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Ethnic Data Collection for Educational Purposes and the Situation of Segregation in Some Western and Central and Eastern European Countries

- **ABSTRACT:** *The aim of this article is to examine the legislation of selected European countries on the collection of ethnic data for educational purposes and how these legislations are put into practice. The author also examines whether educational segregation exists in the selected countries and attempts to draw conclusions about the possible link between the collection of ethnic data for educational purposes and the existence of segregation. In the last part of the article, the author introduces good practices in the fields of desegregation and inclusive education.*
- **KEYWORDS:** segregation, desegregation, inclusive education, ethnic data, good practices.

1. Premises

This research² was conducted in response to the European Commission (EC) challenging the existence of rules on ethnic data collection for desegregation purposes in the ongoing infringement procedure against Hungary³ and Slovakia.⁴ The collection of racial and/or ethnic data requires careful regulation and is a sensitive issue in most European countries. Accordingly, the author's aim was to examine the legislation of *selected European countries on the collection of ethnic data for educational purposes and how these legislations are put into practice*. The current paper studied the relationship

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3 COM (2016); CERD, 2018, pp. 27–33.

4 COM SWD (2016) 93.



between this legislation, including which persons are entitled to process the data and the application of the purpose limitation principle, and the existence and extent of educational segregation in these countries. Thereby, conclusions were drawn about the possible link between the collection of ethnic data for educational purposes and the existence of possible segregation. That is to say, to examine whether *official positions are supported by practical experience in countries where segregation does not officially exist, and where the collection of data on racial or ethnic origin is prohibited*. The objective is to present specific legal provisions for desegregation – or, as labelled in some countries, *promoting inclusive education* – and how they are applied into practice,⁵ as well as to present good practices and approaches for the guidance of the Hungarian legislator.

However, handling the outlined objectives was difficult for several reasons: *on the one hand, in some of the examined countries, the law categorically prohibits collecting data on racial or ethnic origin.*⁶ This is despite the fact that several UN bodies have already drawn attention to the importance of these statistics and the problems caused by their absence.⁷ The countries in question typically record the citizenship of children in education statistics,⁸ which allows conclusions to be drawn primarily for children with migrant backgrounds. Thus, the data is not relevant for children of Roma origin, unless they belong to the Roma communities migrating to Western Europe from the former Eastern Bloc states after the fall of the Iron Curtain⁹ or after the 2004 EU enlargement.¹⁰ In these cases, it is possible to draw indirect conclusions based on nationality. *On the other hand, even if data on racial or ethnic origin can be collected for educational desegregation, these cannot be considered objective in all cases, as they are typically based on self-assessment¹¹ and since Roma origin itself may be determined in various ways.*¹²

2. Research methodology and hypotheses

Due to constraints on length, the author has refrained from examining the regulatory background of all European countries or EU member states. Although this may make the choice of countries appear arbitrary at first, the chosen countries (*Austria, Belgium, the United Kingdom, France, Poland, Germany, Italy, Romania, Slovakia, and Switzerland*) were

5 Hoffman, Fazekas, and Rozsnyai, 2015; Nikolov and Brosio, 2013; Hoffman and Asbóth, 2011; Lidström, 2002.

6 Keen, 2015.

7 CRC GC, 2003; CRC, 2015.

8 For example, in the case of Austria, Germany, and Switzerland.

9 Another wave of quasi-emigration began after the 2004 enlargement: one of the unintended consequences of the right to free movement within the EU was a quasi-migration from the poorer new Member States to the older, more affluent Member States. See: Longhi and Rokicka, 2012.

10 OSCE, 2008.

11 If the data collector indicates a presumed ethnic origin, as is the case in Czech practice, he must do so based on certain criteria, as will be explained below. See: Kalaydjieva, Gresham, and Calafell, 2001.

12 Kiššová, 2017.

selected based on the following factors. *For one*, there are several immediate neighbours of Hungary among the selected countries, as well as countries with which Hungary shares common historical heritage and experiences, namely, members of the V4 group. *On the other hand*, those Western European countries have been selected where the Roma minority was traditionally small,¹³ but had their numbers increase significantly due to the migration that followed after the fall of the Iron Curtain and the internal migration following the 2004 enlargement. At the same time, these countries have traditionally experienced educational segregation and integration, even when they constantly deny the existence of segregation, as is the case with France. The division used in the previous paragraph, namely Western Europe v. Central-Eastern Europe (CEE), is also clearly reflected in the rules on the collection of ethnic data for educational purposes. In the selected Western European countries, with the exception of Italy, it is not possible to collect ethnic data for educational purposes, given that the education system is formally defined by integration and inclusivity. In contrast, in most CEE countries – and in Italy, which is an anomaly among the Western countries in this respect – the collection of ethnic data for desegregation purposes is either a legal requirement or a practice allowed by law. There are a number of reasons for this difference, including diverse concepts of nationhood originating from diverging historical trajectory.¹⁴ However, as research has pointed out, regardless of these differences, educational segregation is present in countries belonging to both groups. This is despite the fact that the phenomenon manifests itself in CEE countries in more visible and spectacular ways, for example, in the form of either a European Court of Human Rights (ECHR) judgement¹⁵ or an infringement procedure.¹⁶ In contrast with this, despite indications from international organisations or the European Commission, these problems are not the subject of public debate and are not clearly reflected in the regulations of Western countries.

