

IN THE EUROPEAN COURT OF HUMAN RIGHTS

Application No. 57325/00

D. H. and Others Applicant

v.

The Czech Republic Respondent

**WRITTEN COMMENTS
BY
INTERNATIONAL STEP BY STEP ASSOCIATION,
ROMA EDUCATION FUND AND EUROPEAN EARLY
CHILDHOOD EDUCATION RESEARCH ASSOCIATION
PURSUANT TO ARTICLE 36 § 2 OF THE EUROPEAN
CONVENTION ON HUMAN RIGHTS AND RULE 44 § 2
OF THE RULES OF THE EUROPEAN COURT OF
HUMAN RIGHTS**

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I. INTERESTS OF AMICI

1. These written comments are submitted by the International Step by Step Association in close collaboration with the Roma Education Fund and the European Early Childhood Education Research Association pursuant to the permission granted by the President of the Chamber in accordance with Rule 44 § 2 of the Rules of Court.¹
2. The International **Step by Step Association** (ISSA) is an international not-for-profit, public benefit organisation, registered in accordance with the laws of the Netherlands. Its main governing body, the ISSA Council, is made up of 29 professional nongovernmental, nonprofit early childhood education organisations from as many countries and territories. ISSA advocates for effective policies, develops standards, advances research and evidence-based practices, provides opportunities for professional development, and strengthens global alliances. In cooperation with national and local governments and international and local organisations, ISSA and its members promote comprehensive reform of existing early education systems, including parent education programs, public preschools and primary schools, and teacher training and retraining programs. ISSA's programs reach more than 200,000 early childhood education professionals in 29 countries, affecting millions of children from birth to age 10 and their families.
3. The **Roma Education Fund** (REF) is a fund registered in Switzerland and Hungary with its head office in Budapest. It was established with the goal of closing the gap in educational outcomes between Roma and non-Roma through the promotion of policies and programs that support quality education for Roma. The Fund provides policy advice to governments and local organisations involved in Roma education, and finances programs implemented by NGOs, local governments, and central governments to advocate for institutional and policy changes in education systems to improve Roma inclusion. The Fund is financed by contributions from multilateral donors, European and North American governments, and foundations. The REF works actively in 12 countries of Eastern and Central Europe, financing programs, supporting research, and providing policy advice. It collaborates closely with a large number of universities, research centres, and independent experts.
4. The **European Early Childhood Education Research Association** (EECERA) is the largest research-based early years organisation in Europe. The Association provides an academic and rigorous forum for the promotion, development, and dissemination of high-quality research into early childhood education; in addition, it is one of the principal aims of EECERA to encourage the clear articulation and communication of the links between research, practice, and policy. The major tools for fulfilling its mission are an international peer-refereed scientific journal (EECERAJ), an Annual Conference, and eight Special Interest Groups, all focussing on aspects of quality in early childhood education and care.

II. OVERVIEW

5. The case of D.H and others v. Czech Republic raises critical questions about the interpretation and application of Article 14 in conjunction with Article 2 of the First Protocol. The Chamber, in finding that there had been no violation of the children's rights, placed considerable reliance on the state's procedures for the testing and evaluation of children as a sound basis for determining their educational placement as well as on the professional judgment of educational psychologists who assessed children's needs, aptitudes, and abilities. The Chamber also discounted statistics that demonstrated that a disproportionate number of Roma children are assigned to special schools.
6. International educational research and professional practice in relation to assessment, testing, and the educational placement of children warrant consideration in this case. The research needs to be viewed in light of the international conventions and accepted principles that bear upon the right of every child to be educated to his/her fullest potential, without discrimination.² In particular, the European

¹ Pursuant to a letter dated 26 September 2006 issued by the Deputy Registrar Michael O'Boyle.

² Of particular relevance are Articles 2 (nondiscrimination) 28 and 29 (education) and 30 (language and culture) of the 1989 UN Convention on Rights of the Child, ratified by the Czech Republic in 1993, and Article 1 of the 1960 UNESCO Convention Against Discrimination in Education.

Federation of Psychologists Associations' (EFPA) Ethical Code³ and the statute of the International School Psychology Association⁴ are significant in that they provide guidelines that are relevant to practice within the European context.

