

WRITTEN COMMENTS

of the European Roma Rights Centre Concerning the Czech Republic

For Consideration by the Human Rights Committee at its 108th Session.
(8-26 July 2013).



CHALLENGING DISCRIMINATION PROMOTING EQUALITY

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INTRODUCTION

The European Roma Rights Centre (ERRC)¹ hereby submits this parallel report to the United Nations Human Rights Committee commenting on the third periodic report of the Czech Republic. In line with the list of issues which will be taken up by the Committee, the themes the ERRC addresses in this report include:

- Anti-Roma discourse and marches,
- Housing situation,
- School discrimination of Romani children,
- Involuntary sterilisation of Romani women

The ERRC is concerned that the Czech Republic has done little to address the Committee's concerns and recommendations and that progress in complying with the International Covenant on Civil and Political Rights (ICCPR) remains limited.

As a member of the Decade of Roma Inclusion 2005-2015, the Czech Republic has politically committed to improve the socio-economic status and social inclusion of its Roma citizens. In 2005, the government submitted its National Action Plan for the Decade of Roma Inclusion which sketches the intended policies in the four target areas of employment, education, housing and health.² The Action Plan has not been updated since 2005 and it remains largely unimplemented.

In September 2011, the government adopted the Strategy for Combating Social Exclusion 2011-2015.³ The Strategy is a comprehensive document “of the Czech government to support the social inclusion of people in socially excluded localities in the Czech Republic, which are currently mainly populated by the Roma. The Strategy has a form of an action plan with 77 measures in the fields of education, employment, housing, social services, family policy, healthcare, security and regional development.”⁴ The relevant ministries responsible for the implementation of particular measures complied to earmark funding from their budgets. Despite the government's proclamation that the Strategy is a principal document to carry on social inclusion of Roma, the current Czech government decided to respond the EC call for National Roma Integration Strategies by submitting the previous and outdated Roma Integration Concept for 2010-2013⁵ which could rather be described as ‘a plan to have plan’. It lacks clear measures, timelines and budget allocations requested by the EU Framework for National Roma Integration Strategies up to 2020 (NRIS).⁶

In its first assessment of NRIS's, the European Commission concluded that “that most Member States have failed to allocate sufficient budgetary resources for Roma Inclusion”.⁷ This conclusion also applies to the Czech Republic, which besides expressing a readiness to use EU funds, did not indicate any funding allocations from the national budget. The European Commission also underlined for example, that the Czech Strategy needs more concrete targets and corresponding measures to tackle segregation of Roma children in the educational system; better measures to provide non-discriminatory access to housing, including good quality social housing; a more detailed description of timeframe, monitoring and evaluation system as well as ensuring the sustainability of funding.⁸

1 The European Roma Rights Centre is an international public interest law organisation working to combat anti-Romani racism and human rights abuse of Roma. The approach of the ERRC involves strategic litigation, international advocacy, research and policy development and training of Romani activists.

2 Czech Republic, *Decade of Roma Inclusion 2005-2015: National Action Plan*, 2005, available at: http://www.romadecade.org/files/downloads/Decade%20Documents/Czech%20Action%20Plan_engl.pdf.

3 Agency for Social Inclusion, *Strategy for Combating Social Exclusion for the Period 2011-2015*, 2011, available at: <http://www.socialni-zaclenovani.cz/dokumenty/strategie-boje-proti-socialnimu-vyloucení>.

4 Agency for Social Inclusion, *Strategy for Combating Social Exclusion for the Period 2011-2015*, p. 3.

5 Minister for Human Rights, *The Roma Integration Concept 2010-2013*, 2009, available at: http://ec.europa.eu/justice/discrimination/files/roma_czech_republic_strategy_en.pdf.

6 European Commission, *An EU Framework for National Roma Integration Strategies up to 2020*, available at: http://ec.europa.eu/justice/policies/discrimination/docs/com_2011_173_en.pdf.

7 European Commission, *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: National Roma Integration Strategies: a first step in the implementation of the EU Framework*, 2012, p. 14-15.

8 European Commission, Staff working document accompanying document to the National Roma Integration Strategies: a first step in the implementation of the EU Framework, SWD (2012) 133 - 21 May 2012, report available at: http://ec.europa.eu/justice/discrimination/files/roma_nat_integration_strat_en.pdf.

VIOLENCE AGAINST ROMA, ANTI-ROMA DISCOURSE AND DEMONSTRATIONS

Question from the Human Rights Committee: *Please comment on reports of racist and anti-Roma discourse among mainstream politicians at both national and local levels and anti-Roma demonstrations organized by far-right political groups. What measures are being taken by the State party to address this phenomenon?*

Attacks against Roma and their property are widespread in the Czech Republic. Anti-Romani statements in the public domain are common in the Czech Republic and may sometimes fuel violent attacks or hate crimes against Roma.

In the period of September 2011 to May 2012 – after an outbreak of anti-Roma riots in the Šluknovsko region in September 2011 – the ERRC registered a significant increase of violent attacks directed against Roma. There were 23 violent attacks that resulted in three deaths, and at least 16 anti-Roma marches have taken place.⁹

Local politicians and policemen who spread disinformation which supported anti-Roma sentiments have not been sanctioned to date. For example, in 2011, it emerged that Petr Jakubec, a member of the Regional Council of the Ústecký Region, had been paying a local activist who was spreading anti-Roma sentiments. There have been no charges issued and no official call for holding him (indirectly) responsible for what evolved in the series of anti-Roma riots in the region. Mr Jakubec was also repeatedly nominated by his Social Democrats party (ČSSD) and re-elected to the regional assembly in the aftermath of the riots.¹⁰

In the summer of 2011, local police headquarters reported two allegedly racially-motivated attacks by Roma against non-Roma in Northern Bohemia.¹¹ The ensuing investigation of the Ministry of Interior revealed that these attacks were not a racially motivated “massacre”, as declared by the local police spokesperson, but merely brawls among local people who had long-standing relations.¹² These incidents, however, initiated a series of anti-Roma marches in the region; the ERRC monitored at least nine marches called to spread anti-Roma sentiments.¹³ The mob with the most serious consequences occurred on 26 August 2012, when locals went on a spontaneous march to houses inhabited by Roma and attacked their houses or flats by throwing stones or branches. Despite the fact that the march was not officially registered with authorities, police forces did not act to disperse it; moreover they lost control over the mob which resulted in damaging the property of local Roma.¹⁴ In the following months the region experienced dozens of hate rallies against Roma, some of them participated by thousands of locals and resulting in physical conflicts with police forces. Numerous protests and demonstrations organised by both residents and extreme right wing organisations against Roma turned violent in several towns with attacks on Romani property. In response, national authorities dispatched 120 riot police to the region to protect the Romani residents.¹⁵ Intensive public action of several NGOs and the governmental Agency for Social Inclusion in cooperation with state police headquarters succeeded in calming down the riots.