3. Factual basis

Educational segregation can be detected to some extent in all examined countries, with the exception of Poland.¹⁷ The grounds on which this segregation occurs can be divided

13 Only Switzerland is an exception to this rule, with its Yenish community counting some 35,000 members. See: EKRE, 2020; Murphy, 2017.

14 Gulyás, 2018, pp 59–86.

15 Raisz, 2017; Raisz, 2009.

16 Kazuska, 2011; Asztalos, 2007.

17 In Poland, due to the *relatively homogeneous ethnic, national, and religious composition, research and country reports do not report segregation as a serious social problem*. According to an Organisation for Economic Co-operation and Development (OECD) study conducted in 2012, educational segregation is a marginal problem in Poland, with low rates of underachieving and early school leaving, and with appropriate PISA measurements. The research highlights that although there is always room for improvement, Polish education policy reduces the gap between students, and the social background has a much smaller impact on student progress than in other OECD countries. See: OECD, 2012; PISA, 2018.

into three major groups: first, *spatial segregation of the population*, that is, segregation of population by neighbourhood, including differences between different districts of cities, and differences between cities and rural areas. Second, *the inaccessibility of different levels of education for certain sections of society*. Third, *the over-representation of disadvantaged children – whether of Roma origin or having a migrant background – in classes for children with special educational needs (SEN)*.

■ 3.1. *Spatial segregation of the population*

The first aspect to be considered is the spatial segregation of the population, which noticeably induces segregation in schools; both in countries that enable and those that deny freedom of choice in education.

In the case of countries with free school choice – the Czech Republic,¹⁸ the United Kingdom, and Italy – segregation is not only due to the parents' choice of school,¹⁹ but also due to the *constant and differentiated spatial distribution of different population groups*. This can be seen in the Czech Republic²⁰ and in Italy.²¹ Another trend observed in the UK is that *wealthier families move to a better neighbourhood, at the latest when the child reaches compulsory school age*, so that the child can attend a school with similarly affluent students.²² The same is true for Switzerland, where the right to choose a school is essentially absent.

Spatial segregation can also be observed in countries where free school choice is restrained. According to surveys in Romania, designated school districts and the spatial separation of the population together result in the segregation, primarily of *Roma children and of children living in rural areas, irrespective of their origin*.²³ In Slovakia, the Education Act²⁴ requires that children be enrolled in the school district *where their permanent residence is*. Under Slovak legislation, *the determination of territorial competence of primary schools – that is, the designation of school districts – falls under the jurisdiction of the local governments*,²⁵ according to which, *in contrast to the Hungarian regulation, there is no binding and enforceable legislation requiring anti-segregation considerations to be taken into account when considering the designation of school districts*. This fact, along with the well-observed separation of social groups by place of residence (similar to the situation in the Czech Republic),²⁶ has led to the formation of segregated classes or schools. Switzerland is a striking example among countries limiting freedom of school choice, as it is allowed only in exceptional cases within the state education

18 Zákon č. 561/2004.

19 OECD 2018; Cederna, 2019.

20 Sýkora, 2007.

21 In the case of Italy, there are also significant differences between the richer north and the poorer south.

22 All this is worth comparing with Switzerland, discussed in the next section.

23 FRA 2016; PTS, 2015.

24 Zákon č. 245/2008.

25 Zákon č. 596/2003. Z.z.

26 Hapalová, 2017.

system.²⁷ However, public education is of a high quality and is completely gratuitous.²⁸ It is therefore not surprising that only around 5% of children attend private schools,²⁹ making the formation of segregated classes or schools inconceivable. However, the practice here is different: *wealthier parents, at the time when the child's compulsory school age is reached, choose districts with better schools as residences* (at this point, reference should be made to an analogous situation in the United Kingdom). Considering the high real estate rental and purchase prices, unaffordable for lower-status social classes, the geographical separation of social strata shapes segregation in Switzerland.³⁰ The existence of this phenomenon is also supported by recommendations and policy papers promoting inclusive education for asylum-seeking children.³¹

■ 3.2. *The exclusive nature of certain levels of education that excludes certain social groups*

Like spatial mapping, the *exclusive nature of certain levels of education may result in segregated education* as well. This phenomenon is discernible both in the high number of children attending private schools and in the public-school sector where institutions provide various quality of education at the same International Standard Classification of Education (ISCED)³² level.