7. The brief explains why the assessment practice used by the Ostrava authorities as a basis for placing Roma children in special schools did not reflect what was known to be appropriate and effective assessment practice. The use of a single test is highly unlikely to produce a valid indicator of a young child's intellectual capabilities, particularly when the test is administered in a single session by an unknown person in a language unfamiliar to the child. Neither is it a good measure of a child's potential for future learning. The brief will show that, in order to provide valid and fair results, educational testing needs to go beyond single measures and, as far as possible, must take into account children's developmental, ethnic, cultural, and language diversity.
8. The brief will also provide evidence challenging assertions that children from a particular ethnic group have learning disabilities immoderately out of proportion with that of the normal distribution. It will present long-established international evidence that, in practice, whether intentional or unintentional, educational tracking (i.e., referring children labeled as being of "low ability" to special schools at an early age) frequently leads to racial segregation and that this has long-term detrimental consequences for children and for society.
9. In short, the brief will begin by referencing the legal, ethical, and educational context (Section III), followed by sections presenting evidence about appropriate assessment of children (Section IV), over-representation of minority children in special education (Section V), and the effects of educational tracking (Section VI).

III. LEGAL, ETHICAL, AND EDUCATIONAL CONTEXT

10. This section will point out that, while the national and international legal and ethical frameworks to support nondiscrimination were in place, the educational context and professional practices in Czech Republic were counterproductive to nondiscrimination.
11. National legislation of Czech Republic includes Article 33 of the Charter of Fundamental Rights and Freedoms, published as Law No. 2/1993, as a constitutional protection to the right to education. It states that everyone has a right to education and that citizens have the right to free education in elementary and secondary schools and, depending on ability, to university-level education.
12. According to EU enlargement regular progress report 2002: "The Government approved a set of measures dealing with the education of Roma children. The Government thus reacted to the final recommendations of the UN Human Rights Committee, which deplored the segregation of Roma children in special schools. The measures include the dissemination of informative material, a voluntary full-time schooling pilot project in five primary schools, and the continuation of the preparatory classes scheme...Regrettably, the new School Act laying down, *inter alia*, a wider reform of the education system, notably phasing out the system of special schools, was again rejected by Parliament. Meanwhile, the steps taken thus far by the Ministry of Education appear ad hoc and low impact. Nevertheless, both preparatory classes and the promotion of Roma assistant teachers in the classroom have had encouraging results."⁵
13. Regarding professional codes of ethics, the School Psychology Association of the Slovak and Czech Republics (Asociace školní psychologie SR a ČR) is a member of International School Psychology Association (ISPA) whose ethical code it adopted in 1997 under the name Etické Normy Práce Školního Psychologa (Ethical Standards of School Psychologist Work).⁶ Also, the statute of the

³ See: website of the Union of Psychologists Associations in Czech Republic: www.sweb.cz/upacr.

⁴ See: www.ispaweb.org.

⁵ See: http://ec.europa.eu/enlargement/key_documents/index_en.htm

⁶ Authors: Thomas Oakland, Suzan Goldmanová, Herbert Bishoff, International School Psychology Association. (Přijaty na 3. Sjezdu Asociace školní psychologie SR a ČR za normy i této Asociace, 1997, <http://spp.ipp.cz/sites/metodicke-informace/pdf/eticke-normy-prace-sp.pdf>). This document is widely accepted and can be found on the websites of schools; for example, <http://www.zs-rajec.cz/kodex.htm>.

International School Psychology Association states in Para. 1.6: “The association rejects any discrimination on the grounds of nationality, race, religion or gender and commits its members to adhere to this principle in their work.” Furthermore, the European Federation of Psychologists Associations’ Ethical Principles include 3.1 Respect for Person’s Rights and Dignity. Under 3.1.1 General Respect, the Principles include: “awareness of individual cultural and role differences including those due to disability, gender, sexual orientation, race, ethnicity, national origin, age, religion, language and socio-economic status;” as well as, “avoidance of practices which are the result of unfair bias and may lead to discrimination.”⁷