In November 2012, the Director of the Government’s Agency for Social Inclusion accused the Czech journalist *Jindřich Ginter*, who writes for the mainstream printed media *Právo*, of writing on Roma tendentiously - supporting anti-Roma stereotypes and misinterpreting the work and expertise of the Agency.¹⁶ The news

9 ERRC, *Anti-Roma Violence in Czech Republic Must End*, May 2012. Available at: <http://www.errc.org/article/anti-roma-violence-in-czech-republic-must-end/3969>.

10 Lidovky.cz, *The Social Democratic Party in Děčín stands behind Mr Jakubec: he is nominated to the regional elections*, available at: http://usti.idnes.cz/decinska-cssd-jakubce-podrzela-radni-je-na-volebni-kandidatce-p51-/usti-zpravy.aspx?c=A111107_1680986_usti-zpravy_oks; Lidovky.cz, *The recordings prove that the councillor collaborated with a controversial activist*, available at: http://usti.idnes.cz/nahravka-dokazuje-spolupraci-raniho-jakubce-s-kontroverznim-aktivistou-1q7-/usti-zpravy.aspx?c=A111105_091630_usti-zpravy_alt.

11 Romea, *First Charge of Racially-motivated Battery-filled in Rumburk Attack*, available at: <http://www.romea.cz/en/news/czech/first-charge-of-racially-motivated-battery-filled-in-rumburk-attack>; and Romea, *Nový Bor: Five minutes of silence for victims of machete attack*, available at: <http://www.romea.cz/en/news/czech/novy-bor-five-minutes-of-silence-for-victims-of-machete-attack>.

12 The development of anti-Roma marches and the ‘carrier’ of the local popular leader who stood behind some of the marches are documented in a movie commissioned by the Czech Television: David Vondráček (dir.), *Na divokém Západu* September 2012, available in Czech at: <http://www.ceskatelevize.cz/porady/10327192109-na-divokem-severu-sluknovsko-2011-2012/21156226402>.

13 ERRC, *Map of incidents 2011-2013*, available upon request.

14 Romea, *Ethnic Czechs Attack Roma Housing in Rumburk*, available at: <http://www.romea.cz/en/news/czech/ethnic-czechs-attack-roma-housing-in-rumburk>. See also video report: <http://www.romea.cz/romeatv/index.php?id=detail&source=t&vid=b6GsODhuuJQ&detail=b6GsODhuuJQ>.

15 ERRC, *Violence against Roma*; available at: <http://www.errc.org/article/violence-against-roma/4055>.

16 Martin Šimáček, *The Editor Ginter uses anti-Roma vocabulary*, available at: <http://www.romea.cz/cz/zpravodajstvi/domaci/redaktor-prava-ginter-vede-protiromskou-kampan>.

agency Romea further emphasised that anti-Roma tendentious reporting has been common in the printed *Právo* and its online version *Novinky.cz*.¹⁷ Mr Ginter had been selected and finally won the Journalist Prize for the best Czech investigative article of 2012.¹⁸

During the Parliamentary Assembly of the Council of Europe (PACE) held on 23 April 2013, the Czech MP *Otto Chaloupka* (Public Affairs (VV) party) issued a statement in which he rejected the ongoing international criticism of the Czech Republic related to the DH case. Among other things, MP Chaloupka said, “If anyone has an opinion that the Czech Republic does not provide enough support for its Roma to integrate into society, I would be more than happy to arrange all finance issue necessary for them to move to your country, and I would follow with interest how you can deal with this problem.”¹⁹

Czech police have introduced some positive measures to curb anti-Roma violence, such as the establishment of Anti-Conflict Departments across the country to fight and prevent violence and aggressive behaviour.²⁰ Furthermore, the Organised Crime Detection Unit (ÚOOZ) launched raids against right-wing extremists and the police conducted operations protecting Roma in the Šluknovsko region.²¹ However, a more comprehensive response of the police - including trainings to police officers on addressing violence against Roma and hate crimes, and implementing programmes to increase the number of Roma in the police forces - is needed to adequately respond to the deteriorating situation. It is also crucial to ensure that relevant authorities use available information and guidelines for investigating and prosecuting hate crimes in their response to crimes against Roma.²²

HOUSING

Question from the Human Rights Committee: *With reference to the Strategy for Roma Integration for the period 2010-2013 (CCPR/C/CZE/3, para. 240), please provide information about the methods by which the State party identifies nationals as belonging to Roma community. Please also provide statistics: (a) on unemployment rates among Roma people; (b) on the number of families belonging to Roma community who benefited from subsidised municipal houses and the progress made in promoting the right to housing of this community and in protecting them from eviction; (c) on representation of Roma in civil service, including police.*

According to the EC/UNDP/WB 2011 Regional Roma Housing survey, only 11% of Roma households, compared to almost half of geographically close non-Roma households, resided in the property they own; almost 10% of Roma households use wood for cooking; 30% of Roma household do not have their waste collected regularly. In the Czech Republic 14% of Roma households live in ruined houses or slums and 9% are live in accommodation with very bad interiors.²³ Almost half of the Roma in the Czech Republic feel under the threat of evictions; 18% feel worried and 30% feel very worried that they will be evicted in the near future. Compared with the other 11 countries surveyed, the situation relating to eviction threats is the worst in the Czech Republic.²⁴

17 Romea, *An analysis: Novinky.cz are harsh on readers while reporting on the criminality of some Roma in the UK*, available at: <http://www.romea.cz/cz/zpravy/analiza-novinky.cz-drou-ctenare-z-kuze-v-souvislosti-s-kriminalitou-nekterych-romu-v-britanii>; and František Kostlán, *The Pravo daily earn credit on anti-Roma populism*, available at: <http://www.romea.cz/cz/zpravy/frantisek-kostlan-denik-pravo-vydelava-na-protiromskem-populismu-co-to-udela-se-spolecnosti-jej-nezajima>.

