

European Network of Ombudspersons for Children (ENOC)**Position Statement on “Equal Opportunities for All Children in Education”****Adopted at the 20th ENOC General Assembly, 22 September 2016, VILNIUS**

"Any form of unequal education violates the right to education" ¹

We, members of the European Network of Ombudspersons for Children (ENOC), call upon our governments, the European Commission and the Council of Europe to promote equal opportunities in education and to undertake all appropriate action.

Having considered the relevant international legal instruments, and in particular:

- The UN Convention on the Rights of the Child (1989)
- The International Covenant on Economic, Social and Cultural Rights (1966), arts. 13 and 14
- The UNESCO Convention against Discrimination in Education (1960)
- The General Comments no. 1, 6, 7, 9, 12 and 14 of the UN Committee on the Rights of the Child
- The European Union Agenda on the Rights of the Child (2011)
- The UN Convention on the Rights of Persons with Disabilities (2006), art. 24
- The European Convention on Human Rights and Freedoms and its additional Protocols.

Introduction

Despite relevant measures adopted by European institutions and States, ENOC states that educational inequalities remain unacceptably high in Europe and have increased in many countries since the economic crisis started in 2007. The inequality of educational opportunities experienced by children with a low socioeconomic status, children belonging to ethnic minorities, children with disabilities or special educational needs and children in specific circumstances (children on the move, children under the custody of the state, children who live and/or work on the streets, children in conflict with the Law, Roma Children) not only violates the child's right to education under art. 28 and 29 of the CRC on the Right to Education, but also undermines the basic pillars of the Convention.

Inequality of educational opportunity contravenes the principle of non-discrimination (art.2). It leaves a large number of children without the right to personal development (art.6) and the right to fully participate in society (art. 12). If States do not sufficiently combat this inequality, it means they are not applying the principle of the best interests of the child (art.3). Taking the best interests of the child into account in all decisions governments make on education, should ensure that every child has access to full developmental and life opportunities. This should be the starting

1. **Prof. Xavier Bonal**, ENOC expert advisor, Professor of Sociology at the Autonomous University of Barcelona and Special Professor of Education and International Development at the University of Amsterdam

point of every national educational system.

The Right to Education in the XXI st century

The increase of child poverty in recent years has damaged children's right to education in several ways. Governments' cuts have reduced the availability of education for children living in vulnerable situation (examples include children with special needs, children on the move, children under the custody of the State). Access to education, and especially to pre-primary education and post-compulsory education, has been affected by the increase of private costs or by the reduction of grants. Poor children also have less access to a number of out-of-school educational activities, which play a fundamental role in their personal development and their socialization process. Education systems have become less adaptable to the particular needs of children living in poverty and less responsive to the needs of the most disadvantaged children. Paradoxically, while children living in poverty are facing more difficulties to learn and make the most of their educational experience, education systems seem to be less concerned with school climate aspects and add more pressure to the learning process with more teaching-to-the test pedagogies and a general results-oriented focus. Attending to the needs of the most disadvantaged children requires systems and strategies that put the child's wellbeing at the forefront of any school reform. ENOC wishes to see the goal of education in States closely aligned to the obligations under Article 29(1) of the UNCRC. Education should strengthen the child's capacity to enjoy the full range of human rights, to promote a culture which is infused by appropriate human rights values and to empower the child through developing his or her skills, learning and other capacities, human dignity, self-esteem and self-confidence. In this context, 'education' goes far beyond formal schooling to embrace the broad range of life experiences and learning processes which enable children, both individually or collectively, to develop their personalities, talents and abilities and to live a full and satisfying life within society.

ENOC advocates for a wider conceptualisation of the right to education. In the 21st century, the right to education cannot be constrained to compulsory or basic education and needs to include access to pre and post compulsory education as well as to non-formal and informal educational options. The persistence of inequalities in all educational domains constitutes a violation of the right to education for the most disadvantaged children, which States should urgently address.

ENOC believes that States and European institutions could do much more efforts to provide educational opportunities for the most disadvantaged children and to guarantee the right to education for all children.

ENOC urges State parties and European institutions to undertake the necessary measures to eliminate all forms of discrimination that perpetuate educational inequalities. In particular, the following aspects should be addressed.