This phenomenon has been observed in *France* and the *United Kingdom*. In France, which has consistently denied the existence of segregation,³³ the middle class typically enrolls its children in private schools, specifically in schools maintained by the Catholic Church. According to statistics published by the Ministry of Education³⁴ in 2020 a surprisingly high proportion (57%) of children in primary education (ISCED levels 1 and 2) attended a secular or church-run private school.³⁵ Private schools in the UK also play a crucial role, and interestingly, the state can also run religious schools. According to a 2019 report by the *National Institute of Economic and Social Research*,³⁶ *34% of public schools are religious institutions*. Although only 50% of the students in these schools are required to belong to a particular denomination, religious schools are a typical setting for segregated education; *Muslim, Hindu, and Sikh religious schools are highly segregated* due to the generally homogeneous composition of the local minority population.

The upper grades of the *Austrian and German primary schools* (ISCED Level 2) are two-tiered, and there are sharp differences between these tiers when comparing

27 Mercator, 2017.

28 EACEA, 2019.

29 EACEA, 2020.

30 van Ham et al., 2019.

31 SCR, 2016.

32 International Standard Classification of Education.

33 OECD – France, 2012; FRA – France, 2011.

34 MLNJ, 2020.

35 OECD, 2014.

36 Manzoni and Rolfe, 2019.

the social situations and further study opportunities of the students. Research shows that *Gymnasium Unterstufe*, which provides a higher level of education, and therefore, requires better learning results, typically includes children from parents with a higher social status and a higher level of education. In the *Hauptschule*, which has a lower level of education, children of less educated and lower social status parents³⁷ (for example, those with Roma or migratory backgrounds)³⁸ are enrolled.³⁹ However, according to existing research, it is *not ethnic origin or migration background alone that determines the chances of further education, but also the social disadvantages typically associated with them. This conclusion was confirmed by EC reports as well.* The Commission found that the social status of parents in Austria has a greater impact on their children's further education opportunities than in other EU countries.⁴⁰ The two-tier higher classes of German primary schools, called *Gymnasium*, *Realschule*, or *Hauptschule*, divide children on the basis of social status, and the same can be observed in the Austrian system.⁴¹

■ 3.3. Over-representation of Roma or migrant children in SEN groups

Among the Western countries, the existence of this phenomenon is particularly striking in Austria, Belgium, and Switzerland;⁴² while among CEE countries, the Czech Republic, and Slovakia deserve special emphasis.

In *Austria*, until 1995, there was a verifiable trend that a significant proportion of children from Roma and migrant backgrounds were directed, almost automatically and without objective justification, to groups and schools for children with special educational needs. Although there has been a major change in this practice since 1995, the EUMC⁴³ 2004 Report⁴⁴ found that this phenomenon remained observable. According to the 2018 reports,⁴⁵ this practice still does not meet 'expectations'.⁴⁶ In *Belgium*, children with migratory backgrounds and those of Roma origin are enrolled

37 EUMC, 2004.

38 Altzinger and Schneebaum, 2018.

39 While 47% of people of Austrian descent have higher education qualifications, this proportion is only 8% for people of Turkish descent. See: NBÖ, 2018.

40 COM SWD, 2020; COM SWD, 2017.

41 OECD, 2018.

42 BS, 2019; Hoti, 2015.

43 European Monitoring Center on Racism and Xenophobia.

44 According to the EUMC, children with a migrant background accounted for 9.6% of students in primary education (ISCED levels 1 and 2), while in institutions belonging to the *Sonderschule* category, their proportion exceeded 20%. See: EUMC, 2004.

45 NBÖ, 2018.

46 The 2017 report of the *Initiative für ein Diskriminierungsfreies Bildungswesen* (IDB) identified a number of cases in which the school principal automatically recommended a language preparation class to parents registering their child of compulsory school age, citing possible language deficiencies due to the child's origin or religion. In one case, a child of Turkish descent who – following the parents' decision – spoke only German at home, was registered by the principal as a child requiring a language preparation class. See: IDB, 2017