18 Novinarska cena.cz, available at: <http://www.novinarskacena.cz/aktuality/novinarska-cena-2012-zname-jmeno-viteze-cesko-slovenske-ceny-verejnosti/>, also: Novinky.cz, *The Pravo editor received the journalist price 2012*, available at: <http://www.novinky.cz/domaci/300117-redaktor-prava-a-serveru-novinky-cz-prevzal-novinarskou-cenu-2012.html>.

19 Otto Chaloupka, *Speech at the Parliamentary Assembly of the Council of Europe*, 23 April 2013, available at: <http://www.assembly.coe.int/Main.asp?link=/Documents/Records/2013/E/1304231530E.htm>; the Czech version available at: <http://www.ottochaloupka.cz/novinky/jsem-uz-naveny-z-neustaleho-osocovani-cr-z-diskriminace-romu-branil-jsem-cr-na-plenu-rady-evropy>.

20 Ministry of Interior, *Anti-conflict or Conflict Teams*, available at: <http://www.mvcr.cz/clanek/antikonfliktnebo-konfliktni-tymy.aspx>, last accessed on 15 February 2013.

21 Czech Radio, *Special police force reinforced in the Šluknovsko region*, 1 February 2012, available at: http://www.rozhlas.cz/zpravy/regiony/_zprava/sluknovsko-se-dockalo-policejnich-posil-ze-specialni-jednotky--1012078.

22 ERRC, Life Together, and the Group of Women Harmed by Forced Sterilization, *Parallel Report to the Human Rights Council, within its Universal Periodic Review – Czech Republic*, April 2012. Available at: <http://www.errc.org/cms/upload/file/czech-republic-un-upr-submission-10-april-2012.pdf>.

23 UNDP, *The Housing Situation of Roma Communities, Regional Roma Survey 2011*, 2012.

24 UNDP, *The Housing Situation of Roma Communities: Regional Roma Survey 2011*, p. 41.

ERRC work in the area of housing has been predominantly focused on cases of evictions, and it is due this thematic focus that this submission does not address other questions related to the housing situation. The following description of eviction in Ostrava demonstrates the procedure applied by the authorities and the consequences for the affected Roma.

On the morning of 3 August 2012, the Head of Ostrava's Construction Office delivered an eviction notice to more than 80 Romani families living in rented housing on Prednádraží Street, Ostrava-Přívoz, giving them just over 24 hours to leave the premises voluntarily. The eviction order declared the houses of Prednádraží Street unsafe for human habitation due to damage to the structure and electrical installations, as well as inadequate sanitation. If the inhabitants had failed to leave, they would have risked having the police enforce the eviction order. The private owner was requested to refuse access to the buildings and when he appealed the demolition order and refused to secure any measures,²⁵ the municipality employees taped the access to most of the houses.²⁶ Not all the evicted families were provided with alternative accommodation.

The sanitation problem was caused by a failure of the property owner and local authorities to maintain the sewerage system – which left numerous houses polluted with raw sewage. After an initial dispute between the private owner and the Ostrava municipality over the ownership of the damaged sewage system, in which neither side took responsibility, the town changed its position and declared the sewage lines were owned by the state (specifically, by Czech Railways), and requested a declaratory judgment on the issue from the District Court in Ostrava.²⁷

The private dormitories offered as alternative housing were inadequate as they assigned in most cases one room to each family – some of which have up to nine members. Several evicted families have to share cooking and sanitation facilities. Four families shared two toilets and two shower facilities, while approximately 16 families shared one kitchen. Moreover, rental prices for a room at the dormitories are more than double what the families were previously paying for a flat and this raised serious concern about their ability to afford the proposed alternative. Finally, similar bad sanitary conditions, which served as the main argument for evictions, were found in the private dormitories where some of the evicted Roma suffered dysentery.²⁸

Czech local authorities completely failed to consult with the Romani families adequately before the planned eviction, contrary to international law procedural standards on forced evictions that require an opportunity for genuine consultation with those affected, adequate and reasonable notice prior to the date of the eviction, as well as ensuring that information on the proposed eviction is available in a reasonable time.²⁹ Numerous residents were not adequately informed about the alternative housing options available to them.³⁰ Despite a deadline set by the local authorities, most of the families stayed in the houses in Přednádraží Street, facing difficulties in enjoying their right to adequate housing, particularly in relation to access to basic services. Access to water was severely limited and on 18 September 2012 electricity was cut off in three of the houses, leaving the families in complete darkness and with no access to cooking and heating facilities.

Local authorities have so far refused to allocate housing alternatives other than dormitories to the Romani inhabitants.³¹ Most of the families finally had to move to dormitories, due to fear of eviction and the risk of homelessness, as they did not meet the criteria set up by the local authorities for being eligible for social housing. The criteria include a requirement of regular employment or being retired, which were not met by most of the Roma from Přednádraží Street.³² The families resisting the eviction order strived to improve the conditions

25 Romea, *Ostrava Ghetto Landlord appeals demolition order*, available at: <http://www.romea.cz/en/news/czech/czech-republic-ostrava-ghetto-landlord-appeals-demolition-order>.

26 Romea, *Czech Municipality Gets Tough on Ostrava Ghetto Residents*, available at: <http://www.romea.cz/en/news/czech/czech-municipality-gets-tough-on-ostrava-ghetto-residents-again>.

27 *Ibid.*

28 Romea, *Dysentery on the rise in Ostrava residential hostels*, available at: <http://www.romea.cz/en/news/czech/czech-republic-dysentery-on-the-rise-in-ostrava-s-residential-hotels>.

29 General Comment No. 7 on the Right to Adequate Housing: Forced Evictions by the CESCR (United Nations Committee on Economic, Social and Cultural Rights), available at: <http://www.unhchr.ch/tbs/doc.nsf/0/959f71e476284596802564c3005d8d50>.

30 Romea, *Czech Municipality says evictions are landlord's responsibility*, available at: <http://www.romea.cz/en/news/czech/czech-municipality-says-evictions-are-landlord-s-responsibility>.