14. “Special schools” in East Central and Southeastern Europe are part of an educational context that perpetuates educational segregation of minority groups. More than a century ago they appeared as the progressive answer to the needs of children who could not meet the standard of education in regular elementary schools. Today, special schools represent a lower standard of education from which there are very few opportunities for reintegration into the mainstream or for progression to higher levels of education, thus limiting children’s future prospects for employment.
15. The continued existence of these special schools also sets the stage for the possibility of inappropriate placement of children, as the number of children identified as being of “low ability” equals the number of places available in the special schools. A 1998 study⁸ in Hungary explained that 94% of special education students in some areas were of Romani origin, while areas where special schools or special education measures were not in place had no special needs students at all. In other situations, as the number of Roma pupils in a school increases, special education programs are more likely to be introduced.⁹ In short, a clear correlation exists between available special class places and the number of special needs students of Romani origin.
16. Related to the placement of students in special schools, countries in the region typically lack national definitions of disability¹⁰ or use definitions in which some form of disability is connected to the socio-cultural background of the child,¹¹ thus, leaving open the door to discriminatory practices. Data on children with disabilities are drawn largely from administrative sources rather than being derived from a thorough assessment of the actual characteristics of the child. The consequence is a self-fulfilling situation where the de facto definition of disability is determined by enrolment in special school; thus placement in special schools dictates disability rather than vice-versa.
17. Educational practices in the 1990s suggest prima facie evidence for discrimination. Young children could be enrolled directly into special schools or could be transferred from a regular basic school. By law, placement was based on the recommendation of the school director in consultation with the parent and an educational psychologist.¹² Educational psychologists recommended which children should be tested and also administered the tests. While single tests were often used, in some instances children were recommended for placement without undergoing any systematic psychological assessment. Evidence from other cases in the region highlights the prevalence of divisive practices. For example, a study focusing on the situation of Roma children in Hungary,¹³ concluded that “apart from the problems with the tests themselves, the examiners carrying out the tests tend to formulate stereotypical opinions on children, and interpret the test results according to their first impressions or some characteristics of the children. . . . Children whose lower test scores were explained by their

⁷ The Union of Psychologists Associations in Czech Republic came into being in 1995 through the professional union of psychologists’ associations and the Czech-Moravian Psychologists. In 1999 the Union became a regular member of the EFPA. Source: www.sweb.cz/upacr.

⁸ Loss Sandor: Szakertoi es Rehabilitacis Bizottsagok hatasvizsgalata BAZ megyeben.

⁹ Babusik Ferenc (2000), Kutatás a roma gyerekek képző általános iskolák körében, Delphoi Consulting, Budapest. www.delphoi.hu

¹⁰ UNICEF, Innocenti Insight (2005), *Children and disability in transition in CEE/CIS and Baltic states*.

¹¹ See: OECD (1998), *Co-ordinating services for children and youth at risk: A world view* (Paris: Centre for Educational Research and Innovation).

¹² D. Ringold (2001), Education of the Roma in Central and Eastern Europe: Trends and challenges, in *The Roma education resource book*, ed. C. McDonald, J. Kovács, and C. Fényes (Budapest: Open Society Institute).

¹³ Anna Kende, Selection in education: The case of Roma children in Hungary. Accepted for publication 2007 in *Equal Opportunities International*.

being Roma do significantly worse in all examined areas than do those whose low test scores were explained by other factors.” Explanation of what are deemed appropriate assessment practices is contained in the following section.

IV. APPROPRIATE ASSESSMENT OF YOUNG CHILDREN

18. This section will outline some basic and widely held principles of appropriate assessment, particularly as they relate to young children. Briefly, assessment should be culturally and linguistically appropriate to the circumstances and competencies of the individual child, sensitive to the child’s prior knowledge, experiences, and developmental stage, multifaceted (i.e., not relying on single measures) and authentic (i.e., gathered in realistic settings and situations by familiar adults with whom the child feels at ease). Attempting to measure a young child’s intelligence or potential for learning in a one-dimensional manner is highly problematic, particularly when a child’s future is at stake. The purpose for testing, including psychological assessment, must be clear and needs to focus on the best interests of the child; that is, it should support maximizing a child’s potential for learning and development, not limit his/her future opportunities, as often occurs through the use of “high stakes” intelligence testing.
19. Support for these principles is found in well-known standard lists of indicators of effective assessment practice. For example, since 1987 the National Association for the Education of Young Children’s internationally known list of indicators has included; “ethical principles to guide assessment practices, assessment instruments are used for their intended purposes, assessments appropriate to the ages and other characteristics of the children being assessed, assessment instruments that are in compliance with professional criteria for quality, what is assessed is developmentally and educationally significant, assessment evidence is used to understand and improve learning, assessment evidence is gathered from realistic settings and in situations that reflect children’s actual performance, assessments use multiple sources of evidence gathered over time, screening is always linked to follow-up, use of individually administered, norm-reference tests is limited, staff and families are knowledgeable about assessment.”¹⁴
20. Assessment should be culturally and linguistically appropriate. While human development shares general universal features, specific development pathways are variable and complex and are always embedded in the context of children’s early relationships and experiences in family and community.¹⁵ Consequently, young children’s specific skills as well as ways of learning and communicating have been shown to differ between cultures, subcultures and ethnic groups, as well as being subject to individual differences. The risks of applying standardized assessments developed in one cultural context and for a specific population to a very different context and community are widely recognized. “There are certain kinds of culture-specific standards or ideals for development that should not be applied or generalized to other populations.”¹⁶ The implications for professionals working in educational psychology are well known. For example, the 1995 Code of Professional Responsibilities in Educational Measurement, prepared by the US National Council on Measurement in Education (NCME) includes Article 3.5 which recommends “against the use of any prospective assessment that is likely to be administered, scored, and used in an invalid manner for members of various groups . . . for reasons of race, ethnicity, gender, age, disability, language background, socioeconomic status, religion or national origin.”