in special schools at a higher proportion than children with Belgian ancestry.⁴⁷ It was a common practice in *the Czech Republic* before the transition of the regime to declare Roma children to be mildly mentally handicapped and to place them in special schools. Because of this practice, to which the transition brought no change, the ECHR condemned the country in a 2007 judgement.⁴⁸ Despite the adoption of a number of measures following the judgement, the Second European Union Minorities and Discrimination Survey (EU-MIDIS II) of 2016⁴⁹ found that there is *still a high level (16%) of Roma people enrolled in SEN groups or schools in the Czech Republic at IESCED levels 1 and 2*. There is a repeated criticism of the Slovak education system as well, for the exceptionally high rate of diagnosis of ‘mild intellectual disability’ among Roma children and students, based on which they are enrolled in a special school or a special class.⁵⁰ One of the likely reasons for this phenomenon is the financial support for children with SEN,⁵¹ which makes schools financially interested in launching SEN groups.⁵² Based on the literature, buildings reserved for students in the SEN category tend to be in a worse-than-average condition, and educational conditions are generally significantly worse.⁵³ In order to reduce this phenomenon, several measures, including amendments to the law,⁵⁴ were taken by the Slovak state. Some of these came after the European Commission sent a letter of formal notice to the Slovak government in April 2015 for violating *Directive 2000/43/EC* by segregating Roma children and students. After considering the measures and their impact,⁵⁵ the Commission in 2019 concluded that these proved insufficient to solve the problem, and thus sent a justified opinion to the government. The topic is also on the agenda in Slovak public life as well as in the trade press.⁵⁶ Based on the circumstances explained in this section, it can be argued that segregation is an existing phenomenon in the educational systems of the examined Western European and CEE countries.

47 Although catch-up classes set up to integrate children with a migrant background can only be studied for a limited period of time, they should be provided with integrated education thereafter. See: ECRI 2020; UNIA 2020; CODE, 2017; COE 2017.

48 D.H. et al. v. Czech Republic.

49 FRA, 2016.

50 These trends are well illustrated by the fact that in the 2017/18 school year, 72% of all students in preparatory classes were of Roma origin.

51 In the 2018/19 school year, € 250 per student.

52 Zákon č. 597/2003 Z.z.

53 Rafael, 2017.

54 Amended sections of the Public Education Act: Sections 29 and 107; The 2015 Act in question also amended Act No. 596/2003 Coll., On the State Administration of Education and School Municipalities, and on Amendments and Supplements to Certain Acts. Act No. 1: the changes are contained in Section 13 (1) and (3).

55 Among other things, the 2015 amendments limited the maximum duration of placement in an SEN class to one year and extended the powers of the State Education Inspectorate to establish institutions for diagnosing special educational needs and to establish rules for making a diagnosis.

56 Sirotnikova, 2019.

4. Rules for ethnic data collection

■ 4.1. Ethnic data collection for educational purposes is required by law or appears in practice

There is no legal definition of segregation in the Czech Republic; the *Anti-Discrimination Act of 2006*⁵⁷ contains the concept of discrimination instead. However, a 2006 document prepared by the Ministry of Labour and Social Affairs⁵⁸ defines this concept.⁵⁹ Pursuant to Article 4 paragraph 2 of the 2001 *Act on the Rights of National Minorities*,⁶⁰ public administrations do not keep records of persons belonging to national minorities. Data revealing racial or ethnic origin were otherwise considered to be sensitive personal data according to Article 66 paragraph 6 of the 2019 Act⁶¹ on Processing Personal Data.⁶²

In practice, however, contrary to the legal regulations and in the absence of a clear definition of segregation, ethnic data collection for educational purposes exists. Starting from the 2014/15 academic year, the Czech School Inspectorate carried out this type of data collection, and from 2016, the *Ministry of Education* took up the task.⁶³ The official justification is that this is what the EU expects from the Czech Republic. Otherwise, the 2007 judgement of the ECHR cannot be enforced. *The collection of data for statistical purposes is made electronically through the school statistics system simultaneously with the processing of enrolment data*, and in a personally unidentifiable manner to ensure data protection.⁶⁴ The guidance presented to schools provides an orientation regarding who can be categorised as Roma when compiling statistics.⁶⁵ Although completion of the questionnaire is mandatory, some schools refused to cooperate with the Ministry on principle, and entered a value of zero even if children of Roma origin attended school. Their justification was that neither the school nor the teachers were capable of establishing 'Roma origin' or analysing the ethnic backgrounds of the students. The

57 Zákon 198/2006 Sb.

58 GAC, 2006.

59 In summary, a process that minimizes the relationship between the majority society and a well-defined group in society. Segregation can stem from pressure from the majority society, as the report states in the Czech Republic, but also from the free will of a segregated group (for example, in the interest of ensuring that the group's identity is preserved).

60 Zákon č. 273/2001 Sb.

61 Zákon o zpracování osobních údajů č. 110/2019 Sb.

62 According to the literature, this regulation, which is otherwise justified from the point of view of data protection, also makes it difficult to assess segregation and take measures against it. Experts and international organizations have also made recommendations for more accurate data collection in order to better assess the situation.

