

SUBMISSION

D.H. and Others v Czech Republic

Committee of Ministers' 1157th CM-DH Meeting, Council of Europe

NOVEMBER 2012

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I. Executive Summary and Recommendations

Exactly five years ago, the landmark Roma rights judgment *D.H. and Others v. the Czech Republic* was delivered by the European Court of Human Rights.¹ This ruling challenged the disproportionate placement of Romani children in “special schools” where they, together with children with disabilities, were segregated from their mainstream peers and taught according to a limited curriculum that failed to equip many with even basic numeracy and literacy skills. The education these children received left them with few chances for further education and diminished options for finding work. The practice has trapped many in a cycle of poverty and despair. On November 13, 2007, the Grand Chamber found that this practice constituted unlawful discrimination against Romani children in the enjoyment of the right to education. It ordered the Czech government to end the violation and remedy, so far as possible, its effects.

Today, little has changed. In the Czech Republic, including in one of the schools in which some of the original *D.H.* applicants studied, Romani children are still segregated. Romani children are disproportionately placed in practical elementary schools (the renamed former “special schools”), and they are segregated into “Roma-only” schools. Moreover, recent research indicates that the discriminatory practices identified in the *D.H.* judgment are now also occurring in schools identifying themselves as *mainstream* elementary schools and not just in “practical elementary schools”.

This submission highlights the ongoing discrimination towards Romani children in practical schools where a separate, limited curriculum – which is a departure from the standard curriculum studied in the general education system – is taught. It also outlines new evidence of the ways in which Romani students are being marginalized within the reformed² education system, including in mainstream elementary schools.

While some promising developments have emerged in recent months – a new Minister of Education has been appointed who is reportedly developing a new plan which aims to address key elements of the *D.H.* judgment– the basic problem remains the same. The fundamental hindrance is the Czech government’s lack of political will to translate the *D.H.* decision into real changes on the ground.

Our five organizations – the European Roma Rights Centre, Open Society Justice Initiative, Amnesty International, Česká Odborná Společnost Pro Onkluzivní Vzdělávání (COSIV) and the League of Human Rights [Czech Republic] (LIGA) – have worked extensively in the Czech Republic to ensure the effective implementation of the *D.H.* judgment over the past five years. Our research demonstrates that the government is failing to fulfill its obligations under the *D.H.* judgment. In these circumstances we respectfully recommend that the Committee of Ministers:

1. Ensures that any revised National Action Plan for Inclusive Education (NAPIE) submitted to this Committee specifically addresses the violations identified in the *D.H.* judgment, contains both concrete timelines and indicators for achieving inclusive education, and links its implementation to a clear, secure funding source. Such a plan should:

- I. Draw on the Czech government's Strategy for Combating Social Exclusion 2011-2015;³
 - II. Include concrete measures, with transparent numerical targets for Roma and non-Roma children, to ensure the desegregation of Czech schools (both practical and mainstream) within five years, and which address all causes and forms of segregation — at present, the government has established and/or disclosed no such measures or numerical targets by which progress can be assessed;
 - III. Place an explicit obligation on mainstream elementary schools to educate children with diverse learning needs in an inclusive environment starting in the next school year — at present, no such obligation exists;
 - IV. Build in financial incentives, starting in the next school year, to provide additional support for children with special learning needs, including those from “socially disadvantaged” backgrounds, to succeed in mainstream school — at present, no such incentives exist;
 - V. Ensure that teachers, school administrators and testing diagnosticians are regularly trained in non-discrimination and human rights principles to combat discriminatory attitudes starting in the current school year — at present, school teachers, administrators and testing diagnosticians receive no State-sponsored training in non-discrimination principles;
 - VI. Include an immediate and explicit ban on new placements of children in practical education — at present, Roma children continue to be disproportionately assigned to practical schools and classes;
 - VII. Ensure the diagnostic testing process (that precedes placements to “practical schools”) is reformed to be both culturally appropriate and in line with current international best practice and human rights standards, and that testing diagnosticians are trained to administer them according to such standards, within the current school year — at present, the diagnostic tests have not been normed for Roma children or conformed to satisfy international standards;
 - VIII. Ensure that testing centers for “mental disability” are independent from the practical schools in which children would be placed — at present, such testing centers are structurally connected to special and practical schools, resulting in a conflict of interest.
2. Request the Czech government to submit a budget indicating the use of public funds — including EU structural funds – for the implementation of the measures to achieve the transformation of its school system as required by the *D.H.* judgment, in time for the June 2013 CM-DH meeting;
 3. Request that the Czech government annually collect and monitor disaggregated data, including by ethnicity (as well as gender and disability), which track the types of schools into which Roma and non-Roma children are placed, and the type of curriculum which they are taught, starting in the current school year. The results of such data collection should be analyzed and transmitted to this Committee in time for each CM-DH meeting in June (i.e. three months before the next school year starts);
 4. Issue an interim resolution on the non-implementation of the *D.H.* judgment that holds the Czech Republic to account for failing to comply with the Court's judgment and decides to ensure the Committee of Ministers remains seized of this case as a matter of urgency.

