 2005/72 Sb., o poskytování poradenských služeb ve školách a školských poradenských zařízeních, ve znění vyhlášky č. 116/2011 Sb.

98. See Vyhláška č. 116/2011 § 1 odst. 5; see also Výklad vyhlášky č. 2005/72 Sb., o poskytování poradenských služeb ve školách a školských poradenských zařízeních, ve znění vyhlášky č. 116/2011 Sb.

99. See Výklad vyhlášky č. 2005/72 Sb., o poskytování poradenských služeb ve školách a školských poradenských zařízeních, ve znění vyhlášky č. 116/2011 Sb.

100. See Vyhláška č. 147/2011 § 3 odst. 4, available at <http://www.msmt.cz/dokumenty/vyhlasaka-c-147-2011-sb-kerou-se-meni-vyhlasaka-c-73-2005-sb>, accessed October 3, 2014.

101. See Vyhláška č. 147/2011 § 3 odst. 4, available at <http://www.msmt.cz/dokumenty/vyhlasaka-c-147-2011-sb-kerou-se-meni-vyhlasaka-c-73-2005-sb>, accessed October 3, 2014.

102. See “Submission; Government Proposal” / *Předkládací zpráva*; Vladní Navrh, p. 89, available at <https://apps.odok.cz/en/kpl-detail?pid=KORN9JEJRVL4>, accessed October 3, 2014.

103. See *Submission; Government Proposal / Předkládací zpráva*; Vladní Navrh, p. 89, available at <https://apps.odok.cz/en/kpl-detail?pid=KORN9JEJRVL4>, accessed October 3, 2014. (Zavedení revizního mechanismu je opatřením, ke kterému se Česká republika zavázala v konsolidovaném

akčním plánu k výkonu rozsudku ve věci *D.H. a ostatní proti České republice*, který byl předložen Výboru ministrů Rady Evropy v listopadu 2012 (opatření D-1); V rámci opatření vyplývajících z akčního plánu postupu ministerstva v návaznosti na rozsudek Evropského soudu pro lidská práva ve věci D.H. a ostatní proti České republice se převádí agenda zápisů školských poradenských zařízení z úrovně krajských úřadů na úroveň ministerstva.), (“it is necessary to create safeguards against misuse of supportive measures, inter alia given the obligations of the Czech Republic in connection with the [D.H.] judgment”).

104. Interview with Jiří Dientsbier, June 25, 2014.

105. Φ4/350/Γ1/1028/22-8-1995, available at http://rom-klimaka.blogspot.com/2010/01/blog-post_7495.html, accessed Sept. 15, 2015.

106. ΥΠΕΠΘ—Γ1/226/6-3-2000, available at http://kday.mag.sch.gr/docs_etc/Laws_etc/Egkyklios YPEPTh Γ1-226-6-3-2000 Orio ilikias gia foitisi mathiton sto dimotiko sholeio.pdf, accessed Sept. 15, 2015.

107. Φ4/350/Γ1/1028/22-8-1995, available at http://rom-klimaka.blogspot.com/2010/01/blog-post_7495.html, accessed Sept. 15, 2015.

108. 116184/Γ1/10-09-2008, available at http://dipe.ach.sch.gr/leitourgia_sxol/116184_g_1.pdf.

109. 116184/Γ1/10-09-2008, available at http://dipe.ach.sch.gr/leitourgia_sxol/116184_g_1.pdf.

110. 116184/Γ1/10-09-2008, available at http://dipe.ach.sch.gr/leitourgia_sxol/116184_g_1.pdf.

111. 116184/Γ1/10-09-2008, available at http://dipe.ach.sch.gr/leitourgia_sxol/116184_g_1.pdf.

112. Ministry of Education, Circular of 26.11.2013, available at <http://www.gdimitrakopoulos.gr/01-Ενημερώσεις-μου/362-Όλα-όσα-πρέπει-να-γνωρίζουμε-για-τη-λειτουργία-των-σχολικών-μονάδων>, accessed Sept. 15, 2015.

113. Interview with Kostas Papachristos, June 25, 2014.

114. Interview with Kostas Papachristos, June 25, 2014; Interview with Christos Parthenis, June 26, 2014; Interview with Alexis Kourkouvelis, June 24, 2014; Interview with Parent and Teacher, Sofades, June 27, 2014; Interview with Giorgos Moschos, June 25, 2014.

115. European Union Agency for Fundamental Rights, *The Situation of Roma in 11 EU Member States 2012*, available at http://fra.europa.eu/sites/default/files/fra_uploads/2099-FRA-2012-Roma-at-a-glance_EN.pdf, accessed Sept. 15, 2015.

116. Sampani judgment, at para. 7; Ministerial Decision 107//2008 (Reg. No. 10781/Δ4/25-01-2008, ΦΕΚ 144/τ. Β'/30-01-2008) regarding “The establishment of the 12th Primary School of Aspropyrgos,” adopted 25 January 2008, published in the Government’s Official Gazette 30 January 2008; Interview with Kostas Markopoulos, June 24, 2008.

117. *Sampani* judgment, at paragraphs 22, 85–87.

118. *Sampani* judgment, at paragraph 18.

119. European Union Agency for Fundamental Rights, *The Situation of Roma in 11 EU Member States 2012*, available at http://fra.europa.eu/sites/default/files/fra_uploads/2099-FRA-2012-Roma-at-a-glance_EN.pdf, accessed Sept. 15, 2015.

120. *Sampani* judgment, at para. 104.

121. *Sampani* judgment, at para. 128. Specifically, the Court proposed that school-age applicants “could be enrolled by the Directorate of Primary Education of West Attica in another state school and those who have attained majority could enroll in the ‘second-chance schools.’”

122. Reg. No. Φ20.3/2930/10-9-2013 Decision of West Attica Directorate of Primary Education, September 13, 2013, pp. 1-4, available at <http://www.synigoros.gr/resources/ektelesh-apofashs-eyr-dik-gia-sampanh--2.pdf>, accessed September 30, 2014.

123. Reg. No. Φ20.3/2930/10-9-2013 Decision of West Attica Directorate of Primary Education, September 13, 2013, p. 4, available at <http://www.synigoros.gr/resources/ektelesh-apofashs-eyr-dik-gia-sampanh--2.pdf>, accessed September 30, 2014.

124. Interview with Kostas Markopoulos, June 24, 2014.

125. Deputy Minister Alexandros Dermentzopoulos, Reg. No 100666/IHEΞ/88244ε1σ Answer to Question No 8399/3-6-2014 on “The situation of Roma pupils and teachers who served at the 12th Primary school of Aspropyrgos” tabled by MPs Maria Yannakaki and Maria Repousi, June 30, 2013.

126. Reg. No. 72624/Γ4/12-05-2014/ΦΕΚ 1329B/2014 Joint Ministerial Decision of the Ministry of Education and Ministry of Finance on the “Establishments, Upgrades, Downgrades, Mergers and Closures of Primary and Nursery Schools,” published in the Government’s Official Gazette May 12, 2014.

127. Interview with Kostas Papachristos, June 25, 2014.

128. ECtHR *Lavida* Applicants’ Comments, at para. 17.

129. See *Lavida* judgment, at paragraphs 21–22.

130. Press Release on Diamantopoulou’s meeting for the integration of Roma students in Sofades (Karditsa), Ministry of Education, Lifelong Learning and Religious Affairs, January 26, 2012, available at <http://www.minedu.gov.gr/grafeio-typoy-kai-dimosion-sxeseon-main/delta-typoy-main/8287-26-01-2012-synantisi-ergasias-y-po-tin-y-poyrgo-gia-tin-entaksi-ton-mathiton-roma-ton-sofadon-karditsas.html>, accessed September 30, 2014.