31 Romea, *Ostrava municipality won't provide accommodation to Prednadrazi inhabitants*, available at: <http://www.romea.cz/cz/zpravodajstvi/domaci/centralni-ostravsky-obvod-lidem-z-prednadrazi-byty-neda>.

32 Romea, *Power cut to ghetto, Romani residents plan temporary move*, available at: <http://www.romea.cz/en/news/czech/czech-republic-power-cut-to-ghetto-romani-residents-plan-temporary-move>.

of the houses with support from the NGO “Life Together” and other organisations, addressing the arguments of the Construction Office in the eviction note. “Life Together” managed to sign an agreement with the private owner and to collect donations enabling it to start repairing one of the houses (sanitation, static, roof, electrical networks, water supply) and they managed to bring the house No. 8 in a fully functional conditions.

In direct connection to the assistance provided to the remaining Roma in Přednádraží Street, the authorities of Ostrava-Přívoz cancelled a leasing agreement with “Life Together” for its main office and its legal and social counselling centre. “Life Together” was thus forced to relocate its offices to a new address in January 2013.³³ The Ostrava authorities also considered suing the director of “Life Together” for defamation.³⁴

On 26 April 2013, the Regional Court in Ostrava ruled that local authorities did not proceed in accordance with the law when trying to evict Romani families last year. The court found that the eviction notice issued to dozens of Romani families was not procedurally correct and not sufficiently precise.³⁵ Following the court’s decision, the private owner of Přednádraží signed new tenancy contracts with ten families³⁶; however, after the further negotiations with the local Construction Office, the owner changed his mind, declared the contracts invalid, and filed a criminal complaint against the families who continued living in Přednádraží.³⁷ Finally, in June 2013 the remaining families move out to private dormitories. The Přednádraží houses are currently offered to auction due to the owner’s debts to the water and sewage supplier.³⁸

SCHOOL SEGREGATION

Question from the Human Rights Committee: *Please indicate whether Roma children continue to be over-represented in “special schools” or “practical elementary schools” (CCPR/C/CZE/3, para. 247) and separated from other children in mainstream schools. Please explain how this policy complies with Covenant rights. In this context, please provide further information on the execution of the National Action Plan for Inclusive Education (CCPR/C/CZE/3, para. 248) and comment on information that lack of financial resources and the resignation of members of the Ministry of Education’s working group tasked to implement the National Action Plan for Inclusive Education has resulted in difficulties in its implementation.*

In November 2007, the European Court of Human Rights (ECtHR) ruled in a landmark judgement (*D.H. and Others v Czech Republic*) that the Czech Republic discriminates against Romani children by placing them disproportionately to special schools designed for children with mild mental disabilities.³⁹ The case was filed by the ERRC in 1999 on behalf of 18 Romani pupils who sued the Czech government for fast tracking them into special education due to their ethnicity. The case included statistical evidence which showed that in some regions of the Czech Republic, Romani children were as much as 27 times more likely to be placed in special schools in comparison to non-Romani children.

In March 2010, the Czech Republic adopted the National Action Plan on Inclusive Education (NAPIE) to address the problem of discrimination of Romani children in access to education and to implement the European Court

33 Czech Television, *Life Together got a notice: it is related to Přednádraží said Vishwanathan*, available at: <http://www.ceskatelevize.cz/zpravodajstvi-ostrava/zpravy/212768-vzajemne-souziti-dostalo-vypoved-je-to-kvuli-prednadrazi-rika-vishwanathan?mobileRedirect=off>. See also: <http://www.infoportaly.cz/ostravsko/ostrava/13172-obcanske-sdruzeni-vzajemne-souziti-dostalo-vypoved>.

34 Romea, *Municipality Hopes to Sue Human Rights Activist for Defamation*, available at: <http://www.romea.cz/en/news/czech/czech-republic-municipality-hopes-to-sue-human-rights-activist-for-defamation>.

35 ERRC, *Positive Decision on Roma Evictions in Czech Republic*, available at: <http://www.errc.org/article/positive-decision-on-roma-evictions-in-czech-republic/4138>.

36 Romea, *The Prednadrazi residents signed new tenancy contracts*, available at: <http://www.romea.cz/cz/zpravodajstvi/domaci/obyvatele-ostravskeho-prednadrazi-podepsali-nove-najemni-smlouvy>.

37 Romea, *The landlord requests the Prednadrazi residents to move out today*, available at: <http://www.romea.cz/cz/zpravodajstvi/domaci/majitel-vyzval-lidi-z-domu-v-prednadrazi-aby-se-dnes-vystehovali>; Romea, *The landlord filed a criminal complaint against the Prednadrazi tenants*, available at: <http://www.romea.cz/cz/zpravodajstvi/domaci/majitel-domu-v-prednadrazi-podal-na-najemniky-trestni-oznameni>.

38 Romea, *Czech court initiates distraint against prednadrazi landlord, action may result*, available at: <http://www.romea.cz/en/news/czech/czech-court-initiates-distraint-against-prednadrazi-landlord-auction-may-result>.

39 European Court of Human Rights, *Case of D.H. and Others v. The Czech Republic*, 13 November 2007, available at: <http://www.errc.org/cms/upload/media/02/D1/m000002D1.pdf>.

judgment in the DH case.⁴⁰ Serious concerns remain regarding the content of the NAPIE, as it does not include concrete targets.⁴¹ The Plan also includes an unacceptably slow time frame for implementation given the urgency of the issue – practical effects on the ground are not anticipated until 2014 - and it does not identify funding.⁴² Furthermore, the NAPIE does not address the need for extra educational support structures for Romani children within mainstream education. The document has been further criticised for its failure to explicitly address racial discrimination within the Czech educational system.⁴³

The Czech Republic has also developed a competing inclusive education plan amid a larger strategy for Roma generally. In September 2011, the Czech government approved the Strategy for the Fight against Social Exclusion 2011-2015.⁴⁴ The education component of the Strategy, developed by the Agency for Social Inclusion in Romani Localities, is regarded by Czech education experts and civil society actors alike as an impressive document that is premised on the notion that a fair and efficient education system is central to the fight against the perpetuation of social disadvantage from one generation to the next. It envisions a 50% increase in per capita financing available for socially disadvantaged children (including Romani children), and an array of support measures that would help children transition from “practical” schools to mainstream education. The Strategy includes plans for subsidies for meals, school supplies and transportation to ensure that all children are learning under the same conditions. Yet serious doubts remain as to its implementation, too. Despite calling for an increase in funding to address exclusion, no budget has been allocated to implement this Strategy, nor is it binding on any government department. No consensus exists as to whether this Strategy or the NAPIE prevails, or if either has any political or financial backing and support.⁴⁵

Finally, in November 2012, the Czech government submitted a New Consolidated Action Plan to the Council of Europe’s Committee of Ministers.⁴⁶ It remains unclear whether the new plan essentially replaces, or should be seen in addition to, the current NAPIE, nor how it relates to the Czech Strategy for Combating Social Exclusion 2011-2015.