II. Developments Since June 2012

The Committee of Ministers issued a strong decision at its Human Rights meeting in June 2012, urging accelerated implementation of the *D.H. and Others v. the Czech Republic* judgment of the European Court of Human Rights. At this meeting, the Committee expressed regret that the information provided by the Czech government did not clearly link to the State's National Action Plan on Inclusive Education (NAPIE), which consequently impeded the Committee's ability to properly assess the implementation of the Court's judgment. The Committee also expressed concern about the absence of information on the impact of measures taken during the last school year to address the *D.H.* decision. The Committee called on the Czech government to take the following action before the December 2012 Human Rights meeting:⁴

1. Submit the “results of the monitoring of the impact of the measures adopted during the current school year and the report of the Czech Public Defender of Rights (“Ombudsman”)” in due time for the Committee's 1150th meeting in September 2012;
2. Submit a “consolidated action plan based on a clear medium- and short-term strategy, with a time-table and budget for the implementation of the measures foreseen”
3. Accelerate the “implementation of the judgment (...) in order to achieve concrete progress on the ground”.

In advance of the December 2012 meeting, our organizations offer our analysis of progress made with respect to each of these requests.

A. No Clear Impact of Measures Implemented in Current School Year

The Czech government submitted reports by both the Czech Public Defender of Rights (the Ombudsman) and the Czech School Inspectorate to the Committee of Ministers in a letter dated September 4, 2012.⁵ Although some significant differences in analysis exist between the reports, both make the same key conclusion: Romani children are still significantly over-represented in segregated environments and taught according to a limited curriculum in disproportionate numbers. Moreover, while both reports also refer to the two legislative Decrees⁶ — adopted by the Czech government at the start of the last school year (September 1, 2011) and intended to address the education of children with special learning needs — neither report makes a comprehensive assessment of the Decrees' impact in practice. **As a result, no clear evidence yet exists that the legislative changes are making a concrete and positive difference on the ground.**

The Czech Ombudsman's Report: June 2012

The Ombudsman's Report is a survey of the ethnic composition of students in former “special schools.” In assessing the results from the 68 schools surveyed across the Czech Republic (representing a randomly chosen sample of 171 former special schools), the Ombudsman

concluded that the ratio of Romani children placed in these schools was “wholly incommensurate” to the proportion of Romani people in Czech society.⁷

The Ombudsman made three key recommendations:

- A legislative change to the *Education Act* affirming that “pupils with special educational needs, including physical disability,⁸ should, wherever possible, be educated through the form of individual integration at elementary school;”
- An amendment to the *Decree on the Education of Pupils with Special Educational Needs* which would remove the option of placing of students without a mild mental disability into a practical school;⁹
- Imposing an obligation on the former special schools to keep records of the number of students being taught to a limited curriculum.

The Ombudsman found that the “proportion of Romani pupils at a ratio of 32%, or 35%,¹⁰ in the schools [he] monitored is proof of the persistent indirect discrimination against them in terms of access to education.” The “only possible course of action,” he concluded, “is to follow up on the 2007 verdict of the European Court of Human Rights.”¹¹ In the *D.H.* judgment, the Grand Chamber considered “reliable and significant” statistics would be sufficient to constitute prima facie evidence of discrimination. The Ombudsman’s report and his statistical conclusions indicate that the segregation of Romani pupils continues – not only in Ostrava but in the Czech Republic as a whole. The Czech government has yet to demonstrate that, in accordance with the *D.H.* judgment, the “difference in treatment is not discriminatory” and is the result of “objective factors unrelated to ethnic origin.”