131. See “Communication from Greece concerning the cases of Sampani and others and Lavida and others against Greece (Applications No. 59608/09 and 7973/10), DH—DD (2013) 1372, {1193th DH meeting (March 4-6, 2014)}, December 19, 2013, available at <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2424985&SecMode=1&DocId=2091326&Usage=2>, accessed September 30, 2014.

132. See “Communication from Greece concerning the cases of Sampani and others and Lavida and others against Greece (Applications No. 59608/09 and 7973/10), DH—DD (2013) 1372, {1193th DH meeting (March 4-6, 2014)}, December 19, 2013, available at <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2424985&SecMode=1&DocId=2091326&Usage=2>, accessed September 30, 2014.

133. Knowledge and Policy, *All against misdiagnosis: Sociologists, neurologists, economists, psychologists and special educators for inclusion*, July 2009, p. 67, available at http://www.knowandpol.eu/IMG/pdf/hunhealth_oriz-pa1_final_final.pdf, accessed Sept. 15, 2015.

134. Knowledge and Policy, *All against misdiagnosis: Sociologists, neurologists, economists, psychologists and special educators for inclusion*, July 2009, p. 68, available at http://www.knowandpol.eu/IMG/pdf/hunhealth_oriz-pa1_final_final.pdf, accessed Sept. 15, 2015.

135. See, e.g., Orsolya Szendrey, “Roma School Desegregation Policies in Hungary,” in I. Rostas (Ed.) *Ten Years After: a history of Roma school desegregation in Central and Eastern Europe*, Central European University Press 2012; “Communication from Hungary concerning the case of *Horváth and Kiss v. Hungary*,” (Application No. 11146/11), January 2014, available at <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2442553&SecMod e=1&DocId=2105580&Usage=2>, accessed Sept. 15, 2015.
136. Open Society Institute, *Equal Access to Quality Education for Roma*, Vol. 1, 2007, available at http://www.opensocietyfoundations.org/sites/default/files/2roma_20070329_0.pdf, accessed Sept. 15, 2015.
137. Knowledge and Policy, *All against misdiagnosis: Sociologists, neurologists, economists, psychologists and special educators for inclusion*, July 2009, p. 68, available at http://www.knowandpol.eu/IMG/pdf/hunhealth_oriz-pari_final_final.pdf, accessed Sept. 15, 2015.
138. European Court of Human Rights, Application No. 11146/11, *István Horváth and András Kiss v. Hungary*, para. 93, available at <http://www.errc.org/cms/upload/file/reply-to-governments-observation.pdf>, accessed Sept. 15, 2015.
139. Knowledge and Policy, *All against misdiagnosis: Sociologists, neurologists, economists, psychologists and special educators for inclusion*, July 2009, p. 68, available at http://www.knowandpol.eu/IMG/pdf/hunhealth_oriz-pari_final_final.pdf, accessed Sept. 15, 2015.
140. European Court of Human Rights, Application No. 11146/11, *István Horváth and András Kiss v. Hungary*, para. 93, available at <http://www.errc.org/cms/upload/file/reply-to-governments-observation.pdf>, accessed Sept. 15, 2015.
141. Judgment, Debrecen Appeal Court, Pf. II.20.509/2009/10, 5 November 2009, pp. 29 and 30; see also *Horváth and Kiss*, paras. 43, 45.
142. *Horváth and Kiss*, para. 52.
143. Interview with Szilvia Palaghy, Sept. 29, 2014.
144. Educatio, “TÁMOP-3.4.2.B” Sajátos nevelési igényű gyerekek integrációja. Szakszolgálatok fejlesztése,” available at <http://www.educatio.hu/projektjeink/tamop342b> accessed Sept. 15, 2015.
145. DH-DD(2013)1185, Action report (14/10/2013), Communication from Hungary concerning the case of *Horváth and Kiss against Hungary* (Application No. 11146/11), available at <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2391169&SecMode=1&DocId=2072098&Usage=2>, accessed Sept. 14, 2015.
146. DH-DD(2013)1185, Action report (14/10/2013), Communication from Hungary concerning the case of *Horváth and Kiss against Hungary* (Application No. 11146/11), available at <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2391169&SecMode=1&DocId=2072098&Usage=2>, accessed Sept. 14, 2015.
147. Art. 41 (4a) of the Act CXC of 2011 on Public Education, as amended in July 2014, available at http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A1100190.TV, accessed Sept. 15, 2015.
148. Art. 41 (4a) of the Act CXC of 2011 on Public Education, as amended in July 2014, available at http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A1100190.TV, accessed Sept. 15, 2015.
149. Informal confirmation came from an official at the Ministry of Education through an intermediary on September 29, 2014. The minister of education refused a formal meeting; thus formal confirmation was not received.

150. Nyíregyháza–keresetlevél, available at <http://www.cfcf.hu/en/projects/litigation-cases/180-Nyiregyhaza-keresetlevel.html>, accessed Sept. 15, 2015.
151. Interview with Laszloné Csabai, July 18, 2014.
152. Nyíregyháza County Town Assembly Meeting Minutes, 23 April 2007, p. 147, available at <http://www.nyirhalo.hu/index.php?option=content&task=view&id=7163&Itemid=108>, accessed Sept. 15, 2015.
153. See “The Problems of Integration and Segregation in Hungary,” in Klemens Budzowski, Magdolna Lácza, *Poland, Hungary, the World: Selected Aspects of Contemporary Economy, Culture, and Science*, p. 78, available at <http://books.google.com/books?id=3uaOdGL6UycC&pg=PA75&lpg=PA75&dq=2007+huszar+segregated+school&source=bl&ots=BVR1nN-Tni&sig=xBJxICPj7JimaBSHsq>, accessed Sept. 15, 2015. In 2006–07, 100 pupils attended Guszev school. See Nyíregyháza judgment, 10G.15-13-040 099/22, at 30. The ones that did not graduate were transferred.
154. Roma Sajtóközpont, Iskola a városhatáron—újraindult a cigánytelepi iskolaNyíregyházán, September 14, 2011, available at <http://www.sosinet.hu/2011/09/14/iskola-a-varoshataron-%E2%80%93-ujraindult-a-ciganytelepi-iskola-Nyiregyhazan-2/>, accessed Sept. 15, 2015.
155. Nyíregyháza judgment, at 4.
156. Nyíregyháza judgment, at 6, 23.
157. Nyíregyháza megyei jogú város közgyűlésének 83/2007. (IV. 23.), <http://www.nyirhalo.hu/adattar/2007/hatarozat/083ho423.pdf>; 197/2011.(X.27.), October 27, 2011, http://adat.Nyiregyhaza.hu/jegyzokonyv/kozgyules11/111111__1027_jegyzokonyv.pdf; <http://www.drkovacsferenc.hu/magamrol/>.
158. For an unofficial translation of the Fourth Amendment, see http://helsinki.hu/wp-content/uploads/Fourth_Amendment_to_the_Fundamental_Law_Unofficial_translation_13032013.pdf. For concerns civil society raised, see http://helsinki.hu/wp-content/uploads/Main_concerns_regarding_the_4th_Amendment_to_the_Fundamental_Law_of_Hungary_13032013.pdf. For European Commission’s press release on the Fourth Amendment, see http://europa.eu/rapid/press-release_IP-13-327_en.htm.
159. Emphasis added. Please note that the phrase “social catching up” (in Hungarian: társadalmi felzárkózás) is sometimes translated as “social inclusion” or “social integration.” Available at http://www.kormany.hu/download/3/a9/11000/MK_13_163.pdf; See Hungary Fundamental Law, as Amended by Fourth Constitutional Amendment, Art. XV(4) available at <http://www.mfa.gov.hu/NR/rdonlyres/8204FB28-BF22-481A-9426-D2761D10EC7C/0/FUNDAMENTALLAWOFHUNGARYmostrecentversion01102013.pdf>, accessed Sept. 15, 2015.
160. Veronika Gulyas, “Discrimination of Roma Looms in Hungarian Schools,” *The Wall Street Journal*, April 9, 2013, available at <http://blogs.wsj.com/emerging europe/2013/04/09/discrimination-of-roma-loom-in-hungarian-schools/>, accessed Sept. 15, 2015.
161. Hungarian Civil Liberties Union, “Hungarian government creates the legal framework for segregating Roma children in schools,” April 18, 2013, available at <http://tasz.hu/en/romaprogram/hungarian-government-creates-legal-framework-segregating-roma-children-schools>, accessed Sept. 15, 2015.