63 MSMT, 2018.

64 Numbers are entered by the school principals in the electronic data collection interface.

65 According to the guide, a person is considered to be a Roma if he or she considers himself or herself to be so, without necessarily undertaking it in all circumstances; or if a significant part of his or her environment considers him or her to be real or perceived based on anthropological, cultural or social characteristics.

legitimacy of this data collection has not only been debated by teachers, but has also been examined by the Ombudsman.⁶⁶

The *Polish legal system* does not define segregation, although, as described above, the phenomenon is not prevalent in the country's education system. *As a general rule, the collection of ethnic data for educational purposes is not permitted.* Article 151 of the *Education Act*⁶⁷ defines the scope of data to be provided when enrolling in a school, and *data on racial and ethnic origin* are not included on the list. However, the Act provides for certain exceptions: Article 30/A states that kindergartens, schools, pedagogical supervisory authorities, and other organisations performing tasks specified in the act may use personal data, including *information on racial or ethnic origin*, to the extent necessary to fulfil obligations arising from the provisions of this Act. These allowances are made with the provision that the data can be transferred or published only under the conditions specified by law.⁶⁸ The sanction for the unauthorised transfer of data is laid down in Article 107 of the Act of 10 May 2018 on the Protection of Personal Data.⁶⁹ Article 160 of the Education Act, which sets a time limit for data processing, can be regarded as an important guarantee: the data and documentation of children admitted to the school are kept for as long as the child is a student of the school. The data of children who have applied to school but have not been admitted will be kept for one year.

*There is no expressis verbis definition of segregation in the Italian legal system either.*⁷⁰ The legal framework for the processing of personal data was provided by the *Data Protection Act*⁷¹ and the *Legislative Decree 322 of 1989 on the Collection of Data from Schools*.⁷² The recommendations of the *Italian Data Protection Supervisor*⁷³ and the guidance on personal data management⁷⁴ of the Ministry of Education (MIUR)⁷⁵ provide information regarding the practical implementations of these regulations. According to the above-mentioned legislative decree, *the following data may be collected in connection with public education: year of birth, grade, sex, citizenship, disability, and repetition of school years.* Processing, that is, the collection and dissemination of personal data in school registers, is required by the national statistical program with regard to a task derived from public interest. It is worth emphasising that *different regulations apply*

66 VO, 2020; Klípa, 2017.

67 USTAWA z dnia 14 grudnia 2016.

68 In addition to the expressed legal provisions, such a case is the protection of the student's health or, in the case of a student or a minor student, the consent of the person exercising parental responsibility to the release of the data.

69 Ustawa z dnia 10 maja 2018.

70 Articles 2 and 3 of the Constitution and Article 43 of Legislative Decree 286/98 on immigration lay down the prohibition of discrimination, which is defined as disadvantages in connection with education on grounds of racial, ethnic, or religious origin. See: MIUR, 2014.

71 Decreto legislativo 30 giugno 2003.

72 Decreto legislativo 6 settembre 1989.

73 IPRS, 2016.

74 MIUR, 2017.

75 *Ministero dell'Istruzione, dell'Università e della Ricerca.*

to state and non-state-maintained schools; the former collect data⁷⁶ required by law or data necessary for the pursuit of educational activities without the consent of the concerned.⁷⁷ In contrast, non-public schools are required to obtain written consent from the persons affected, unless the data processing is needed because of enrolment or the child's request. As required by the Italian Data Protection Supervisor, both public and non-public schools must inform parents and students about the data they collect and manage. MIUR is responsible for managing the statistics collected by the schools and for regularly updating and publishing them on its website. *In the case of explicit requirements of law, schools will take into account the recommendations⁷⁸ of the Data Protection Supervisor and specific data, such as race, ethnic origin, religious beliefs, health status, and financial situation can be collected. The law does not exclude this possibility, provided that they are processed for a specific purpose⁷⁹ and are treated confidentially. Special data may be handled in a targeted manner in accordance with legal and MIUR regulations.*

Among the countries examined, only the *Romanian legislature defines expressis verbis* the concept of discrimination. According to Article 3 of the Framework Regulation No. 6134 of 2016, *school segregation is a segregation based on ethnicity, disability, special educational needs, socioeconomic situation of the family, place of residence, or school performance*. Importantly, among the examined countries, *the widest range of ethnic data collection for educational purposes takes place in Romania: it is not only possible to collect data on racial and/or ethnic origin with the aim of anti-segregation, but it is also a mandated legal obligation of all academic institutions*. The scope of the data to be collected is defined by Decree 5633 of 2019 on the Approval of the Methodology for Monitoring School Segregation (Methodological Decree). The data collected under the Methodological Decree, including that on ethnic segregation, are collected and forwarded by the inspectorate⁸⁰ to the National Council Responsible for Desegregation and Educational Integration. Annex 2 of the Methodological Regulation defines the conditions under which segregation can be assessed, and ethnic-based segregation is quantified according to 11 criteria.⁸¹ Data collection required by the Methodological Decree was scheduled for the

76 For the processing of data not specifically related to school activities, public schools are also obliged to obtain the consent of the data subject.

77 However, they are obliged to provide information on the data processed.

78 Through questionnaires, after informing students and parents in advance about data management, data retention, and data protection.