¹⁴ National Association for the Education of Young Children (NAEYC, USA). Where we stand on curriculum, assessment, and program evaluation. Available: <http://www.naeyc.org/default.asp>. Principles were available in 1987 and have been updated. While these indicators were originally published by NAEYC, they are now connected with the Global Alliance for the Education of Young Children, which includes organisations that share NAEYC’s commitment to children and excellence in education. The Global Alliance for the Education of Young Children currently includes organisations in Europe and Czech Republic.

¹⁵ B. Rogoff (2003), *The cultural nature of human development* (Oxford: Oxford University Press).

¹⁶ R. A. Shweder, (1999), Culture and development in our poststructural age. In *Cultural processes in child development: Minnesota symposia on child psychology 29*, ed. A. S. Mastens (Mahwah, NJ: Lawrence Erlbaum), 137–148.

21. Assessment of young children requires special consideration and an understanding of early childhood development.¹⁷ Young children experience rapid growth and change during this period of their lives, including in their communication skills and intellectual capacities as well as in their interests and abilities. In addition, “young children’s experiences in growth and development vary according to their individual nature, as well as their gender, living conditions, family organisation, care arrangements and education systems.”¹⁸
22. Assessment needs to be multifaceted. As stated by NCME (1995), “use multiple sources and types of relevant information about persons or programs whenever possible in making educational decisions.” As explained by Katz (1997),¹⁹ “an overall assessment should include four categories of educational goals: knowledge, skills, dispositions, and feelings.” One assessment instrument cannot take into account all areas of a child’s development.
23. Assessment practices should be authentic and child centered, especially with regard to young children’s unfamiliarity with formal educational testing procedures. Risks of inappropriate and invalid assessment are especially acute for children of minority groups who have a long history of separation from mainstream language and culture. In addition, assessment practices should be conducted by an adult who has established a positive relationship with the child and with whom the child feels relaxed and comfortable. Assessment should be conducted in a familiar environment using procedures that maximize children’s abilities to demonstrate their actual and potential capacities for learning: “assessments made during children’s informal work and play are most likely to minimize errors in interpretation.”²⁰
24. The significance of these socio-cultural dimensions of intelligence testing have been recognized since at least the 1930s, building particularly on the work of Vygotsky²¹ and, more recently, Cole and Rogoff and others.²² These dimensions include the importance of children showing their potential when guided by an adult or more capable peer and speak to the place of social interaction in assessment. Research demonstrates that intelligence is much more complex than can be measured by standardized tests, but also that external socio-cultural factors are intrinsic to the development of a child’s intelligence. Furthermore, distinctions must be made in any assessment between children’s performance in test situations, their competencies in real-life situations, and their potential for learning in the future.²³
25. Understanding of intelligence has been evolving over the past 50 years, as illustrated by a number of prominent educators. Sternberg argued for the notion of various aspects of intelligence and, as early as

¹⁷ While definitions of “early childhood” differ, the recent Committee on the Rights of the Child in General Comment No. 7 (2005) includes “all young children; at birth through infancy; during the preschool years, as well as during transition to school. Accordingly, the Committee proposed as an appropriate working definition of early childhood the period of birth to the age of 8 years.”

¹⁸ United Nations Convention on the Rights of the Child. Committee on the Rights of the Child in General Comment No. 7 (2005).

¹⁹ L. G. Katz (1997), A developmental approach to assessment of young children (Clearinghouse on Elementary and Early Childhood Education).

²⁰ Ibid..

²¹ Vygotsky’s work was known in Czech Republic in the 1990s as evidenced by Czech references to Vygotsky on the website of Charles University: http://it.pdf.cuni.cz/ovc/index.php?link=13#psy_pedagogika. See: Vygotsky, Lev Semjonovic. *Myšlení a řeč*. Praha: SPN, 1971.

²² See: M. Cole (1985), The zone of proximal development: Where culture and cognition create each other, in *Culture, communication, and cognition: Vygotskian perspectives*, ed. J. V. Wertsch 146–161 (Cambridge University Press); B. Rogoff (1993), Children’s guided participation and participatory appropriation in sociocultural activity, in *Development in context: Acting and thinking in specific environments*, ed. R. Woxniak and K. Fischer, 121–153. (Hillsdale, NJ: Erlbaum).