Recommendations

1. Protect public expenditure on education

European institutions and States should protect education from the economic and political pressure to reduce public spending. By using children's rights proofing and child impact assessments, institutions must create clear priorities in the funding of education for those most needed and develop programmes to ensure educational equity.

2. Ensure the same quality education for all children

All children should have access to the same quality of education, irrespective of their socio-economic environment, religion, ethnic and cultural background, gender or nationality. The quality of education children have access to should never depend on performance or other assessment as this can result in discriminatory practices.

In particular, European institutions and States must guarantee access to quality education to children under special circumstances (including children in poverty, children living in rural and remote areas, children in the care or custody of the State, young carers, children in hospital, children out of school and children on the move). States should identify and remove all barriers experienced by children in achieving their full potential in education. In particular, States must effectively address bullying in schools and provide adequate support and/or counselling in school for all children who require it to ensure that all children have equal access to an excellent quality education.

3. Expand opportunities for accessing to Early Childhood Education and Care (ECEC) for the most disadvantaged children

European institutions and State parties must proactively expand educational opportunities to ECEC to the most disadvantaged children. States should introduce the necessary mechanisms to expand coverage of ECEC and to provide greater access for those children most in need, with special reference to children with unemployed parents, newcomer children, Roma children and children from other ethnic minorities. European institutions and State parties must ensure a high quality provision of ECEC systems to facilitate the removal of barriers to future opportunities for all.

4. Addressing inter and intra school segregation

State parties should develop effective measures to avoid a negative impact of poverty on education and opportunities for development. In particular, States must avoid high concentration levels of at-risk children in specific schools or classes and religious segregation in education should end. Moreover, ideally States should avoid early tracking in their educational system and should create opportunities to move upwards within a tracking system. Also, States should avoid forms of differentiation within schools that may result in unequal provision of educational opportunities.

5. Reduce Early School Leaving (ESL) and expand opportunities in post compulsory education

State parties should undertake measures to reduce ESL and increase access to diverse forms of post compulsory education. In particular, States should take supportive and flexible measures to prevent dropping out of school during compulsory education and develop more and better programmes of “second opportunity” to expand the chances of the most vulnerable groups.

6. Work for a real inclusive education

European institutions should work towards a standard classification framework of special educational needs (SEN). States must guarantee access to a quality education, either inclusive or special, in order to meet in the best possible way the needs of every child. The transition between these two types of education should be facilitated all over the schooling period, in accordance with the progress of the child. State parties should also increase the number of specialists involved in assessment and support for children with SEN, facilitate these children’s inclusion in education and guarantee full and equal participation. State parties should immediately stop the reduction of cuts in support services for children with SEN, and increase and ensure access to mainstream education.

7. Protecting the education rights of children with a migrant background and children from ethnic minorities

European institutions and State parties must develop measures to ensure that children from migrant background, ethnic, cultural or religious minorities are fully included in the national education systems and must ensure that all children enjoy full and equal access to their rights. States should identify and remove all barriers experienced by these children in achieving their full potential in education. In particular, States must develop policy to ensure that these children have equal access to a high quality of education.

Stability, continuity and security is essential to ensure that children can truly benefit from their right to education, right to health, right to rehabilitation and ultimately their right to development. The trend in Europe in granting only temporary protection is a threat to the exercise of these rights for children. We therefore urge States to ensure durable solutions for children applying for international protection.

8. Fighting for the education rights of refugee children

To fulfil the right to education of children on the move, European institutions and States should guarantee that children living temporarily in camps, shelters or other settings are offered the opportunity to have full and equal access to quality educational activities, adjusted to their needs. European institutions and States must guarantee the inclusion of children on the move into national education systems.

9. Ensuring meaningful participation of children in the education system

State parties must ensure meaningful participation of all children both as part of their everyday practice in school as well as in the development of the school curriculum and school policies. Education systems must provide children with information appropriate to their age and

circumstances and must enhance mechanisms to ensure that all children are heard, have their views taken into account and are able to participate in all matters that affect them. Children should be informed that they have the right to present complaints to the school authorities or to the ombudspersons for children and be assisted to do so where necessary.

10. Providing equal access to creative and expressive education

European institutions and State parties should take all appropriate measures to ensure that all children, without discrimination, have access to adequate opportunities related to various forms of personal expression, arts, creative work and sport. Accessing to these activities has both intrinsic and instrumental value and can be a source of educational inequalities that States must address. Education should strengthen the capacity of children to enjoy the full range of human rights, and empower children through the development of skills, learning and other capacities, human dignity, self-esteem and self-confidence.