79 The condition of purpose limitation is the establishment of integration goals in the case of data on racial and ethnic origin, and the eligibility for education benefits in the case of data on financial situation.

80 Decentralized body under the Ministry.

81 The school should report, inter alia, on the proportion of students belonging to each ethnic group in a given school, the buildings in which these students are typically housed and the performance of each school level. – It should be noted that the legislation uses the concepts of ethnicity and minority alternately.

first time in the second half of the 2019/2020 school year.⁸²⁸³ At the time of writing this article,⁸⁴ the data is not yet available.

In Slovakia, anti-discrimination laws⁸⁵ *do not name expressis verbis the concept of segregation (separation)*. Though the Public Education Act⁸⁶ *integrates the prohibition of segregation into the basic principles of education and training*, neither the law nor the related implementing legislation contains a definition. Pursuant to Article 16, paragraph 1 of the Personal Data Protection Act,⁸⁷ racial origin and ethnic origin are special categories of personal data; therefore, as a general rule, the processing of such personal data is prohibited.⁸⁸ According to the law, data processing for public interest is an exception to the general prohibition. This exception raises a debate on legal interpretation: *Can the statutory obligation of equal treatment be interpreted as a public interest that justifies the processing of data relating to racial or ethnic origin?* In practice, this dispute is manifested in the fact that while public bodies consider the collection of this data to be illegal, and consequently refrain from it, non-governmental organisations active in the field carry out data collection relating to desegregation. Pursuant to Article 11, paragraph 6 of the Public Education Act, schools and educational institutions *may collect personal data relating to nationality*. However, since this is an issue of personally confessed identity – and a significant part of the Roma population in Slovakia defines itself as non-Roma⁸⁹ – this data can be used only in a limited capacity for the purpose of desegregation. Thus, ‘anonymized and disaggregated’ data on children and students of Roma origin are not available in Slovakia. An ‘ethnographic mapping’ was conducted by the office of the government commissioner for Roma affairs between 2004 and 2019. The resulting ‘Atlas of Roma Communities’⁹⁰ survey series, which due to legal considerations is based on the concept of the Roma ‘community’, can be considered a reliable and useful source of information.⁹¹

82 The arrival of the first measurable data is expected to be further delayed due to the school holidays ordered from 11 March 2020 due to the COVID-19 epidemic. See: hirado.hu, 2020

83 Since the legislation was adopted and published at the end of 2019, in Official Gazette No. 1056 of 31.12.2019, its application actually started in the second semester of the school year.

84 15 April 2020.

85 Zákon č. 365/2004 Z.z.

86 Zákon č. 245/2008 Z. z.).

87 Zákon č. 18/2018.

88 Based on Paragraph 1 Section 16 of the Act on Data Privacy: It is prohibited to handle special categories of personal data. Special categories of personal data are data which reveal a person's racial or ethnic origin, political views, religion, worldview, trade union membership, genetic data, biometric data, or data relating to his or her state of health and sexual life or sexual orientation.

89 In Slovakia, the number of Roma in the ethnic sense is very low compared to the number of Roma in the non-ethnic sense.

90 Kíšťová, 2017.

91 Data provided by local mayors and field social workers.

■ 4.2. *Ethnic data collection for educational purposes is prohibited or not regulated by law*

The current research suggests that *the issue of discrimination against minorities is not a major issue in Austria and the existence of segregation itself cannot be considered an officially recognised phenomenon*. For example, the Integration Act⁹² and the Asylum Seekers Act⁹³ use the words *integration and inclusion*. Considering this, *segregation should be approached from the conditions set out in relation to the concept of discrimination*.

In Austria, pursuant to Article 5, paragraph 3 of the *Federal Statistics Act*⁹⁴ adopted in 2000, no one is obliged to provide data on racial or ethnic origin. Also, Article 1, para. 3 of the Act on Minorities allows anyone to voluntarily assume membership in a national minority.⁹⁵ It should be noted that since 1993, the Romani people have also been a national minority in Burgenland.

During the collection of data for educational purposes, *only the citizenship and mother tongue of the children are recorded*;⁹⁶ *data on their racial or ethnic origin are not collected*.⁹⁷ Pursuant to Article 20 of the Integration Act, reports on the integration situation of children seeking asylum are to be submitted to the Integration Council. This includes the nationality and gender of students attending a special school, according to Article 21 para. 5. Data processing is regulated by the Data Processing Act of 1999.⁹⁸

In Belgium, the concept of segregation is not defined at the legislative level, but the prohibition of discrimination is applied to practical cases of segregation.