²³ V. Gonzalez (1996), Do you believe in intelligence? Sociocultural dimensions of intelligence assessment in majority and minority students. *Educational Horizons*: 75.

1991, described 13 approaches to the measurement of intelligence divided into categories of classical psychometric, developmental, culture-sensitive, biological, and systems.²⁴ Gardner's well-known work on multiple intelligences, beginning in the 1980s, argues that there are a variety of intelligences and, therefore, human intelligence cannot be measured by a standard psychometric instrument.²⁵

26. Intelligence testing in young children is particularly problematic. Studies in well-known educational publications in the early to mid-1990s opposed the use of intelligence testing in early intervention and pointed to the fact that intelligence tests had been used to track children into ineffective programs or to deny them school entry.²⁶
27. Assessment should be in the best interests of the child's future learning and development. The use of "high stakes testing" with young children (i.e., a single test or a short battery of tests that have a significant impact on a child's future) has been condemned in the educational literature for many years. In 1989, a study on high-stakes testing in kindergarten noted that using readiness tests to classify, promote, and retain children is inappropriate and costly.²⁷ Furthermore, the younger the child being tested, assessed, or evaluated, the more errors are made.²⁸ Therefore, the likelihood of attaching false labels is increased. "The longer a child lives with a label (a true or a false one), the more difficult it may become to discard it."²⁹
28. The assessment used to place Roma children in special schools in the Ostrava region runs contrary to numerous of the aforementioned indicators that were well known by the mid-1990s.³⁰ The assessment did not take into account the language and culture of the children, or their prior learning experiences, or their unfamiliarity with the demands of the testing situation. Single rather than multiple sources of evidence were used. Testing was done in a single administration, not over time. Evidence was not obtained in realistic or authentic settings where children could demonstrate their learning. Undue emphasis was placed on individually administered, standardized tests normed on other populations. Assessment was "high stakes," as it was used to place Roma children in a segregated setting where the use of special education curriculum limited their future education and employment options.

V. OVER-REPRESENTATION OF MINORITY CHILDREN IN SPECIAL EDUCATION

29. The over-representation of minority children in special education is well documented both in East Central Europe and elsewhere and was widely recognized by the mid-1990s. This section will present the evidence that minority groups are over-represented in special education and the reasons for over-representation. The section will also provide evidence that Czech Republic has been notable for its placement of children in segregated settings because of "social disadvantage" in ways that systematically prejudice these children's right to an education that would enable them to reach their full potential.

²⁴ R. J. Sternberg (1991), Death, taxes, and bad intelligence tests, *Intelligence* 15 (3): 257–269. Also see: R. J. Sternberg (1997), What does it mean to be smart?, *Educational Leadership* 5: 20–24.

²⁵ See: H. Gardner (1983), *Frames of mind: The theory of multiple intelligences* (New York: Basic Books); H. Gardner, and T. Hatch (1989), Multiple intelligences go to school: Educational implications of the theory of multiple intelligences, *Educational Researcher* 18 (8): 4–10; H. Gardner (1993), *Multiple intelligences: The theory in practice* (New York: Basic Books); and, H. Gardner (1999), *Intelligence Reframed: Multiple Intelligences for the 21st Century* (New York: Basic Books).

²⁶ Examples of these studies include: J. T. Neisworth, and S. J. Bagnato (1992), The case against intelligence testing in early intervention, *Topics in Early Childhood Special Education* 12 (1); and, L. A. Shephard, (1994), The challenges of assessing young children appropriately, *Phi Delta Kappa* 76 (3): 599–603.

²⁷ S. J. Meisels (1998), High-stakes testing in kindergarten, *Educational Leadership* 46 (7): 16–22.

²⁸ See: L. A. Shepard (1994), The challenges of assessing young children appropriately, *Phi Delta Kappan* 76 (3): 206–212; and N. Ratcliff (1995), The need for alternative techniques for assessing young children's emerging literacy skills, *Contemporary Education* 66 (3): 169–171.

²⁹ L. G. Katz (1997), *A developmental approach to assessment of young children*, (Champagne, IL:ERIC Clearing House on Elementary and Early Childhood Education).

³⁰ By 2001, an independent group of Czech psychologists was working on a revised assessment instrument designed to be more appropriate to Roma children, thus indicating that the problematic nature of such assessment was known by at least some psychologists. See: D. Ringold, (2001), Education of the Roma in Central and Eastern Europe: Trends and challenges, in *The Roma education resource book*, ed. C. McDonald, J. Kovács, and C. Fényes (Budapest: Open Society Institute).