11. Developing teacher education for equality of opportunities

The principles of non-discrimination and the promotion of equality of opportunity should be included in teachers' initial and in-service training, as well as in the curriculum of students and in all information provided to their parents. European institutions and State parties should ensure that teacher education programmes are designed and developed taking into account all principles of equality of educational opportunities and avoiding all possible discriminatory practices.

ANNEX: Data and evidence

Educational expenditure

The cuts experienced in the education budgets by many European countries since the beginning of the crisis (and in particular since 2010) have especially impacted on children with low socioeconomic status (SES). Budget reductions have affected both, capital and current expenditures. Programmes of support and scholarships to students have been frozen or reduced in many countries. In addition, salaries have experienced significant cuts from 2010. Altogether, education budgets were reduced by 3,2% between 2010 and 2013, which accounts for more than 37.000 million euros in the EU zone². However, education cuts have not occurred solely as a result of the economic crisis. Political and ideological factors have also played their role. Even countries that have not been dramatically hit by the crisis have severely reduced their public funding to education. Most countries have reduced educational investments, but they have also reduced support programmes for the most disadvantaged children, including for students with SEN. The most important education cuts have affected human resources (which account for more than 60% of educational budgets, on average). More than half of European countries reduced or frozen teacher salaries, while more than one third reduced the absolute number of teachers, even though the number of students increased.

Linear cuts (such as those to human resources) and selective cuts in programmes for those that are worst off have clearly damaged the conditions of educability of the poorest children and other disadvantaged children. Recent analyses based on Programme for International Student Assessment (PISA) show that while educational expenditure does not have a direct relationship with educational performance, it does have a negative relationship with inequalities in performance.

Early Childhood Education and Care (ECEC)

Research on the effects of accessing to ECEC increasingly shows the positive benefits on children's wellbeing in the present and in the long term, and the foundation of skills and competences that are essential for learning outcomes. Indeed, participation in ECEC is associated with higher educational performance, reduced risk of early school leaving, better social integration and early development of skills such as creative and critical thinking, social behaviour and emotional development.

All these effects are particularly acute for children from low socioeconomic background and children with disabilities. Both, students and the overall education system benefit greatly. In fact, high-performing and equitable school systems are also those with little socio-economic disparity in access to pre-primary education. However, there are large differences in the opportunities offered by States and there are also large within-country inequalities. Disadvantaged students have less access to pre-primary education than advantaged students in almost every country, particularly

² All data extracted from Eurydice (2013) *Funding of Education in Europe 2000-2012: The Impact of the Economic Crisis*; and European Commission (2015) *Education and Training. Monitor 2015*.

those in which pre-primary education is not widespread. The EU average (28%) has not yet achieved the 'Barcelona' objective (33%) of 0-2 year's old children in ECEC. In this age group, about 50% of European children are cared for solely by their parents. This not only shows the disparity of approaches, affordability and availability in the early years; it also captures well the implications for parental labour market participation. The crisis has made differences among countries more acute and has reduced the access of the poorest to an educational service that is non-free and non-universal.

Regarding quality of provision, European States differ largely on the principal structural dimensions of ECEC quality. Aspects such as qualifications of the staff, appropriate pedagogies, learning activities based on well-defined objectives, adequate facilities and good communication between children, parents and staff, all contributes to a better quality of ECEC. For socially disadvantaged families, parental support measures can be particularly useful. However, while the majority of European States run targeted schemes of linguistic support for children in ECEC whose home language differs from that of the ECEC centre's instruction (as well as children suffering language difficulties), national regulations and guidelines in most of these countries often do not include out-reach strategies such as home-learning guidance and parenting programmes.

School Segregation

Children from socioeconomically disadvantaged backgrounds tend to be concentrated in disadvantaged schools. International research shows that this concentration affects their educational performance. The absence of a social mix eliminates the potential positive 'peer effect' that could provide better opportunities for students with low SES. That is, the absence of social mixing condemns the poorest students to a low performance. Recent analyses of PISA data show that the level of concentration of migrant students in disadvantaged schools is one of the most important factors affecting their low performance. While levels of poverty are the main cause of their concentration in low performing schools, specific cultural aspects such as not speaking the language of instruction of the host country intensify the inequality in performance between native and migrant students.