Under the Act on the Protection of Individuals with Regard to the Processing of Personal Data, personal data classified as sensitive, such as data on racial or ethnic origin, cannot be collected, with certain narrow exceptions.⁹⁹

Article 34, paragraph 1 of the Data Protection Act permits the collection and management of sensitive personal data only if it is done for clear and legitimate purposes.¹⁰⁰ Additionally, the individuals concerned should be properly informed.¹⁰¹ Article 185 paragraph 1 of the Data Protection Act specifies which bodies are allowed to collect various types of data, including data on racial or ethnic origin. The law does not specify education as a valid purpose; thus, it can be argued that *sensitive personal data of children on racial or ethnic origin in connection with education cannot be collected and processed*.

92 BGBl. I Nr. 68/2017.

93 BGBl. I Nr. 100/2005.

94 BGBl. I Nr. 163/1999.

95 BGBl. I Nr. 396/1976.

96 Education statistics differentiate between foreign and non-EU students within foreigners.

97 EUMC, 2006.

98 BGBl. I Nr. 165/1999.

99 De Terwangne et al., 2019.

100 Conditions: *absolutely necessary*, the fundamental rights and freedoms of the data subject are adequately guaranteed and one of the following cases exists: if the processing is authorized by law, regulation, international treaty or European Union law; if it is necessary to the vital interest of the data subject or of another natural person; if the processing relates to data disclosed by the data subject.

101 Pursuant to Article 193, the controller collecting the data must inform the data subject whether or not his or her data will be anonymized.

In the UK, under the provisions of the School Admissions Code, data relating specifically to racial or ethnic origin cannot be collected during the school admission process. According to the guidelines issued by the Ministry of Education,¹⁰² the racial and ethnic data of enrolled students are considered particularly sensitive and can therefore, only be collected when necessary and must be stored separately. The provisions of the Human Rights Act, the Data Protection Act, and the Freedom of Information Act allow the British Office for National Statistics and local governments to gather and manage ethnic data in order to help some ethnic minorities in integrating.¹⁰³ Belonging to an ethnic minority is based on self-declaration.¹⁰⁴

In France, segregation is an officially non-existent phenomenon.¹⁰⁵ The French system ensures that both regulation¹⁰⁶ and communication should focus on absolute equality, inclusive education, and integration. In line with this, Article 8 of Act 78 of 1978 on Data Processing¹⁰⁷ explicitly prohibits the collection of data on racial and/or ethnic origin.

Although the German Act on Equal Treatment covers education, the concept of segregation has not been defined. Under current regulations, the collection of data concerning ethnic profiles, both generally and in education, is not permitted. However, information on the migration background of students can be collected, from which the origin of the child can be deduced.¹⁰⁸

In Switzerland, Article 8, paragraph 2 of the Constitution prohibits discrimination, stating that no one should suffer discrimination, particularly due to their origin or membership of a race [...]. This research did not reveal any specific legal provisions regarding the concept of segregation, which also stems from the fact that it is not formally recognised as a phenomenon in Switzerland. According to correspondence with the Swiss Statistical Office, no data can be collected in the country on either Roma origin or nationality,¹⁰⁹ and the statistics¹¹⁰ only indicate the status of children under the age of 15 as either Swiss nationals or foreigners. There is also a recurring criticism in the reports of UN bodies and other organisations that there is limited data available on educational goals, that is, the achievement of inclusive and integrative education, which makes it difficult to take measures to address desegregation and to assess their effects. In addition, the clarity of the question is hampered, because the organisation of basic education and related activities is a cantonal competence under Article 62 of the Constitution.

102 DE, 2018.

103 ONS, 2016.

104 GSS, 2015.

105 In other words, the French legal system, including education legislation, neglects France's ethnic diversity.

106 Article L. 111-1 of the Education Code. Article 1 of the Convention explicitly provides for inclusive education for all, regardless of origin or religion.