30. Systematic studies demonstrate convincingly that minority children and those from vulnerable families are over-represented in special education in Central and Eastern Europe. In some CEE and CIS countries it has been noted that “special school enrolment rates are inflated by the practice of placing children from all sorts of vulnerable families in these facilities. In Hungary, many children from disadvantaged families who have neither physical nor learning disabilities end up in special schools that have a ‘lighter’ curriculum.”³¹ The disproportionate placement specifically of Roma children in special education is also well documented, with Roma children being approximately 15 times more likely than other children to be placed in special schools.³² The placement of minority students in special education has also been documented elsewhere. In the United States, studies confirmed that African American males and students speaking English as a second language were over-represented in special education;³³ “African American students were two to three times more likely than whites to be labeled as retarded or behaviorally disturbed.”³⁴
31. Other studies suggest that disproportionately placing certain groups of students in special education results from an array of complex and interacting factors. These factors include “the unconscious racial bias on the part of school authorities, large resource inequalities, unjustifiable reliance on IQ and other evaluation tools, educators’ inappropriate responses to the pressures of high stakes testing, and power differentials between minority parents and school officials.”³⁵ The research suggests that “unconscious racial bias, stereotypes, and other race-linked factors have a significant impact on the patterns of identification, placement and the quality of services for minority children.”³⁶ School placement through psychological testing often “reflects racial biases in the society to which they are applied.”³⁷ In the United States,, white middle-class children provided the standard against which “other” children are evaluated. “In this context, poor and minority youth are destined to ‘demonstrate’ more academic and behavioral problems, which increase their likelihood of being referred for special education.”³⁸ It is not poverty that places minority students at higher risk of special education placement; rather it is a case of “how structures of opportunity and constraint come to bear on the educational chances of the poor to either expand or constrain their likelihood of achieving competitive educational outcomes. Disproportionality, then, is the structured probability with which minority youth are more likely to be ‘documented’ as disabled.”³⁹
32. Since the transition, in Central and Eastern Europe the official incidence of children with disabilities or having special needs has grown. An increase in actual numbers must be viewed against the fact of falling fertility rates. One way countries have addressed the growing numbers of children identified as disabled has been to increase the number of special education facilities. In Czech Republic, while integration has been part of the education strategy, the number of special and remedial schools has risen considerably since 1989. OECD data provide a broader comparison of inclusion practices in OECD countries. Data on placement in special schools were analyzed in three categories: children who had organic impairments, children who had learning difficulties or learning disabilities, and

31 UNICEF, Innocenti Insight (2005). Also see: G. Havas, I. Kemény, and I. Liskó (2002), *Cigány gyerekek az általános iskolában* Oktatókutató Intézet, Új Mandátum, Budapest.

32 Sources: Save the Children (2000), *Denied a future: The right to education of Roma/Gypsy and Traveller children*; and, D. Ringold (2001), Education of the Roma in Central and Eastern Europe: Trends and challenges in *The Roma education resource book*, ed. C. McDonald, J. Kovács, and C. Fényes (Budapest: Open Society Institute).

33 References: D. K. Lipsky, and A. Gartner (1997), *Inclusion and school reform* (Baltimore, MD: Paul H. Brookes Publishing); and, M. Wang, and J. Kovach (1996), Bridging the achievement gap in urban schools: Reducing educational segregation and advancing resilience—Promoting strategies in *Closing the achievement gap: A vision for changing beliefs and practices*, ed. B. Williams (Alexandria, VA: Association for Supervision and Curriculum Development).

34 Wang and Kovach (1996).

35 D. J. Losen, and G. Orfield (2002), Introduction: Racial inequity in special education. *Racial inequity in special education* (Cambridge, MA: Harvard Education Press).

36 Ibid.

37 Ibid; and Save the Children (2000), *Denied a future: The right to education of Roma/Gypsy and Traveller children*.

38 C. O’Connor, and S. D. Fernandez (2006), Race, class, and disproportionality: Reevaluating the relationship between poverty and special education placement, *Educational Researcher* (25) 6: 6–11.

39 Ibid.

children “whose difficulties arise from social factors.”⁴⁰ In a comparison of 15 countries, including European, Asian, and North American countries, Czech Republic ranked second highest in terms of placing students with organic impairments in special schools and ranked third in placing students with learning disabilities in special school settings. Eight countries provided data on placement of students in special schools as a result of “social factors.” “With the exception of the Czech Republic [at 100%] the other countries almost exclusively use regular schools for educating these students.”