162. Interview with Adel Kegye, July 21, 2014.
163. Interview with Andras Ujlaky and Lilla Farkas, July 14, 2014.
164. <http://www.kozlonyok.hu/nkonline/MKP/DF/hiteles/MK13120.pdf>, ETA preamble, Art. 11(1).
165. *Nyíregyháza* judgment, 10G.15-13-040 099/22 at 18.
166. Interview with Roma activist, Nyíregyháza, July 17-18, 2014.
167. Interview with Edita Stejskalova, June 13, 2014.
168. See, e.g., Amnesty International, “Injustice Renamed,” p. 16, available at <http://www.amnesty-kinderrechte.de/pdfs/eur710032009en.pdf>, accessed October 3, 2014.
169. See CSI, “Prompt investigation, Pupils educated in line with FEP ES MMR,” (2013) (on file with author), available at <http://www.csicr.cz/getattachment/ddf8327d-091c-4e25-9abe-e548a796d86f>, accessed October 3, 2014.
170. Interview with Ondrej Liska, former Minister of Education, June 11, 2014 (“One of the sensitivities, which is kind of sad, is that DH didn’t have much overall impact on the society although for me and the other people working on the agenda, it was absolutely crucial and groundbreaking”); Interview with Marcela Miková, August 8, 2014 (“I feel disappointed, though, as nothing changed for Roma children at mainstream or practical schools.”); Interview with Jolana Šmarhovyčová, June 9, 2014 (“[S]egregation persists, only in a different form”).
171. See Stanovisko veřejného ochránce práv k podezření na diskriminaci romských dětí a žáků—poznatky ze zprávy z tematické kontrolní činnosti České školní inspekce na základních školách praktických, 20. dubna 2010, available at <http://www.csicr.cz/getattachment/1ab991e8-c407-44cc-98bo-ab5e875c5c12>, October 3, 2014); see also Verejny ochrance prav, Popis metody a výsledky výzkumu etnického složení žáků bývalých zvláštních škol v ČR v roce 2011/2012, pp. 14–15, available at http://www.ochrance.cz/fileadmin/user_upload/DISKRIMINACE/Vyzkum/Vyzkum_skoly-metoda.pdf, accessed October 3, 2014.
172. See “Pending cases: current state of execution on the Council of Europe’s website, D.H. State of Execution,” available at http://www.coe.int/t/dghl/monitoring/execution/Reports/pendingCases_en.asp?CaseTitleOrNumber=57325%2F00&StateCode=&SectionCode=, accessed October 3, 2014.
173. See “Czech EdMin protests Brussels’ criticism, AI confirms Roma are discriminated,” (ROMEIA, 26 September 2014), available at <http://www.romeia.cz/en/news/czech/czech-edmin-protests-brussels-criticism-ai-confirms-roma-are-discriminated>, accessed October 3, 2014.
174. See Czech School Inspection (CSI) (35%), Thematic Report—Compendium of results from the thematic control activity in practical elementary schools, March 2010, available at <http://www.csicr.cz/cz/85126-zprava-z-kontrolni-cinnosti-v-byvalych-zvlastnich-skolach>; see also the CSI 2011/2012 thematic report on the process of transforming former special schools (26.4%), available at <http://www.csicr.cz/getattachment/641e8e0e-36b3-4ba3-af8f-e5bf939040e2>, accessed October 3, 2014), at page 4; *UIV 2009* (35%), available at http://www.varianty.cz/download/pdf/texts_156.pdf (last accessed 3 October, 2014), at page 6; Ombudsman (32% / 35%) http://www.ochrance.cz/fileadmin/user_upload/DISKRIMINACE/Vyzkum/Vyzkum_skoly-metoda.pdf, accessed October 3, 2014, at pages 10; CSI 2013/2014 (28.2%) available at <http://www.csicr.cz/cz/DOKUMENTY/Projektove-vystupy/Rovny-pristup-ke-vzdelavani-v-CR-situace-a-doporu>, accessed October 3, 2014, at pages 25–26.

175. See Ombudsman Press Release, “Research has confirmed indirect discrimination of Roma pupils”/Výzkum potvrdil nepřímou diskriminaci romských žáků, June 6, 2012, available at <http://www.ochrance.cz/tiskove-zpravy/tiskove-zpravy-2012/vyzkum-potvrdil-neprimou-diskriminaci-romskych-zaku/>, accessed October 3, 2014.

176. See Judgement by the Supreme Court of the Czech Republic, file 30 Cdo 4277/2010, from December 13, 2012, available at <http://www.epravo.cz/top/soudni-rozhodnuti/diskriminace-89703.html>, accessed October 3, 2014, at page 9.

177. See Institute for Information in Education (UIV), RVP Monitoring, Introduction, Ratio of Roma children education in line with the framework educational programme for primary schools for pupils with mild mental retardation and Special school (2009), available at http://www.varianty.cz/download/pdf/texts_156.pdf, accessed October 3, 2014, at page 6.

178. Ombudsman Press Release, “Research has confirmed indirect discrimination of Roma pupils”/ Výzkum potvrdil nepřímou diskriminaci romských žáků, June 6, 2012, available at <http://www.ochrance.cz/tiskove-zpravy/tiskove-zpravy-2012/vyzkum-potvrdil-neprimou-diskriminaci-romskych-zaku/>, accessed October 3, 2014.

179. See “Czech School Inspection (CSI) Thematic Report—Compendium of results from the thematic control activity in practical elementary schools,” March 2010, available at <http://www.csicr.cz/cz/85126-zprava-z-kontrolni-cinnosti-v-byvalych-zvlastnich-skolach>, accessed October 3, 2014, at pages 2, 5; CSI 2012 thematic report on the process of transforming former special schools, available at <http://www.csicr.cz/getattachment/64rebe0e-36b3-4ba3-af8f-e5bf939040e2>, accessed October 3, 2014, at pages 3 and 4; CSI, Prompt investigation, Pupils educated in line with FEP ES MMR (2013) (on file with author), available at <http://www.csicr.cz/getattachment/ddf8327d-091c-4e25-9abe-e548a796d86f>, accessed Oct. 3, 2014.

180. See Equal Access to Quality Education for Roma Children, Field Assessment Visit to the Czech Republic (OSCE ODIHR, May 2012, p. 34, available at <http://www.osce.org/odihr/96661?download=true>, accessed October 3, 2014.

181. See “Is special pedagogical care provided to pupils with mild mental retardation threatened?”/ *Je ohrožena speciálněpedagogická péče o žáky s lehkým mentálním postižením?* (Učitelské noviny č. 26/2012), available at <http://www.ucitelskenoviny.cz/?archiv&clanek=6760>, accessed October 3, 2014. In 2009, when the Czech School Inspectorate found 34 former special schools to be educating pupils with no mental disability diagnosis as mildly mentally disabled, it also noted that these schools unjustifiably requested approximately 2.25 million Kč in funds for mentally disabled and scheduled a financial inspection. See Czech School Inspection (CSI) Thematic Report—Compendium of results from the thematic control activity in practical elementary schools, March 2010, available at <http://www.csicr.cz/cz/85126-zprava-z-kontrolni-cinnosti-v-byvalych-zvlastnich-skolach>, accessed 3 October, 2014, at pages 9–10. In early 2010, the Minister of Education sent a letter to school principals requesting that only children with true mental disability be taught as mentally disabled.