107 Loi n 78-17 du 6 janvier 1978.

108 COM, 2017.

109 Based on correspondence with the Eidgenössisches Departement des Innern EDI Bundesamt für Statistik BFS.

110 BS, 2020.

5. Good practices

Finally, this section will discuss measures that countries have taken towards desegregation or promotion of inclusive education.¹¹¹ In *Austria*, in response to the criticisms described above regarding lower-level secondary education, the *Neue Mittelschule* (New High School) was introduced instead of the previous *Hauptschule* from the 2018/19 school year.¹¹² This new educational concept is based on *competency-based and personalised education* with the aim of improving learning outcomes for students with difficulties. In *Belgium*, schools arrange language courses for newly arrived children, while for the host community, they organise sensitisation programmes to other cultures and languages.¹¹³ The *Czech* government in 2010 – responding to a condemnatory judgement in the D.H. case – accepted the *Inclusive Education National Action Plan* document, and then the *Equal Opportunities Action Plan in 2012*.¹¹⁴ The *Strategy for Social Cohesion 2014–2020* is also an important measure concerning the Czech Roma community.¹¹⁵ Research in the United Kingdom, initiated by the Ministry of Education, aims specifically to establish measures for the integration of children *with Roma or immigrant backgrounds*. In *France*, the existence of segregation is not officially recognised, but in the spirit of inclusion, the country undertakes desegregation measures for schools as well as the broader community,¹¹⁶ particularly, to allow students to integrate and grow as individuals.¹¹⁷ In order to meet the requirements of the EU Framework of 2020 Roma Integration Strategies,¹¹⁸ the government in 2011 adopted a *policy package in line with French social inclusion efforts*. The term ‘Roma’ refers to an ethnic group, and *in French law, an ethnic basis cannot be used to adopt comprehensive public policies*.¹¹⁹ Therefore, the French approach aims to eradicate poverty and social exclusion in marginalised communities in accordance with national law. With regard to *Poland*, the Decree of the Minister of Education of 18 August 2017 on the preservation of national and ethnic identity and language¹²⁰ in Article 12 paragraph 2 allows kindergartens and schools to assign a *Roma education assistant* to help teachers to integrate Roma children into the school environment. The *German province of Baden-Württemberg* is mentioned in

111 These measures are also important because school failures or dropping out of school can have a significant impact on an individual’s later life. See: Váradi 2019; Váradi, 2013; Váradi, 2008.

112 EACEA Austria, 2019.

113 The program currently involves eight partner countries: China, Spain, Greece, Italy, Morocco, Portugal, Romania and Turkey, which also send visiting teachers to participating schools.

114 MSMT, 2012.

115 MPSV, 2014.

116 The so-called balancing education policy. See: CGT, 2014,

117 By way of example, the so-called linguistic catch-up scheme for non-native French-speaking students. UPE2A classes.

118 CGT, 2014.

119 COM, 2011.

120 Rozporządzenie Ministra Edukacji Narodowej z dnia 18 sierpnia 2017.

an OECD report as a template for community schools, for their inclusive education of pupils with heterogeneous social backgrounds and ethnicities.

In Italy, the provisions of Act No. 107 of 2015,¹²¹ relating to the comprehensive development of schools and the increasing of schools' autonomy, led to the drafting of the 'good school' principle. The aims are to strengthen the role of schools in children's lives, to eliminate socio-cultural inequalities among students, and to reduce early school leaving. In *Romania*, the National Council for Desegregation and Educational Integration started its work in 2019, and there is also an 'After-School' programme to support learning before or after the compulsory school programme. The results of the survey conducted in the 2019/2020 school year are still awaited; however, if it is carried out in accordance with the regulations, it undoubtedly deserves to be mentioned as a good example. The Slovak Republic in 2012 adopted the *Strategy for the Integration of the Roma* until 2020.¹²² This document pushes for educational programs for Roma children by providing help to develop national catch-up projects and action plans. In Switzerland, an *algorithm formulates a continuous uniform distribution of children with migration backgrounds to eliminate the residence-based segregation that has developed over the past decades.*¹²³

6. Conclusions

This paper argues that there is a connection between a country's historical background and its attitudes towards segregation: Western European countries, which have seen increased migration in recent decades, deny the existence of segregation. Even when desegregation measures are employed, they are typically labelled as inclusion measures. Importantly, although surveys by the Council of Europe, the OECD, and the EU indicate the existence of the problem in these countries, they have not so far been challenged for segregation in primary education, either before the ECHR¹²⁴ or before the Court of Justice of the European Union (CJEU). The cases of Austria and the Czech Republic are an illuminating example. In both Austria and the Czech Republic, it was a common practice to categorise Roma students as children with special educational needs. While proceedings against the Czech Republic were brought before the ECHR, no proceedings were instituted against Austria.¹²⁵ Instead, Austria in 1995 finally

121 Legge 13 luglio 2015, n. 107.

122 Stratégia pre integráciu Rómov do roku 2020.

123 The Local, 2019.

124 As an illustration, in the Belgian language case (ECHR, Judgment of 23 July 1968 (2126/64) para. 10), one of the complainants referred to *expressis verbis* segregation. However, the case examined the Belgian education system in a different context from the current research and therefore, cannot be considered relevant.

125 Due to the nature of the proceedings before the ECHR, this may of course also mean that the case has been satisfactorily resolved before the national courts, so that potential complainants did not feel the need to bring the proceedings before an international forum.

instituted a change in practice, albeit without an ECHR judgement. In contrast, the issue of educational segregation in CEE countries is seen as a constant problem; one that is closely monitored by the European Commission, as evidenced by the ongoing infringement proceedings against Hungary and Slovakia. Nevertheless, one of the positive benefits of this focus is that there are many good practices in these countries to eradicate the problem. The push for further improvements to the system requires that the problem be kept on the agenda and in public dialogue, and that discussions and solutions be based on real data. The collection of ethnic data for educational purposes, with purpose limitation and with appropriate guarantees, can clearly contribute to the goals of desegregation and inclusion.

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