33. To further understand the challenges facing young Roma children and their families in securing their rights to education without discrimination in Czech Republic, the words of Alison Closs (a European authority on special education) may be helpful: “Even Cerna, a key Czech authority in bridging East and West Europe in relation to special needs in the early years after the political changes, makes no mention of Romani children in special schools in an otherwise comprehensive chapter reporting on challenges for teacher education in special education needs (1995) and, while commenting on the expansion of education services for children and adults with learning difficulties, fails to mention that some children with more severe learning difficulties were still excluded from all education.”⁴¹ She closes by arguing: “Children with disabilities were seen by the majority population as being ‘us’, potentially our children only less fortunate, whereas Romani children were perceived as ‘them’, not real Czechs. Children with disabilities were given positive media treatment with admired and respected public personalities taking a lead and a ‘feel good’ factor was on offer to all those who helped but Romani children and their parents were given a bad press image, ‘thieves and scroungers’ and those who supported them were at risk of sharing the stigma. Children with disabilities were small in number and not a growing population—they represented no risk to society. Romani children were growing in number and the non-Romani Czechs were worried about the future, their fears fuelled by racist interests and irresponsible media.”⁴²
34. Thus, the over-representation of minority students in special education is well documented and has been shown to result from factors unrelated to children’s intellectual capabilities, including the use of “social factors” to place children in special schools in Czech Republic. Concerns about the evidence for the over-representation of minority children in special schools were strongly expressed by the UN Committee on the Rights of the Child in its Concluding Observations released at the end of its 32nd Session, 2003. The Committee expressed its regret that some of its recommendations in the previous Concluding Observations, including reducing discriminatory practices against the Roma population, had been insufficiently addressed. Drawing attention to continued over-representation of Roma children in “so-called special schools,” and calling for an end to the practices of assigning children to these schools, the Committee made clear that it “remains concerned at the persistence of de facto discrimination against minorities, in particular the Roma and other vulnerable groups.”⁴³

VI. EFFECTS OF EDUCATIONAL TRACKING

35. Essentially, the placement of children in ability groupings is “educational tracking.” Placement of children in segregated special schools is an example of very early tracking of students, in this case by assigning children who were perceived to be of “low ability” or “low potential” into special schools from an early age. This section will provide evidence that educational tracking is detrimental to children, in terms of their achievement, interracial relations, and future opportunities. Positive alternatives to this practice exist.
36. Research pointing to the negative effects of early and inflexible educational tracking has been known for some time. Since the 1990s, educational research has shown that “tracking contributes significantly

⁴⁰ P. Evans (2006), Educating students with special needs: A comparison of inclusion practices in OECD countries, *Education Canada* 44 (1): 32–35. OECD data used are from 1999.

⁴¹ A. Closs, *Proces vzdělávací inkluze v České republice. Srovnání dětí s poruchami učení a romských dětí: pohled "odjinud"*, In *Pedagogika* roc. LI, 2001, Praha: Universita Karlova, Pedagogická fakulta, 3.

⁴² *Ibid.*, 16.

⁴³ <http://193.194.138.190/html/menu2/6/crc/doc/session32.htm>.

to the achievement gap between low-income, minority students and their more affluent peers.”⁴⁴ “Some countries track students into differing-ability schools as early as age 10 (e.g., Austria, Germany, Hungary and the Slovak Republic). By contrast, others including Canada, Japan, Norway, Sweden, the United Kingdom, and the United States essentially keep their entire lower secondary school system comprehensive [rather than selective].”⁴⁵ Recent research, supported by CESifo under the project International Educational Performance, compared outcomes for students across tracked and nontracked systems. Six international student assessments provided eight pairs of achievement contrasts for between 18 and 26 cross-country comparisons. The results, including data from Czech Republic, strongly suggest that early tracking increases educational inequity.

37. Early tracking has especially negative effects on the achievement levels of disadvantaged children. As stated in a recent communication from the Commission to the Council and to the European Parliament: “Education systems with early tracking of students exacerbate differences in educational attainment due to social background, and thereby lead to even more inequitable outcomes in student performance. . . . [early tracking] tends to channel them [children] towards less prestigious forms of education and training. Postponing tracking until the upper secondary level, combined with transfer between school types, can reduce segregation and promote equity without diminishing efficiency.”⁴⁶ Researchers concur that a school structure that employs tracking “may help create a social construction of failure, especially for disadvantaged children.”⁴⁷ Furthermore, “ability grouping must end because it is ineffective and harmful to many students, and damaging to interracial relations and democratic society.”⁴⁸ A report of the EU Commission noted: “The Czech government has estimated that, in the country as a whole, approximately 75% of Romani children of primary school age were being educated in remedial special schools . . . follow-up research in 2003 indicated that since the initial research was undertaken, those government policies aiming at addressing the situation of Roma in the school system had little impact in reducing high levels of racial segregation.”⁴⁹
38. The longer-term consequences of tracking include dropping out of school early, thus limiting young people’s opportunities for future employment. A recent study⁵⁰ on special education students shows that 42% of students never continue their studies after finishing grade 8 of special elementary school (2003–04). If they do continue, they enroll in special vocational school or in short vocational training programs that result in low qualification and the acquisition of skills that are not in demand in the labour market.
39. Effective and practical alternatives exist to segregation in special schools.⁵¹ These alternatives, known in Europe,⁵² include settings with high expectations of all students, heterogeneous classrooms, high-level curriculum for all students, use of Roma teaching assistants, after-school and summer classes,