182. Interview with anonymous Roma, June 13, 2014; Interview with Jiri Pilar, June 12, 2014.

183. Interview with mother of a *D.H.* applicant, Mikova, August 8, 2014.

184. Interview with anonymous Roma, June 13, 2014.

185. Interview with Jiri Pilar, June 12, 2014.
186. See Jana Smetanova at the public hearing in the Czech Senate, transcript of the hearing held on February 4, 2013: Petition for keeping primary practical schools, pages 1–3.
187. See Consolidated Action Plan for the execution of the judgement of the European Court of Human Rights in the case of D.H. and others v. The Czech Republic (Nov 16, 2012), available at <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2186980&SecMode=1&DocId=1953724&Usage=2>, accessed on October 3, 2014, at page 22.
188. See Consolidated Action Plan for the execution of the judgement of the European Court of Human Rights in the case of D.H. and others v. The Czech Republic (Nov 16, 2012), available at <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2186980&SecMode=1&DocId=1953724&Usage=2>, accessed on October 3, 2014, at page 23.
189. Interview with Libor Mikulasek, June 10, 2014.
190. Interview with mother of a *D.H.* applicant, Mikova, August 8, 2014.
191. See Report on Implementation of the Action Plan for the Execution of the Judgment of the European Court of Human Rights in the Case of D.H. and Others v. the Czech Republic Equal Opportunities April 25, 2014, April 2014, DH-DD(2014)541, available at <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2514955&SecMode=1&DocId=2135608&Usage=2>, accessed October 3, 2014, at page 2.
192. Interview with Libor Mikulasek, June 10, 2014.
193. Interview with Martin Simacek, August 22, 2014.
194. Interview with Jiri Nantl, June 10, 2014.
195. Amnesty International et al., The Czech Republic’s Discriminatory Treatment of Roma Breaches EU Race Directive, April 2013, available at http://www.amnesty.eu/content/assets/doc2013/czech_roma_submission_190413_final.pdf, accessed Sept.20, 2015.
196. Interview with Jolana Smarhovycova; interview with Edita Stejskalova.
197. Greek Action Plan, <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2424985&SecMode=1&DocId=2091326&Usage=2>. One was transferred in 2010/2011.
198. Deputy Minister Alexandros Dermentzopoulos, Answer to Question No 8399/3-6-2014.
199. Interview with Christos Parthenis, June 26, 2014.
200. Deputy Minister Alexandros Dermentzopoulos, Answer to Question No 8399/3-6-2014.
201. Interview with Alexis Kourkouvelis, June 24, 2014.
202. Interview with Christos Parthenis, June 26, 2014; interview with Alexis Koutrovelis; Deputy Minister Alexandros Dermentzopoulos, Answer to Question No 8399/3-6-2014 (speaking of 50 applicant children and 60 non-applicant children enrolled at 12th school in 2013/2014).
203. Committee of Ministers of the Council of Europe, Action Report and Action Plan of January 29, 2014 Appl. No. 11146/11 Horváth and Kiss v. Hungary judgment of 29/01/2013, <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2442553&SecMode=1&DocId=2105580&Usage=2>, accessed Sept. 15, 2015.

204. See “The Problems of Integration and Segregation in Hungary,” in Klemens Budzowski, Magdolna Lácay, *Poland, Hungary, the World: Selected Aspects of Contemporary Economy, Culture, and Science*, p. 78, available at <http://books.google.com/books?id=3uaOdGL6UycC&pg=PA75&lpg=PA75&dq=2007+huszar+segregated+school&source=bl&ots=BVR1nN-Tni&sig=xBJxICPj7JimaBSHsq>, accessed Sept. 15, 2015. In 2006–07, 100 pupils attended Guszev school. See Nyíregyháza judgment, 10G.15-13-040 099/22, at 30. The ones that did not graduate were transferred.

205. Interview with Nyíregyháza activist, July 17–18, 2014.

206. Because the judgment in the domestic Nyíregyháza litigation can still be appealed at the time of writing of this report, its impact on domestic jurisprudence is not explored here.

207. See James A. Goldston and Mirna Adjami, *The Opportunities and Challenges of Using Public Interest Litigation to Secure Access to Justice for Roma Minorities in Central and Eastern Europe*, p. 30, Draft for ABA World Justice Forum, Vienna, July 2008, available at http://www.lexisnexis.com/documents/pdf/20080924043559_large.pdf, accessed October 1, 2014.

208. See, e.g. Chance for Children Foundation, *Handbook on Roma Segregation in Schooling, Part 2*, available at <http://www.cfc.hu/rólunk>, accessed Sept. 15, 2015.

209. Council of Europe, European Convention on Human Rights, available at <http://human-rights-convention.org/>, accessed Sept. 15, 2015.

210. Claude Cahn, “Elephant in the Room: On Not Tackling Systemic Racial Discrimination,” available at http://ec.europa.eu/justice/discrimination/files/lawrev4_en.pdf, accessed Sept. 15, 2015. In two judgments that implicated race, the Court found violation of other articles rather than Article 14.

211. Claude Cahn, “Elephant in the Room: On Not Tackling Systemic Racial Discrimination,” (quoting *Anguelova v. Bulgaria*), available at http://ec.europa.eu/justice/discrimination/files/lawrev4_en.pdf, accessed Sept. 15, 2015.

212. See ERRC, Grand Chamber Referral, *D.H.*, para. 3, available at <http://www.errc.org/cms/upload/media/02/D3/m000002D3.pdf>; ERRC, European Court of Human Rights Condemns Bulgaria for Discrimination against Roma, <http://www.errc.org/article/european-court-of-human-rights-condemns-bulgaria-for-discrimination-against-roma/1858>; ERRC, Case of Moldovan and Others v Romania; village of Hadareni, <http://www.errc.org/article/case-of-moldovan-and-others-v-romania%3B-village-of-hadareni/3581>

213. ERRC, Grand Chamber Referral, *D.H.*, para. 22, available at <http://www.errc.org/cms/upload/media/02/D3/m000002D3.pdf>, accessed Sept. 15, 2015.

214. James A. Goldston, “The role of European anti-discrimination law in combating school segregation: the path forward after *Ostrava*,” Brussels, April 28, 2006.

215. See ERRC, Grand Chamber Referral, *D.H.*, para. 3, available at <http://www.errc.org/cms/upload/media/02/D3/m000002D3.pdf>, accessed Sept. 15, 2015.

216. ERRC, Grand Chamber Referral, *D.H.*, para. 176, available at <http://www.errc.org/cms/upload/media/02/D3/m000002D3.pdf>, accessed Sept. 15, 2015.

217. See *Sampanis*, at para. 96; see also “Resolution CM/ResDH(2011)119 Execution of the judgment of the European Court of Human Rights *Sampanis and others against Greece*,” Com-

mittee of Ministers of the Council of Europe, 14 September 2011, at page 2, available at <http://caselaw.echr.globe24h.com/o/o/greece/2011/09/14/case-of-sampanis-and-others-against-greece-106912-32526-05.shtml>, accessed September 28, 2014.

218. *Oršuš and Others v. Croatia*, (Application no. 03/15766), March 16, 2010, para. 143-186.

219. *Sampani* judgment, at para. 104; *Lavida* judgment, at paras 73-74.