In 2011, the Czech Ministry of Education, Youth and Sport amended two decrees directly connected to the system of special education, in response to numerous protests and submissions by several international and national institutions and NGOs. Decree 72/2005 on the Provision of Counselling Services in Schools and School Counselling Facilities (“Decree on Counselling (No. 116/2011)”) and Decree 73/2005 on the Education of Children, Pupils and Students with Special Educational Needs and Exceptionally Gifted Children, Pupils and Students (“Decree on Special Education (No. 147/2011)”) with effect from 1 September 2011.⁴⁷ Some of the most problematic provisions of these two decrees were amended before the decrees’ passage.⁴⁸ For example, Section 10 of Decree on Special Education (No. 73/2005) was modified so it no longer allows for children without disabilities to constitute up to 25% of classes for children with disabilities. Moreover, temporary placements in practical school (a so-called ‘diagnostic stay’) will be abolished, and integration in mainstream schools will be preferred. Finally, an annual re-assessment of children placed in practical schools is being introduced.

40 Ministry of Education, *National Plan for Inclusive Education*, 2010, available at: <http://www.msmt.cz/socialni-programy/narodni-akcni-plan-inkluzivniho-vzdelavani>.

41 *Ibid.*

42 ERRC and OSJI, *Submission to the Committee of Ministers of the Council of Europe on the D.H. and Others v. The Czech Republic*, March 2012, available at: <http://www.errc.org/cms/upload/file/eighth-communication-to-the-committee-of-ministers-on-judgment-implementation-18-may-2012.pdf>.

43 Amnesty International, *Submission to the Committee of Ministers of the Council of Europe on the D.H. and Others v. The Czech Republic*, October 2011, available at: <http://www.amnesty.org/fr/library/asset/EUR71/005/2011/en/65f6ddcd-17df-4756-874a-cd121427f210/eur710052011en.pdf>.

44 Agency for Social Inclusion, *Strategy for Combating Social Exclusion for the Period 2011-2015*.

45 OSJI, ERRC, COSIV, *Eighth Communication to the Committee of Ministers on the DH Judgment Implementation*, available at: <http://www.errc.org/cms/upload/file/eighth-communication-to-the-committee-of-ministers-on-judgment-implementation-18-may-2012.pdf>.

46 Government of the Czech Republic, *Consolidated Action Plan for the Execution of the Judgment of the European Court of Human Rights in the Case of D.H. and Others v. The Czech Republic*, available at: <https://wcd.coe.int/ViewDoc.jsp?id=1846711&Site=CM&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864>.

47 Ministry of Education, *Amendments no. 116/2011 and 147/2011 of the Ministerial Decrees no. 72/2005 and no. 73/2005*, available at: <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=1962655&SecMode=1&DocId=1797718&Usage=2>.

48 See: ERRC, OSJI, COSIV, *Eighth Communication to the Committee of Ministers on the DH Judgment Implementation*.

Since 2009, the Czech authorities have carried out five inquiries into the ethnic composition of practical schools.^{49,50} Although each survey was conducted with a different methodology, they all provided evidence that Romani children are significantly over-represented in the education system designed for children with disabilities. In the school year 2011/2012, the Office of the Czech Ombudsperson looked into a representative sample of 67 former special schools⁵¹ throughout the country, which provide education under curricula for pupils with mild mental disabilities. According to the findings of the Ombudsperson, 35% of the pupils in these schools and classes were Roma.⁵² These numbers are strikingly at odds with the official population estimates according to which Roma represent 1.4 to 2.8% of the total population living in Czech Republic and no evidence exists to show that Roma are more likely to suffer mental disabilities in larger numbers than any other group. The Ombudsperson concluded that even five years after the Czech Republic was found to be discriminating against Romani children, they continue to be substantially overrepresented in practical schools and classes. Such overrepresentation, the Office stated, amounts to segregation which predestines future generations of Roma to a life in poverty. The Ombudsperson's report called on the government to take measures that will ensure inclusion of Romani pupils into the mainstream educational system. What is clear from the various inquiries carried out by Czech government bodies is that segregation of Romani children in education continues practically unchanged with any advertised government policy measure.

The lack of progress to implement the Czech Government's commitment to end discrimination against Roma children in education, and to achieve measures of inclusive education that benefit both Roma children and children with disabilities remains a serious concern, in particular in light of recent statements⁵³ that the Government has no intention of abolishing practical schools and that preparatory classes and kindergartens will continue existing under the system of practical schools.⁵⁴ We consider that these statements undermine the commitment made by the Government in the Strategy for Combating Social Exclusion for 2011-2015 to progressively transform the practical school system and include pupils in mainstream education.⁵⁵ The decision to backtrack from the commitment on progressive transformation of the practical schools system amounts to a significant hindrance to the reforms the Czech Republic is bound to implement with respect to the *D.H. and Others* case, as well as its commitments under the *Convention on the Rights of Persons with Disabilities*.⁵⁶