44 H. Mehan, and L. Hubbard (1999), Tracking untracking: Evaluating the effectiveness of an educational innovation. Center for Research on Education, Diversity and Excellence, University of California. http://repositories.cdlib.org/crede/rschbrfs/research_brief03.

45 E. A. Hanushek, and L. Wößmann (2005), Does educational tracking affect performance and inequality? Differences-in-differences evidence across countries.

46 Communication from the Commission to the Council and to the European Parliament on “efficiency and equity in the European education and training systems,” Brussels, 8.9. 2006, COM (2006) 481 final.

47 G. Ansalone, and C. Ming (2006), Programming students for academic success: The PLS—An alternative to traditional tracking, *Educational Research Quarterly* 29 (3): 3–10.

48 J. H. Braddock, and R. E. Slavin (1992), Why ability grouping must end: Achieving excellence and equity in American education (Baltimore, MD: Centre for Research on Effective Schooling for Disadvantaged Students. John Hopkins University).

49 European Commission, Employment and Social Affairs (2004). *Report on Roma in Enlarged European Union*.

50 Bernath-Zolnay: Adatok magyarorszagi fogyatekossa minositesrol 2006.

51 See: J. H. Braddock, and R. E. Slavin (1992), Why ability grouping must end: Achieving excellence and equity in American education (Baltimore, MD: Centre for Research on Effective Schooling for Disadvantaged Students. John Hopkins University); and, R. Sanders, (1999), Alternatives to tracking. *Motion Magazine*.

52 Council of Europe Project, “Education of Roma/Gypsy children in Europe,” DGIV/EDU/ROM; and, S. Rona, and L. Lee (2001), *School success for Roma children: Step by Step special schools initiative interim report*. (New York: Open Society Institute).

tutoring and mentoring, as well as teacher training in second language and multicultural pedagogy. Examples of successful integration of Roma children are also found in the region.⁵³

40. The cost of placing students in special schools is higher than in regular schools. For example, in Slovakia the average cost per child in a regular school is 640 euros per year, as compared to 1,350 euros per year in a special school.⁵⁴ Therefore, cost should not be considered as a barrier to inclusion nor a reason for maintaining segregated special schools.⁵⁵
41. Educational tracking, as expressed in children's placement in special schools, effectively denies minority children and children from marginalized communities access to educational equity, thus limiting their opportunities for higher education and employment.

VII. CONCLUDING REMARKS

42. Access to education without discrimination implies that children should have the opportunity to participate in appropriate education that respects their early experiences, builds on their current skills and competencies, supports their future learning, and lays a foundation for their full participation in society as adults. Assessing young children appropriately is a complex, but achievable, endeavour. Minimal standards require that assessment be sensitive to language and cultural differences and provide children with multiple opportunities to demonstrate their capabilities in authentic settings. Much is known about appropriate assessment practice and the dangerous consequences when accepted standards are not met. Inappropriate practices result in the over-representation of minority children in special education; a phenomenon that has been well documented internationally. Once tracked into a special education setting, racial segregation and educational inequity are increased, thus denying children their right to equality in education and irrevocably limiting achievement of the fundamental goals of education, notably "the development of a child's personality, talents, and mental and physical abilities to their fullest potential."⁵⁶

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⁵³ Proactive Information Services (2004), Transition of students: Roma special schools initiative: Year 4 final evaluation report, <http://www.osi.hu/esp/rei/Documents/>; and, Elementary school, Gorkeho 21, (Trnava, Slovakia).

⁵⁴ Source: http://www.minedu.sk/FaR/FINRS/2006/WEB_2006_DATA_V3.xls

⁵⁵ See: P. Evans (2006); and B. Levin (2001), Costs and effects of the Step by Step Roma Special Schools Initiative. <http://www.osi.hu/esp/rei/research.html>

⁵⁶ UN Convention on the Rights of the Child, 1989, Article 29.