220. *Horváth and Kiss*, at para. 128.

221. See, e.g., Bernadette Rainey, *Human Rights Law Concentrate: Law Revision and Study Guide*, at page 167 (Oxford University Press 2013) (calling *D.H.* “the most important discrimination case yet decided” by the ECHR ((last accessed October 1, 2014)); Ralph Sandland, *Developing a Jurisprudence of Difference: The Protection of the Human Rights of Travelling Peoples by the European Court of Human Rights*, at page 509, *Human Rights Law Review* 8:3(2008) (calling *D.H.* a “historic decision”), accessed October 1, 2014; Rory O’Connell, Commentary, *Substantive Equality in the European Court of Human Rights?*, 107 Mich. L. Rev. First Impressions 129, 132 (2009), at page 132, available at <http://www.michiganlawreview.org/firstimpressions/vol107/oconnell.pdf>, <http://academos.ro/sites/default/files/biblio-docs/1203/oconnell.pdf> (calling *D.H.* a “breakthrough for a more substantive model of equality in Strasbourg”), accessed October 1, 2014; Jennifer Devroye, *The Case of D.H. and Others v. the Czech Republic*, 7 Nw. J. Int’l Hum. Rts. 81, 81 (2009), at pages 2 and 18, available at <http://scholarlycommons.law.northwestern.edu/njihr/vol7/iss1/3> (calling *D.H.* “landmark”), accessed October 1, 2014.

222. See Overview: ECHR 1953-2013, at 3 (“Since it was established in 1959 the Court has delivered about 17,000 judgments”), http://www.echr.coe.int/Documents/Overview_19592013_ENG.pdf. Between January and October 2014, the Court delivered another 2173 judgments. See ECHR, STATISTICS 1/1-31/10/2014, available at http://www.echr.coe.int/Documents/Stats_month_2014_ENG.pdf, accessed Sept. 15, 2015.

223. Phone interview with European Court of Human Rights judge (former), July 15, 2014.

224. Phone interview with European Court of Human Rights judge (current or former), July 15, 2014; see also *D.H.*, accessed October 1, 2014, at para. 176.

225. Phone interview with European Court of Human Rights judge (current or former), July 15, 2014; see also *D.H.*, accessed October 1, 2014, at para. 176, 182.

226. Phone interview with European Court of Human Rights judge (current or former), 15 July, 2014; see also *D.H.* (last accessed October 1, 2014), para. 209. See also Roberta Medda-Windischer, *Dismantling Segregating Education and the European Court of Human Rights. D.H. and Others vs. Czech Republic: Towards an Inclusive Education?*, in *European Yearbook of Minority Issues Vol 7, 2007/8* (last accessed October 1, 2014), at pages 39–40, available at http://www.jus.unitn.it/download/gestione/jens.woelk/20131118_1938EYMI_7_Medda-Windischer_Roma_Education_CZ.pdf; see also Samantha Besson, *Evolutions in Non-Discrimination Law within the ECHR and the ESC Systems: It Takes Two to Tango in the Council of Europe*, in 60 *Am. J. Comp. L.* 147, 160–161 (2012), accessed October 1, 2014.

227. Phone interview with European Court of Human Rights judge (current or former), July 15, 2014.

228. Phone interview with European Court of Human Rights judge (current or former), July 15, 2014; see also *D.H.* (last accessed October 1, 2014), at para. 184.

229. Phone interview with European Court of Human Rights judge (former), July 15, 2014.
230. Phone interview with European Court of Human Rights judge (former), July 15, 2014.
231. See, e.g., Alastair Mowbra, *Cases, Materials, and Commentary on the European Convention on Human Rights* 837 (Oxford 2012); Council of Europe, *Institutional Accommodation and the Citizen: Legal and Political Interaction in a Pluralist Society* 115 (2009), accessed August 20, 2014.
232. See, e.g., Rory O’Connell, *Commentary, Substantive Equality in the European Court of Human Rights?*, 107 Mich. L. Rev. First Impressions 129, 132 (2009), available at <http://www.michiganlaw-review.org/firstimpressions/vol107/oconnell.pdf>, accessed October 1, 2014; see also *D.H.* at para. 175.
233. See, e.g., Jennifer Devroye, *The Case of D.H. and Others v. the Czech Republic*, 7 Nw. J. Int’l Hum. Rts. 81, 81 (2009), available at <http://scholarlycommons.law.northwestern.edu/njihr/vol7/iss1/3>, accessed October 1, 2014; ERRC website, *Ostrava Case: D.H. and Others v. Czech Republic*, <http://www.errc.org/article/ostrava-case-dh-and-others-v-the-czech-republic/2945>, accessed August 20, 2014; Council of Europe, *Institutional Accommodation and the Citizen: Legal and Political Interaction in a Pluralist Society* 115 (2009); Andi Dobrush, *A Fresh Wind Across the Prairie—The European Court of Human Rights Acknowledges Systemic Discrimination in the Case of Education of Romani Children from the Czech Republic*, *Roma Rights Quarterly*, No. 4, 2007, available at <http://www.errc.org/cms/upload/media/02/FA/m000002FA.pdf>, accessed October 1, 2014, at page 77; Roberta Medda-Windischer, *Dismantling Segregating Education and the European Court of Human Rights. D.H. and Others v. Czech Republic: Towards an Inclusive Education?*, in *European Yearbook of Minority Issues Vol 7, 2007/8*, available at http://www.jus.unitn.it/download/gestione/jens.woelk/20131118_1938EYMI_7_Medda-Windischer_Roma_Education_CZ.pdf, accessed October 1, 2014, at pages 39-40
234. *Sampani*, para. 128.
235. See *Horváth and Kiss*, paras. 104, 116; see also <http://echrblog.blogspot.hu/2013/02/Horvath-and-kiss-judgment-on-roma.html>.
236. *Lavida*, para. 73.
237. Interview with Roma Researcher, June 23, 2014.
238. Interview with Thalia Dragona, June 23, 2014.
239. “Combating Segregation in Education through Litigation: Reflections on the Experience to Date,” by James A. Goldston and Ivan Ivanov, at 166, in *Separate and Unequal* (2004).
240. Interview with Edita Stejskalova.
241. Interview with Magdalena Karvayova.
242. Interview with Martina Horváthova.
243. Interview with Jolana Smarhovycova, June 9, 2014 (Magdalena Karvayova present) (“A person who would do it only as a job should not work [on changing the education system]. I would give greater opportunity to Roma, because they do it from the heart, because they want to do something for themselves, for their children.”)
244. Communication with Panayote Dimitras, Nov. 22, 2014.
245. Interview with Eleni Tstetsekou, August 29, 2014.