- 49 The new School Act (2004) named the schools and classes designed for children with mild mental disabilities newly as practical schools and classes. The term 'special school and classes' was limited to schools educating children with medium and severe mental disabilities.
- 50 MŠMT 2009a: *Education Paths and Education Chances of Roma Pupils in Elementary Schools in the Neighbourhood of Socially Excluded Localities: The Final Report of the Czech Ministry of Education Project – Sociological Research Focused on Analysis of Forms and Causes of Segregation of Children, Pupils and Young People from Socially Disadvantaged Environment*, Prague, Ministry of Education: Available at: www.msmt.cz/uploads/Skupina_6/VZDELANOSTNI_DRAHY.pdf. MŠMT 2009b: *Analysis of An individual teacher's approach to the Pupils with Special Educational Needs: The Final Report of the Czech Ministry of Education Project*, Prague, Ministry of Education, available at: http://www.google.hu/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0C1QfJAA&url=http%3A%2F%2Fwww.msmt.cz%2Fuploads%2Fsoubory%2Ftiskove_zpravy%2FAnalyza_individualniho_pristupu_pedagogu_k_zakum_se_specialnimi_vzdelavacimi_potrebami_PLNE_ZNENI.pdf&ei=vs48UPepL_14QSzgYHwCA&usq=AFOjCNGxEnR2scpX4nVfoBlxKTP67myzQ&sig2=AXOYWk3716uLtQOrE46tA. ÚIV 2009: *Monitoring of the General Education Program (RVP)*, Prague, Institute for Information in Education, available at: <http://www.ferovaskola.cz/data/downloads/monitoring%20RVP.pdf>. ČŠI 2010: *General Information from the Thematic Inspection in the Former Special Schools*, Prague, Czech School Inspectorate, available at: <http://www.csicr.cz/cz/Dokumenty/Tematicke-zpravy/Zprava-z-kontrolni-cinnosti-v-byvalych-zvlastnich>. VOP 2012: *Research of the Public Defender of Rights into the Question of Ethnic Composition of Pupils of Former Special Schools*, Brno, Public Defender of Rights, available at: http://www.ochrance.cz/fileadmin/user_upload/DISKRIMINACE/Vyzkum/Vyzkum_skoly-zprava.pdf. ČŠI 2012: *Thematic Report: Progress in Transformation of Former Special School in the School Year 2011/2012*, Prague, Czech School Inspectorate, available at: <http://www.csicr.cz/cz/Dokumenty/Tematicke-zpravy/Tematicka-zprava-Postup-transformace-byvalych-zvla>.
- 51 The 2004 School Act transformation of special schools allowed schools teaching according to the curricula for children with mild mental disabilities to be officially listed either as 'practical elementary schools' or regular elementary schools – consequently, many former special schools started operating hidden as regular elementary schools. This situation applies until nowadays.
- 52 Public Defender of Rights, *Research of the Public Defender of Rights into the Question of Ethnic Composition of Pupils of Former Special Schools*, Brno, 2012, available at: http://www.ochrance.cz/fileadmin/user_upload/DISKRIMINACE/Vyzkum/Vyzkum_skoly-zprava.pdf.
- 53 *Idnes.cz, Practical schools will not be closed, regular elementary schools are not ready for the change*, March 6, 2013, available at: http://zpravy.idnes.cz/zvlastni-skoly-se-rusit-nebudou-doe/domaci.aspx?c=A130305_214029_domaci_brm; *Romea.cz, Czech MinEd: "Practical primary schools" will not be closed*, March 22, 2013, available at: <http://www.romea.cz/en/news/czech/czech-edmin-practical-primary-schools-will-not-be-closed>.
- 54 *Aktualne.cz, Stigmatized entry to life, special kindergartens remain in the Czech Republic*, April 2, 2013, available at: <http://www.news.sk/rss/link/2013/04/1152512/s-nalepkou-do-zivota-specialni-skoly-v-cesku-zustanou>.
- 55 Agency for Social Inclusion, *Strategy for Combating Social Exclusion for the period 2011-2015*, measures 4.5.3.3 and 4.5.3.4, available at: <http://www.socialni-zaclenovani.cz/dokumenty/strategie-boje-proti-socialnimu-vyloucenil>.
- 56 UN General Assembly, *Convention on the Rights of People with Disabilities*, January 24, 2007, A/RES/61/106, available at: <http://www.un.org/disabilities/convention/conventionfull.shtml>.

Recently, the Supreme Court of the Czech Republic delivered a judgment in the case of *Jaroslav Suchy v Ministry of Education*, and held that enrolment of the plaintiff into special education system did not unlawfully interfere with his personality rights. What is striking in this case is that the court (despite recalling *D.H. v Czech Republic* and case-law on shifting of burden of proof in discrimination cases) held that overrepresentation of the Roma children in the special education system below 50% does not create a *prima facie* discrimination case and thus does not result in the shift of burden of proof to the state. The Supreme Court was of the opinion that the fact that Roma represented 40% of the pupils in the special education system at the time Mr. Suchy was enrolled into it is not sufficient to be considered to be *prima facie* evidence of discrimination, thus not allowing shifting of burden of proof.

Despite the landmark judgement by the European Court of Human Rights (ECtHR), *D.H. and Others v Czech Republic*, in November 2007, little has changed in the experience of the Czech Romani children. The continued segregation of Romani pupils in practical schools and classes – on the basis of real or alleged special learning needs – infringes the European Union Race Equality Directive (2000/43/EC of 29 June 2000). The Directive is a key means of promoting inclusion and human rights principles while combating discrimination. The fact that a great number of Romani pupils in both practical and Roma-only elementary schools continue to be segregated, and consequently follow an inferior quality, reduced curriculum with little chance of succeeding (or even accessing) academic secondary and higher education, serves to secure their exclusion from broader society and consigns them to a cycle of poverty and deprivation.