In addition, systems of tracking students from an early age and systems of streaming within schools tend to harm the opportunities of students from low SES, who are more likely to be classified among the lowest performers. These practices radically reduce the opportunities of some social groups, such as migrant students or Irish Traveller or Roma Children.³ Romani children are often concentrated in sub-standard schools or classes that follow substandard curricula, which clearly amounts to direct discrimination. In some countries Roma children are separated into Roma only classes or intra-class segregation, where the separate study groups may derive from differing levels of curricular standards within the same class.

Early School Leaving and Post-Compulsory Education

Participation in post-compulsory education has been identified by the OECD and the EU as the necessary minimum threshold for social and labour inclusion. This has converted the objective of

³ See EC (2014) *Report on discrimination of Roma children in Education*.

reducing early school leavers (ESL⁴) in one of the main priorities of the European agenda. In fact, ET2020 maintains the reduction of ESL as one of the main priorities of education policy. The crisis and a number of active policies by member States have contributed to progress towards the target of the 10% (11,1% is the current EU average), but significant regional differences remain within Europe. Spain leads the ranking with a 21,7%, while most Scandinavian countries and other continental countries have already reached the benchmark of 10%.

Besides territorial inequalities, social inequalities are especially acute in respect to ESL. About 60% of early school leavers are either inactive or unemployed, illustrating how educational poverty has long-term effects. Widening access to higher education is made more difficult by a lack of inclusiveness in the earlier years of schooling. Differences are most acute when comparing foreign-born vs. native students, with rates of 20,1% and 10,3% respectively.

Many of these young people, after having failed to acquire a sufficient level of skills during their initial education, are trapped in low-quality jobs that offer little opportunity for career growth. As the ET2020 Monitoring report states: “one in four adults in Europe is caught in a low-skills trap – one that limits access to the labour market while simultaneously closing avenues to further education or training”.

In summary, the problem is not just the level of ESL, but also inequalities experienced by those who leave the school system early. ESL are more likely to come from workless households; be male rather than female; come from vulnerable groups, such as those with SEN, teenage mothers and those with physical and mental health problems; come from minority or migrant backgrounds and to be concentrated in particular areas.

Inclusive Education

Education for children with special needs is not yet sufficiently inclusive. Despite the Convention on the Rights of Persons with Disabilities (2006) and the recent Incheon Declaration (2015), one third of the 57 million of out-of-school children are children with disabilities.⁵ In Europe, recent estimates place the number of children with special educational needs (SEN) at 15 million.⁶

Children with SEN usually leave school with few qualifications and are much more likely to become unemployed or economically inactive. Children with SEN are still not being sufficiently included in mainstream education and separate special education placements remain the most common option in most countries. Ensuring that children with SEN fully enjoy their right to education begins with an accurate and early identification of their needs, which are crucial factors to overcoming difficulties. All Member States have their own system of categorising children with SEN, and this is one of the factors that make it difficult to run international comparisons on SEN policies and practices. This leads, for example, to the misidentification of SEN amongst Roma children and other minority ethnic groups (which appears to be related to policy on language of instruction). However, categorisation systems may be also used to stigmatise and segregate, and countries should be

⁴ ESL is defined as people aged 18-24 who have only lower secondary education or less and are no longer in education or training.

⁵ Data from the Global Monitoring Report (2015).

⁶ Data from the EC Report (2013) *Support for children with special educational needs (SEN)*.

aware of their systems of labelling different SEN.

Responding appropriately to the needs of students with SEN involves the provision of support by trained professionals in mainstream education. In fact, most pupils with SEN benefit from the application of common pedagogical principles which are relevant to all pupils, whilst a minority require intensive and focused teaching and additional adaptations.⁷ However, teacher education and continuing professional development do not always have a sufficient focus on inclusiveness and equal opportunity. In many countries, a lack of specialised professionals harms the individualised attention required by children with SEN and mainstream teachers do not have sufficient training to interpret some of the students' needs and to respond satisfactorily.

Economic crisis has also caused significant cuts in educational, health, and other complementary services addressed to children with disabilities. These cuts might produce a reversal process in the fulfilment of the rights of children with disabilities and might exclude them from the mainstream education and from society.