246. Interview with T. Dragona. With the advance of ROMED (a Council of Europe Roma mediation program) scores of Roma mediators have began mediating in local Roma communities—because many are employed through a government-commissioned program that seeks to enroll Roma pupils, Roma mediators are now involved in seeking to ensure access to education. Interview with Christos Illiadis. For information about the government-commissioned program, see <http://www.keda.gr/roma/files/ROMA14PagesEnglish-2.pdf>
247. Interview with Eleni Tstetsekou, August 29, 2014.
248. Interview with Eleni Tstetsekou, August 29, 2014.
249. Interview with Aurora Ailincăi, July 7, 2014.
250. Interview with Aurora Ailincăi, July 7, 2014.
251. At least one Roma interviewee thought that average Roma is probably not aware of CFCF.
252. Interview with Magdalena Karvayova, June 12, 2014.
253. Interview with Miko and Horváthova, June 12, 2014.
254. Slovo 21, http://www.slovo21.cz/nove/index.php?option=com_content&view=article&id=102%3Anebu-dilino-&lang=en, accessed Sept. 21, 2015.
255. See Interim report on the project entitled the Pilot project implementing the judgement *DH and others v the Czech Republic in Ostrava*, available at <http://www.vzajemnesouziti.estranky.cz/clanky/co-je-u-nas-noveho--/dh-projekt.html>, accessed October 3, 2014.
256. Interview with Edita Stejskalová, 13 June 2014.
257. Interview with Peter Polak, Ombudsperson's Office.
258. *Nyíregyháza* judgment, at 13–14.
259. Interview with mother of a *D.H.* applicant, Mikova, 8 August 2014 (by Lucie Fremlova).
260. Interview with Magdalena Karvayova, 9 June 2014.
261. Interview with Parents, Guszev, 18 July 2014.
262. Interview with Minor, Guszev, 18 July 2014.
263. Interview with Parents, Guszev, 18 July 2014.
264. Interview with Parents, Guszev, 18 July 2014.
265. Interview with Parents, Guszev, 18 July 2014.
266. Interview with two non-applicant mothers, 24 June 2014.
267. Interview with Alexis Kourkovelis, 24 June 2014.
268. Interview with Kostas Markopoulos, 24 June 2014.
269. Mainstream schools refer in this context to regular schools that provide quality education.
270. See, e.g. *Nyíregyháza* judgment, 10G.15-13-040 099/22 at 13–14.
271. Interview with Magdalena Karvayova; Interview with Parents, Guszev.
272. Interview with Magdalena Karvayova 9 June 2014.

273. Interview with Mariann Pongo, Mario Kiss, 18 July 2014.
274. Interview with Agnesz Osztolykan, 14 July 2014.
275. Interview with Magdalena Karvayova; Interview with Roma activist, Greece.
276. Interview with Jana Horváthova, 12 June 2014.
277. Interview with Panayote Dimitras, June 23, 2014.
278. Interview with Martina Horváthova, 12 June 2014.
279. Interview with Martina Horváthova, 12 June 2014.
280. Katerina Hruba, The Reaction of Relevant Czech State Authorities to the European Court of Human Rights Judgment in the Case *D.H. and Others v. the Czech Republic*, at 33, Roma Rights Journal, Number 1, 2008 (Amnesty International CR, Clovek v tísní (People in Need), Drom, Dzeno, European Roma Rights Centre, Liga lidských práva (The League of Human Rights), Romodrom, Step by Step CR, Vzájemne soužití (Life Together) and Zřívule práva).
281. Katerina Hruba, The Reaction of Relevant Czech State Authorities to the European Court of Human Rights Judgment in the Case *D.H. and Others v. the Czech Republic*, at 33, Roma Rights Journal, Number 1, 2008.
282. See Romea. CZ, Koalice Společně do škol protestuje proti používání termínu “nepřízpusobiví” v médiích, available at <http://www.romea.cz/cz/zpravy/koalice-spolecne-do-skol-protestuje-proti-pouzivani-terminu-neprizpusobivi-v-mediich>, accessed Sept. 15, 2015.
283. See Romea CZ, Seminář o inkluzi romských dětí zítra v Senátu, available at <http://www.romea.cz/cz/zpravodajstvi/domaci/seminar-o-inkluzi-romskych-deti-zitra-v-senatu>, accessed Sept. 15, 2015.
284. European Roma Rights Centre, “*D.H. and Other v. Czech Republic*,” available at <http://www.errc.org/article/dh-and-others-v-the-czech-republic/3559>, accessed Sept. 15, 2015.
285. Interview with COE Officials, 7 July 2014.
286. Interview with Jiří Nantl, 10 June 2014.
287. Amnesty International et al., The Czech Republic’s Discriminatory Treatment of Roma Breaches EU Race Directive, April 2013, available at http://www.amnesty.eu/content/assets/doc2013/czech_roma_submission_190413_final.pdf, accessed Sept. 20, 2015.
288. Amnesty International et al., The Czech Republic’s Discriminatory Treatment of Roma Breaches EU Race Directive, April 2013, available at http://www.amnesty.eu/content/assets/doc2013/czech_roma_submission_190413_final.pdf, accessed Sept. 20, 2015.
289. See, e.g., Amnesty International, “Press Release: Thousands call for action by Commission to end discrimination against Roma people,” Brussels, 28 June 2012, available at <http://www.amnesty.eu/en/news/press-releases/eu/discrimination/roma/0646-0646/#.VC6UZCldXXw>, accessed October 4, 2014.
290. See e.g., Amnesty International et al., The Czech Republic’s Discriminatory Treatment of Roma Breaches EU Race Directive, April 2013, available at http://www.amnesty.eu/content/assets/doc2013/czech_roma_submission_190413_final.pdf, accessed Sept. 20, 2015.

291. See generally Amnesty International et al., *The Czech Republic's Discriminatory Treatment of Roma Breaches EU Race Directive*, April 2013, available at http://www.amnesty.eu/content/assets/doc2013/czech_roma_submission_190413_final.pdf, accessed Sept. 20, 2015.

292. *Sampani* judgment, at paras 26, 29; ECHR Application, *Sampani*, at II.26; See also GHM Press Release, "Greece: Appeal for Supreme Court Prosecutor's intervention for equal access of Roma in education," Greek Helsinki Monitor, 26 August 2010.

293. European Roma Rights Centre et al., *Guide for Monitoring and Documenting School Segregation in Greece*, p. 12, available at <http://www.dare-net.eu/cms/upload/file/guide-for-monitoring-and-documenting-school-segregation-greece-english-2014.pdf>, accessed Sept. 15, 2015.

294. Greek Parliament, "Means of Parliamentary Control," available at <http://www.hellenicparliament.gr/en/Koinovouleftikos-Elenchos/Mesa-Koinovouleutikou-Elegxou>, accessed October 6, 2014.

295. The source referenced here makes a strong case for how (according to those quoted) the judgments imply that a segregated special education system is justifiable. That important statement may be found at <http://www.mdac.info/en/14/02/2013/challenging-discrimination-expense-promoting-equality>, accessed Sept. 15, 2015.

296. See also Judgement by the Supreme Court of the Czech Republic, file 30 Cdo 4277/2010, from 13 December, 2012, available at <http://www.epravo.cz/top/soudni-rozhodnuti/diskriminace-89703.html>, accessed October 3, 2014.

297. See also Judgement by the Supreme Court of the Czech Republic, file 30 Cdo 4277/2010, from 13 December, 2012, available at <http://www.epravo.cz/top/soudni-rozhodnuti/diskriminace-89703.html>, accessed October 3, 2014. The Court explained:

In summary, the ECtHR, in the case of *D.H. and Others versus the Czech Republic*, allowed that if between 50 and 70% of the children enrolled in the special schools in the Ostrava area were Romani, then that was a *prima facie* case of such discrimination. On the other hand, in the matter of *Oršuš and Others versus Croatia*, in the case of the primary school in Podturen, where 10% of the children were of Romani origin, 36% of whom attended Romani-only classes, the statistical evidence did not demonstrate *prima facie* discrimination. In the matter under review, according to the statistics submitted, in the Karlovy Vary Region between 1985 and 1990 the special school population ranged between 29 and 50% Romani, with an average over the course of those six years of 36% Romani.

298. Interview with Adam Weiss, 15 July 2014.

299. Chance for Children Foundation, *Annual Report 2010*, available at <http://www.cfcf.hu/en/about-us/annual-reports/187-beszamolozas.html>.

300. It is not clear whether the Ombudsperson has examined the justifiability of diagnosis/disability as a ground for segregation.

301. See *Verejny ochrance prav, Výzkum potvrdil nepřímou diskriminaci romských žáků*, 6 June 2012; Vyjádření zástupce veřejného ochránce práv k plnění závazků plynoucích z Úmluvy o odstranění všech forem rasové diskriminace (on file with author).