STERILISATION

Question from the Human Rights Committee: *Please outline the measures taken by the State party to put an end to forced sterilisation of Romani women. Please also provide information on the status and content of the new law on health services (CCPR/C/CZE/3, para. 46), including on how it envisages clearly defining the requirements of free, prior, and informed consent with regard to sterilisation, and provide further explanations on the exceptions to these requirements envisaged in the new legislation, in particular with respect to the basis for an exception in “life-threatening” situations. Please indicate the measures taken by the State party to enable Romani women sterilised in a coercive and non-consensual manner to have access to free legal aid for the purpose of claiming compensation (CCPR/C/CZE/3, para. 49). Please provide further information on the criminal prosecutions initiated and the reasons behind their suspension or discontinuance.*

In the former Czechoslovakia, a Public Decree on Sterilisation⁵⁷ from 1972 enabled the government to take programmatic steps to encourage the sterilisation of Romani women in order to reduce the birth-rate of the Romani population, which they characterised as “high [and] unhealthy”.⁵⁸ This legal provision, abolished in 1991, resulted in giving the government more or less free reigns to systematically sterilise Romani women without their full and informed consent. According to the Czech Ombudsperson report, at least to 1991 the sterilisation practice was directly encouraged by eugenic state policy.⁵⁹

On 17 February 2012, the Czech Government’s Human Rights Council passed a motion urging the Czech Government to introduce a mechanism for adequate financial redress for victims of involuntary sterilisation.⁶⁰ The Council advised establishing a systematic and transparent compensation mechanism for women subjected to involuntary sterilisations. In this regard, the motion suggests creating a compensation committee that would review the cases of sterilisation and propose individual remedies.⁶¹

The Council’s compensation proposal counted on dividing involuntarily sterilised women in 2 groups: (1) women, subjected to coercive sterilisations between 1 January 1972 and 27 May 1991, directly eligible for compensation

57 Government of the Czech Republic, Decree on Sterilisation: *Bulletin of the Ministry of Health of the Czech Socialist Republic* (29 February 1972).

58 ERRC, *Ambulance Not on the Way: The Disgrace of Health Care for Roma in Europe, 2006*, available at: <http://www.errc.org/cms/upload/media/01/E6/m000001E6.pdf>.

59 Public Defender of Rights, *Final Statement of the Public Defender of Rights in the Matter of Sterilisations Performed in Contravention of the Law and Proposed Remedial Measures*, Brno, 2005.

60 *Human Rights Council*, Recommendation related to the sterilisation of women executed in the Czech Republic in breach with the law, 2012, available at (in Czech): <http://www.vlada.cz/cz/ppov/rfp/cinnost-rady/zasedani-rady/zasedani-rady-dne-17-unora-2012-98737/>.

61 More details can be found in an ERRC/partner letter of concern, *NGOs Welcome Czech Republic Recommendation on Forced Sterilisation*, available at: <http://www.errc.org/article/ngos-welcome-czech-republic-recommendation-on-forced-sterilisations/3971>.

due to the direct involvement of the state which provided financial and material incentives to women undergoing sterilisation; (2) women sterilised after 1991 who would be entitled to compensation if they were unable to sue in civil court before the three-year statute of limitations – in this group, direct state involvement was not declared, so they would have to claim harm by individual doctors and hospitals. The way these two groups are defined generates a third possible group: women sterilised between 27 May and 31 December 1991, who are left entirely uncovered by the compensation recommendations. Similarly uncovered are also women coercively sterilised in Slovakia prior to 1991 nowadays residing in the Czech Republic. The Council's proposal further included free of charge legal assistance for sterilised women, and the recommendation to the Czech Government (Ministry of Health) to ensure that the medical documents on sterilisation continue being archived.

To date there have been three court cases where forced or coercively sterilised women have been financially compensated. All three cases were considered by the European Court of Human Rights, the last one was found to be in breach of ECtHR procedural rules and rejected, as there was a friendly settlement agreed at the domestic level. The women, sterilised in 1997, 2001 and 2003, were eventually compensated either by the court decision or in an extrajudicial settlement.⁶² The primary challenge at domestic courts is that the three-year statute of limitation, dating from the moment of sterilisation, prevents the majority of victims from bringing civil claims for damages. Although in September 2011, the Supreme Court in Czech Republic ruled in one case that the three-year statute of limitations restricting civil court claims for damages can be lifted in very specific circumstances when found in contradiction with common morals, the lower-level courts do not follow this judgment. The Ministry of Justice, although previously assigned the task, refused to analyse the lifting of the statute of limitations in this category of cases.⁶³ The recent case of the League of Human Rights NGO representing a sterilised woman from the town of *Znojmo* proved that it is impossible to win compensation with Czech courts.⁶⁴

Seven years after the Ombudsperson's report, and one and a half years since the Human Rights Council's motion was signed by the Prime Minister, significant barriers to access to justice persist for the Romani victims of coercive sterilisation. The governmental response to date has not moved forward to create any form of redress mechanism or safeguards. The Czech Government's Human Rights Council's recommendation has not been discussed by the government and the responsible ministries have yet to come with measures urged by the Council's motion. Moreover, several recommendations from the motion do not have the government's support.

On 15 May 2013, the Czech Helsinki Committee called a meeting in Prague to discuss the delays in implementation of the Council's motion. During the meeting, the Government's Human Rights Commissioner stated that ministries are currently discussing the motion, however the compensation scheme itself has not been defined yet; Ministry of Health has been designated as the leading subject for deciding on the adequacy and form of compensation. The Motion's recommendations do not enjoy governments support. The repeated inter-ministerial review concluded that there will not be a new legislative measure used for redress – this will have significant consequences as not bringing the redress mechanism to the legislative level means that it would be difficult to earmark resources from the state budget. Thus, it remains unclear which factual mechanisms are foreseen for compensation schemes. Human Rights Commissioner is yet to have meetings with Ministry of Finance, which previously declared no money possible to earmark from the state budget for compensation. The roughly estimated amount for individual cases is approximately 200.000 CZK and according to the Commissioner the proposal for compensation will be introduced to the government in the middle of 2014.

The ERRC acknowledges with concerns that the recently passed amendments to the motion disqualify all women sterilised after 1991 from claiming compensation as the representatives of affected ministries agreed that there will be a redress offered only to those case where engagement of state sector can be traced through specific decrees which were abolished in 1991. Under the current proposal, the women sterilised after 1991 will neither be included in the compensation scheme nor they will be able to pursue their compensation claims through the courts because of three year statute of limitation. The Ministry of Justice is not considering introducing free-of-charge legal representation due to lack of finances. In addition, the Ministry of Health did not consider reviewing the period of 30 years for archiving documentation. As a result, many sterilisation documents dating back to 1970s can now

62 European Court of Human Rights, *Ferenčíková v the Czech Republic* (Application no. 21826/10), *Červeňáková v the Czech Republic* (Application no. 26852/09); and *R.K. v the Czech Republic* (Application no. 7883/08).