The consequences of non-inclusive education systems detrimentally affect the educational opportunities of children with SEN. Compared with their non-disabled peers, young disabled people in the 16-24 age group are less likely to participate in post-16 education and training, and transitions from school to post-compulsory education may be impeded by several barriers.

Education for children with migrant background and from ethnic minorities

During the last decade, migration movements have challenged national European education systems. Education has been considered the best tool to include migrant children in society and the best institution to provide them with social and economic opportunities. However, in almost all European systems migrant and ethnic minority students are disadvantaged in terms of enrolment in different types of school, duration of attendance to school, educational performance, drop-out rates and types of graduation.

In some countries these differences are mainly explained by socioeconomic factors. The educational attainment of migrant students is comparatively higher in countries with lower levels of economic inequality, high investments in childcare and a well-developed system of preschool education. Likewise, the educational attainment of migrant students is better in comprehensive systems with late selection of students to different ability tracks and worse in systems of high selectivity. However, there are other countries in which the factors driving the gap between native and migrant students are more complex and have roots outside socioeconomic conditions. Specific discrimination of some ethnic minorities in several education systems takes many forms: lack of an adequate education supply in specific urban areas; absence of mother tongue as language of instruction in the early years of education; and non-access to pre-primary education or inter and intra school segregation. Their under representation or poor representation in curriculum and school materials harms the self-image and self-esteem of children and youth belonging to minority groups and negatively affects their chances of school success. Equally, their high concentration in

⁷ See NESSE (2012) *Education and Disability/Special Needs. Policies and practices in education, training and employment for students with disabilities and special educational needs in the EU*.

schools hinders their academic performance. The last PISA (2012) showed a gap of 34 points in the PISA scale in mathematics between native and migrant students (equivalent to one academic course).

In summary, proving equal opportunities to migrant children and children from ethnic minorities is a fundamental aspect for fulfilling their rights, and also to ensure a more cohesive and inclusive society, which is one of the main goals of the European agenda. If inequalities with native students are not addressed, their social integration will be seriously challenged.

Children on the move

The ENOC report on the rights of refugee children shows that Europe violates the fundamental principles of children's rights and is failing to protect children travelling through Europe. This lack of protection adversely impacts the right to education of children on the move. Most refugee children can be considered out-of-school children. Access to education for refugees is limited and uneven across regions and settings of displacement, particularly for girls and at secondary levels. Enrolment in primary school is only 76% globally and drops dramatically to 36% at secondary levels.⁸

Others may receive some forms of education of low quality, with a lack of basic facilities and with little opportunities to progress in their learning experiences. There is a lack of effective indicators to measure the learning of refugee children, focusing on the measurement of inputs rather than outcomes. Teacher-pupil ratios average as high as 1:70 and, in many situations, teachers do not have even a basic training for working with children under highly traumatic situations. European and national institutions must be sensitive to the connections between education and conflict in all education policy and planning, emphasising the use of conflict-sensitive analyses to assess the content and structures of education; the importance of education for political stability and leadership in host countries and upon repatriation; and the reinstatement of peace education as a core component of refugee education. The challenge for providing a better quality education is enormous and as the UNHCR has recognised "the need for quality services is beyond UNHCR's existing capacity".

Participation in education

The rights of the child to participate in society are clearly reflected in several provisions of the CRC. Article 12 of the CRC asserts that "State parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child." Children's participation has a special dimension in education. Education should give children the opportunity to develop their talents and abilities, to gain confidence and self-esteem, to gain life skills and take informed decisions and to understand and experience pluralism, tolerance and democratic living. The right to education means the right to experience citizenship. To become citizens, children must be treated not as simple recipients of knowledge, but rather as active players in the learning process.

⁸ Data from UNHCR (2011) *Refugee Education. A Global Review*.

We know that children benefit from participation. They develop increased self-confidence, feel a greater sense of responsibility and play a more active role in their communities. However, there are several challenges to the application of article 12 of the CRC. Child participation is very unequal among European countries, and it is unequally recognised by national legislation. Children's participation in school is still relatively neglected. Students hardly participate in decision-making processes that affect their everyday life in school (i.e. coexistence rules) –a fundamental aspect that benefits school climate and reduces conflict among peers and between students and teachers; they hardly have an input on curriculum content, school pedagogies or systems of evaluation. Paradoxically, some schools might include 'participation' as a curricular unit while neglecting children's participation in basic aspects of the school life.