302. Panel discussion: Equal access of children to education, September 20, 2012, available at http://www.ochrance.cz/dalsi-aktivity/konference/konference-archiv/?tx_odcalendar%5Buid%5D=26&cHash=2fia35bc56fd88e8b0c6of206d92c596, accessed October 3, 2014.

303. Interview with Jiří Nantl, 10 June 2014; Interview with Petr Polak, 10 June 2014.
304. Interview with COE Officials, 6 July 2014; Interview with Patricia Otvos, 6 July 2014.
305. Interview with Patricia Otvos, 6 July 2014; Interview with Isabela Mihalache, 6 July 2014; Interview with COE Officials, 6 July 2014.
306. Interview with Patricia Ötvös, 6 July 2014.
307. See “Segregated schools marginalise Roma children – the decisions of the Strasbourg Court must be implemented,” posted by Thomas Hammarberg at the Council of Europe Commissioner’s Human Rights Comment, available at http://commissioner.cws.coe.int/tiki-view_blog_post.php?postId=39 (last visited 4 October 2014).
308. Report by Nils Muižnieks, Commissioner for Human Rights of the Council of Europe, following his visit to the Czech Republic from 12 to 15 November 2012, CommDH(2013)1, Strasbourg, 21 February 2013, at paragraphs 2, 11-14, available at [http://s3.amazonaws.com/rcpp/assets/attachments/1577-CommDH\(2013\)1-E-original.pdf](http://s3.amazonaws.com/rcpp/assets/attachments/1577-CommDH(2013)1-E-original.pdf) (last visited 4 October 2014).
309. *Equal Access to Quality Education for Roma Children: Field Assessment Visit to the Czech Republic*, Organisation for Security and Co-operation in Europe, Office for Democratic Institutions and Human Rights, Warsaw, 26 October 2012, at page 4, available at <http://www.osce.org/odihr/96661> (last visited 4 October 2014).
310. Seminar on “Equal Access to Quality Education for Roma Children in the Czech Republic, 2014,” available at <http://www.khamoro.cz/index.php/en/other-events>, accessed Sept. 15, 2015.
311. *Equal Access to Quality Education for Roma Children: Field Assessment Visit to the Czech Republic*, Organisation for Security and Co-operation in Europe, Office for Democratic Institutions and Human Rights, Warsaw, 26 October 2012, at page 4, available at <http://www.osce.org/odihr/96661> (last visited 4 October 2014).
312. See “The Czech Republic’s Discriminatory Treatment of Roma breaches EU Directive Race Directive”, Amnesty International European Institutions Office, April 2013, at page 3, available at http://www.amnesty.eu/content/assets/doc2013/czech_roma_submission_190413_final.pdf, (last visited 4 October 2014); see also “Will Brussels galvanize the Czech Gov’t to end segregation of Roma in the schools?” Romea News release, UK/USA, 29 September 2014, available at <http://www.romea.cz/en/news/will-brussels-galvanize-the-czech-gov-t-to-end-segregation-of-roma-in-the-schools> (last visited 4 October 2014).
313. Interview with Jiří Nantl, 10 June 2014.
314. Interview with Jiří Dienstbier, 12 June 2014.
315. Interview with Jiří Nantl, 10 June 2014.
316. ECHR Application, *Sampani and others*, 7 October 2009, at II.12.
317. See Document Φ20.3/1714/24-4-2013 of West Attica Directorate of Primary Education annexed to Minister Konstantinos Arvanitopoulos’ Answer to Parliament Question No 9500/10-4/2013 on “Access to education for Roma children” tabled by MP Kostas Triantafyllos, 8 May 2013.
318. See *Sampani* judgment, at para. 23.
319. See *Sampani* judgment, at para. 18.

320. See the backlash section.
321. Interview with Ministry of Justice official.
322. Interview with Ministry of Justice official.
323. “I think it was a flawed judgment, we acted based on the law,” Interview with Libor Lenco, 9 June 2014; Interview with Jiří Pilar, 12 June 2014 (“absolutely no discrimination is taking place”); Interview with Libor Mikulasek, 10 June 2014.
324. Official, Magistrate of Ostrava, 9 June 2014.
325. Dopis Ministryně školám u příležitosti zápisu do 1. tříd, Czech Ministry of Education, January 19, 2010, *available at* <http://www.msmt.cz/ministerstvo/dopis-ministryne-skolam-u-prilezitosti-zapisu-do-1-trid> (last accessed August 7, 2014).
326. Dopis Ministryně školám u příležitosti zápisu do 1. tříd, Czech Ministry of Education, January 19, 2010, *available at* <http://www.msmt.cz/ministerstvo/dopis-ministryne-skolam-u-prilezitosti-zapisu-do-1-trid> (last accessed August 7, 2014).
327. Dopis Ministryně školám u příležitosti zápisu do 1. tříd, Czech Ministry of Education, January 19, 2010, *available at* <http://www.msmt.cz/ministerstvo/dopis-ministryne-skolam-u-prilezitosti-zapisu-do-1-trid> (last accessed August 7, 2014).
328. Dopis Ministryně školám u příležitosti zápisu do 1. tříd, Czech Ministry of Education, January 19, 2010, *available at* <http://www.msmt.cz/ministerstvo/dopis-ministryne-skolam-u-prilezitosti-zapisu-do-1-trid> (last accessed August 7, 2014).
329. See <http://www.ucitelskenoviny.cz/?archiv&clanek=3215&PHPSESSID=cab74bc14e5f6f582841c95c23ac7549>.
330. Letter to Kopicova.
331. Interview with Jiří Pilar, 12 June 2014.
332. Interview with Jiří Nantl, 10 June, 2014.
333. Interview with Jiří Nantl, 10 June, 2014.
334. Interview with Jiří Pilar, 12 June 2014.
335. Michal Komárek, Tyhle školy nejsou pro Romy, Respekt, February 10, 2010, *available at* <http://respekt.ihned.cz/c1-40459600-tyhle-skoly-nejsou-pro-romy> (last accessed August 7, 2014).
336. Přepis VSV ze dne 4. února 2013: Petice za zachování základních škol praktických, at 2–4; Interview with Jiří Pilar; Interview with Filip Rames.
337. Přepis VSV ze dne 4. února 2013: Petice za zachování základních škol praktických, at 2–4.
338. MSMT, Press Release, MŠMT nechce rušit speciální a praktické školy, ani zařízení náhradní výchovy, 1 November 2011, <http://www.msmt.cz/ministerstvo/novinar/msmt-nechce-rusit-specialni-a-prakticke-skoly-ani-zarizeni>.
339. Přepis VSV ze dne 4. února 2013: Petice za zachování základních škol praktických, at 2–4.
340. See Přepis VSV ze dne 4. února 2013: Petice za zachování základních škol praktických, at 3–4.
341. See *Petice za zachování základních škol praktických*, 12 October 2012, <http://hostinne.info/petice-za-zachovani-zakladnich-skol-prakticky-umistenipodpisovych-archu/d-3157/p1=1370>.