63 The Government of the Czech Republic, Decision 770/2011 of 19 October 2011, available at: [http://kormoran.vlada.cz/usneseni/usneseni_webtest.nsf/0/87725D06F85FE727C1257956002CC333/\\$FILE/770%20uv111019.0770.pdf](http://kormoran.vlada.cz/usneseni/usneseni_webtest.nsf/0/87725D06F85FE727C1257956002CC333/$FILE/770%20uv111019.0770.pdf). The representatives of the Ministry of Justice at the meeting organized in Prague by the Czech Helsinki Committee on 15 March 2013 stated that the statute won't be lifted.

64 League's representative at the meeting organized by the CHC, Prague, 16 May 2013.

be disposed of (the Minister of Health only issued an oral request to hospitals asking them not to dispose of the documentation). All the changes mentioned above give reasons to suggest that the government is not serious in providing acknowledgment and redress to women involuntarily sterilised.

RECOMMENDATIONS

1. EDUCATION:

The ERRC makes the following recommendations to the Ministry of Education/Government of the Czech Republic:

- Fully implement the new Consolidated Action Plan for the Execution of the D.H. Judgement. Make sure that the plan timelines and indicators for achieving inclusive education are respected, and link its implementation to a clear, secure funding source;
- Take concrete and targeted steps to implement the revised NAPIE and the Strategy for Combating Social Exclusion 2010-2015;
- Make available the necessary human and other resources, including the resources from European Union (EU) Structural Funds, for the effective implementation and monitoring of the NAPIE, the Strategy and other desegregation measures;
- Immediately adopt a moratorium on placements of Romani children in schools and classes for pupils with “mild mental disabilities” and undertake a comprehensive review of the system to ensure compliance with international and regional standards on education and non-discrimination, at all times ensuring the best interests of the child;
- Immediately review the system of assessments used to diagnose mild mental disabilities to adequately account for the range of issues it currently addresses (including mild mental disability, social disadvantage, etc.) and to eliminate the impact of racial discrimination against Roma in its application;
- Immediately transfer all Romani children erroneously placed in practical schools to mainstream schools containing a mix of Romani and non-Romani pupils, and provide the relevant support to facilitate their successful integration;
- Start implementing measures for progressive transformation of the system of schools established for “pupils with mild mental disabilities”, including the phasing out of practical schools within a realistic time period and their replacement with inclusive education within the mainstream system in line with the Strategy and accompanied by the necessary resources to achieve this goal;
- Urgently adopt legislation and measures explicitly mandating the desegregation of Czech schools;
- Adopt a concrete plan and timeline commencing at the earliest opportunity, with clear annual targets to eliminate school segregation and secure inclusive education in compliance with the Strategy;
- Review the discriminatory impact of non-Romani parents taking their children away from schools with Romani children, and take concrete, targeted and effective steps to combat any increase in segregation in practice;
- Ensure that the designation of school districts does not result in racial segregation of Romani children and promote their integration in all mainstream schools. Measures such as provision of free transport, and adoption of temporary special measures such as quotas, or others, should be considered in line with the government’s obligation to tackle racial discrimination and segregation;
- Consistently monitor and collect disaggregated data according to ethnicity, gender and disability as a tool to assess the implementation and impact on the ground of the decrees, the NAPIE, pilot projects and other steps to promote inclusive education;
- Empower the School Inspectorate to fulfil its function to prevent, prohibit and eradicate segregation in education. It will need: adequate financial and human resources, robust, detailed guidelines and procedures on how to identify, monitor and combat segregation in practice, the ability to impose sanctions for violations of the ban on discrimination and segregation, and provision of training for its staff on the issue of discrimination and the principle of equal treatment in education;

- Ensure that the Ombudsperson is adequately resourced to monitor the desegregation of schools and the integration of children from practical elementary schools into mainstream elementary schools.

2. COERCIVE AND INVOLUNTARY STERILISATION

The ERRC makes the following recommendations to the Czech government:

- Grant compensation to all victims of coercive sterilisation in the Czech Republic irrespective of the date of sterilisation, ethnicity, nationality or age;
- Make sure that the any commission for compensation will contain independent expert representatives along with representatives of ministries and health services;
- Ensure that all victims of involuntary sterilisation are provided with free legal aid and all litigation costs are covered;
- Secure access to non-financial compensation benefits such as artificial fertilisation, rehabilitation, etc.;
- Conduct research into the full extent of harms caused by the practice of coercive sterilisation, and support on-going outreach to all potential applicants for compensation;
- Assign the Czech Foreign Ministry to undertake negotiations with the Slovak Government to provide redress for women sterilised in Slovakia prior to 1991;
- Make sure that new Sterilisation Guidelines incorporating the 2011 FIGO ethical guidelines on female contraceptive sterilisation, which states that sterilisation cannot be justified on grounds of medical emergency, are adopted;
- Establish clear procedural guidelines for following up on complaints of rights violations and strengthen administrative accountability mechanisms at hospitals.

3. VIOLENCE AGAINST ROMA AND ANTI-ROMA PUBLIC DISCOURSE

The ERRC makes the following recommendations to the Czech authorities:

- Prosecute to the fullest extent of the law all perpetrators of violence and hate crimes against Roma;
- Ensure that relevant authorities use available information and guidelines for investigating and prosecuting hate crimes in their response to crimes against Roma;
- Senior government officials should publicly denounce every instance of anti-Roma violence and other kinds of hate crimes;
- Regularly collect, publish and analyse data disaggregated by ethnicity on violence against Roma, including hate crimes, and their prosecution;
- Ensure full assistance, protection and compensation mechanisms to the victims of violence;
- Provide systematic and ongoing training to police officers, prosecutors and judges on addressing violence against Roma and hate crimes;
- Scale up or implement programmes to increase the number of Roma employed in police forces;
- Develop community safety and policing programmes, with close cooperation among police, Romani NGOs and Romani communities;
- Support grassroots activities to promote cooperation between Romani NGOs and authorities to increase reporting of crimes of violence and hate crimes.

4. HOUSING:

The ERRC makes the following recommendations to the Czech government:

- To stop forcibly evicting Roma;
- Ensure that any evictions that do take place are a means of last resort, and are carried out in accordance with both national and international law;
- The authorities should not consider dormitories as an adequate housing solution, and should engage meaningfully with representatives of the Roma community and local NGOs to actively seek solutions that fully satisfy the right to adequate housing;
- Introduce adequate social housing policies