342. Přepis VSV ze dne 4. února 2013: Petice za zachování základních škol praktických, at 3.
343. See Nečas' team want to abolish practical schools, they will have to face Dobeš/ Nečasův tým chce rušit zvláštní školy, narazí na Dobeše (3 October, 2010, available at <http://zpravy.aktualne.cz/domaci/necasuv-tym-chce-rusit-zvlastni-skoly-narazi-na-dobese/r-i:article:715987/> (last accessed 3 October, 2014); *Minister Fiala: Unlawful selection in education leads to wasting human potential?* Minister Fiala: Nespravedlivá selekce ve vzdělávání vede k plýtvání lidským potenciálem (9 May, 2013), speech at the 53rd meeting of the Parliament on 9 May, 2013 ("Nonetheless the Action plan does not contain, has never contained and does not aim to intervene in any way against primary practical schools./Akční plán nicméně neobsahuje, nikdy neobsahoval a není jeho cílem jakýkoli zásah proti základním školám praktickým."); available at http://zpravy.idnes.cz/skolam-chybi-podminky-na-inkluzi-d4n-/domaci.aspx?c=A131017_164157_domaci_jj (last accessed 3 October, 2014).
344. Deputy Minister Symeon Kedikoglou, Reg. No. 52352/IH EΞ/3988 εΙσ. Answer to Question 5293/10.1.2014 on "Non-execution of ECtHR judgments Sampani and Lavidá regarding Ghetto schools for Roma children" tabled by SYRIZA MPs Petros Tatsopoulos, Vasiliki Katrivanou, Hara Kafantari, Afroditi Stampouli, 4 April 2014.
345. Interview with Adel Kegye, October 5, 2014.
346. Interview with Lilla Farkas, July 14, 2014.
347. Interview with Julek Mika, 8 August 2014.
348. Interview with Anastasios Lavidá, 27 June 2014.
349. Interview with István Horváth, 16 July 2014; Interview with DH. Applicants' mother, 8 June 2014 ("Mr. Khumar took the kids for a psychological evaluation and discovered that they have heads good for elementary school, not for special school. . . . Our people cheered us on, 'It is good what you are doing, that you do not let it be.'")
350. Interview with Helena Bandyiova, 24 June 2014. In Sofades, the desire to escape the lower quality of education at the 4th School guided the *Lavidá* applicants we interviewed. "I wanted my children to go to the 1st or 2nd school because in the 4th school classes are not properly done." Interview with Anastasios Lavidas, 27 June 2014. "We wanted to help all our children, because our children only go to the 4th School, were they don't learn to read and write properly." Interview with Anonymous Applicant, Sofades, phone, Maniou, add date.
351. Interview with Anonymous Applicant, Sofades, phone, Maniou, add date. Interview with Vasilis Sampanis, [add date] (Maniou) ("We wanted justice for the kids."); Interview with D.H. applicant, 8 August 2014 (Fremlova) ("We wanted justice")
352. Interview with Julek Mika, 8 August 2014.
353. Interview with Helena Bandyiova, 8 June 2014.
354. Interview with Edita Stejskalova, 8 June 2014.
355. Interview with Anastasios Lavidas, 8 June 2014.
356. Interview with István Horváth, 16 July 2014.
357. Interview with Jolana Smarhovycova, 8 June 2014.
358. Interview with Edita PISOJOVA, 13 June, 2014.

359. Interview with Wolfram Bechtel, 7 July 2014.
360. Email communication with Andras Ujlaky, 14 July 2014.
361. Interview with ECHR Judge, 7 July 2014.
362. Interview with Wolfram Bechtel, 7 July 2014.
363. Interview with Michael Guet, 7 July 2014.
364. Interview with Wolfram Bechtel, 7 July 2014.
365. See “Segregated schools marginalise Roma children – the decisions of the Strasbourg Court must be implemented”, posted by Thomas Hammarberg at the Council of Europe Commissioner’s Human Rights Comment, available at http://commissioner.cws.coe.int/tiki-view_blog_post.php?postId=39 (last visited 4 October 2014).
366. See Report by Alvaro Gil-Robles, Commissioner for Human Rights of the Council of Europe, on his visit to the Czech Republic from 24 to 26 February 2003, CommDH(2003)10, Strasbourg, 15 October 2003, at paragraphs 6, 8, available at https://wcd.coe.int/ViewDoc.jsp?id=73371&Site=COE#P86_6350 (last visited 4 October 2014).
367. Council of Europe Commissioner for Human Rights, Follow-up Report on the Czech Republic (2003–2005), available at <https://wcd.coe.int/ViewDoc.jsp?id=984269&Site=CommDH&BackColorInternet=FEC65B&BackColorIntranet=FEC65B&BackColorLogged=FFC679>, accessed Sept. 15, 2015.
368. Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visit to the Czech Republic from 17 to 19 November 2010, at para. 58.
369. Interview with Prof. Zlatuska, 8 June 2014.
370. Interview with Ivan Gabal, 13 June 2014.
371. ČEMU VĚŘIT?, Učitel'ské noviny č. 46/2012 <http://www.ucitelskenoviny.cz/?archiv&clanek=6994>
372. Interview with Prof. Zlatuska, 8 June 2014; Interview with Ministry of Justice Official, Czech Republic, 8 June 2014.
373. Interview with Ministry of Justice Official, Czech Republic, 8 June 2014.
374. Interview with Prof. Zlatuska, 8 June 2014.
375. Interview with Edita PISOJOVA, 8 June 2014.
376. Interview with Ombudsperson, Czech Republic, Prague, February 12, 2014.
377. Dopis Ministryně školám u příležitosti zápisu do 1. tříd, Czech Ministry of Education, January 19, 2010, available at <http://www.msmt.cz/ministerstvo/dopis-ministryne-skolam-u-prilezitosti-zapisu-do-1-trid> (last accessed August 7, 2014).
378. Interview with Ondrej Liska, 12 June 2014; Interview with Jiří Dienstbier (the judgment “has been a major tool for everyone nationally who wanted to change the situation within”—from government officials through civil society—as it “equipped them with relatively powerful argumentation”).
379. Interview with Štěpán Drahokoupil, 13 June 2014.

380. Interview with Eleni Tsetsekou, 29 August 2014.
381. Interview with Prof. Guovardis, 8 June 2014.
382. Interview with Zoltan Tallodi 8 June 2014.
383. Interview with Zoltan Tallodi 8 June 2014.
384. Interview with Andras Ujlaky, 14 July 2014.
385. Interview with Andras Ujlaky, 14 July 2014.
386. Interview with Andras Becker, 14 July 2014.
387. Interview with ECHR Judge, 7 July 2014.
388. Interview with Prof. Zlatuska 8 June 2014.
389. Interview with Andras Ujlaky, 14 July 2014.
390. Interview with Filip Rames, 13 June 2014.

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Using strategic litigation to effect social change can be stunningly effective, capable of breaking down longstanding injustices and opening new paths of human rights protection and enforcement. But strategic litigation can be complex, time-consuming, expensive, and risky. It may fail outright. Or it may succeed, but engender a powerful backlash against the very values and protections it seeks to enshrine in law.

This study is the first in a four-part series examining strategic litigation impacts. It seeks to contribute to emerging thinking about strategic litigation by exploring—in all their complexity—specific efforts to end discrimination against Roma school children.

Based on over 100 interviews with litigants, members of affected communities, government officials, litigators, judges, rights advocates, and others, this volume looks at strategic litigation as a social change agent. It examines the impacts of strategic litigation, with an emphasis on the social, political, and legal change it can generate. It also seeks to consider the context in which the litigation took place, and the factors that propelled or hindered it.

Six significant cases lie at the heart of this study. Those cases are taken from three countries—the Czech Republic, Greece, and Hungary—and all focus on Roma school desegregation. Strategic litigation on the six cases has resulted in groundbreaking judicial rulings and significant changes in policy and practice. But it has also led to disillusionment with the courts and new manifestations of discrimination, including against some of the very people who—at least in theory—stand to benefit from the judgments.

As this study explores, strategic litigation can be pathbreaking but also frustrating, powerful but also marred by unintended consequences. Above all, this study shows that strategic litigation is neither a panacea nor an invitation to disaster. Rather, it is one tool among many, a tactic that—under the right circumstances and in combination with other efforts—can contribute to positive social change.



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