The Czech School Inspectorate Report: July 2012

The Czech School Inspectorate (CSI) Report assessed measures taken by the Czech government to facilitate the transformation of former special schools into mainstream elementary schools, practical elementary schools and special elementary schools (for pupils with severe disabilities).¹² Entitled “Progress in Transformation of Former Special Schools in the School Year 2011/2012,” the report covers the CSI’s follow-up checks in 41 schools in which deficiencies had been found by previous inspections. It also analyzed surveys completed by 158 headmasters from former special schools (which aimed to assess, among other things, the number of students studying according to standard and reduced curriculum, the number of Roma students at each school and the number of schools in an excluded locality).

The CSI report found:

- No legislative reform has been carried out to enable a more accurate assessment of a child’s learning needs prior to placement into schools or classes ostensibly designed for pupils with “mild mental disabilities”;¹³
- No progress has been made towards a systemic financing structure for the inclusion of “socially disadvantaged” students into the mainstream education system;¹⁴

- No legislative reform has been carried out to help decrease the number of pupils in practical schools and their (individual) inclusion into mainstream schools;¹⁵
- Amendments to legislation addressing concerns about informed consent regarding the transfer of children to study a limited curriculum were carried out.¹⁶

The CSI report estimates that Romani children comprise 26.4% of all children being taught according to a limited curriculum. This – the report argues – represents an 8.6% decrease from the 2009/2010 school year. Although the CSI report considers this finding to be “positive,” it did note that “there continues to be a high share of Romani children, which does not correspond to the number of members of Roma ethnicity in the population in the Czech Republic.” **Though the statistics differ from those collected by the Ombudsman, the high percentage of Roma children being taught a limited curriculum, even under this assessment, would still be sufficient to meet the standard required under the *D.H.* judgment to constitute *prima facie* evidence of discrimination.**

The methodology of this report, however, gives rise to concerns about the accuracy of its statistical estimations. Unlike the Ombudsman’s report,¹⁷ the CSI report did not indicate the methods used to identify the ethnicity of students. Moreover, the CSI report does not analyze the inconsistency in the data that it reported. At the same time as heralding an overall decrease in Romani students being taught a limited curriculum, the report also noted that in some regions, the number of Romani children studying such a curriculum has actually increased.¹⁸ Such variances raise serious questions about the overall effectiveness and national impact of the policy changes put in place during the last school year. Consequently, it remains unclear whether the purported overall decrease in Romani children studying a limited curriculum (1) is in fact accurate, and (2) even if it is, whether such a decrease is indeed a direct result of the State’s policy interventions.

Impact of the Amended Legislative Decrees Addressing Students with Special Needs

The CSI report attributes the purported decrease in the percentage of Romani students studying a limited curriculum to the implementation of one of the two amended legislative decrees which came into force on September 1, 2011.¹⁹ It states that a “significant shift” was brought about by the Decree which “substantially limited” the placement of students without disabilities into special classes.”²⁰ Yet the report does not attempt to describe, on the basis of concrete evidence, how the Decree produced this result in practice or whether this purported result was, actually a consequence of the amended Decree.

The CSI report also indicates that the same Decree represents a “substantial legislative change” governing the provision of informed consent by a student’s parents or legal guardian to study a limited curriculum.²¹ The real impact of the new regulation, however, is questionable as in fact it does not substantially strengthen the rights of parents and/or legal guardians.

As noted in the *D.H.* judgment and stressed by the Committee of Ministers, the right not to be discriminated against on account of ethnicity cannot be waived. This applies regardless of informed consent from parents to placement in classes where their child will be taught a limited curriculum.²² The extent to which the provision of informed consent can act as a possible safeguard in executing the *D.H.* decision, however, is dependent on school authorities providing parents with sufficient and relevant information about the differences in education in practical

classes and schools, and about the impact of such an education on their children's future. Although the new regulations provide the details on the type of information that should be given to the parent/legal guardian, in practice it is up to a school to prepare the consent forms without adequate systematic safeguards to ensure these forms supply all the information needed to ensure consent can in fact be fully informed.²³

These amended legislative Decrees, then, require monitoring by both the government and independent bodies — which must include feedback from Romani families— to assess the real impact on the ground for Romani children.

B. Waiting to Assess New Policy Plans

At the time of writing, no new consolidated action plan for the Czech Republic is publicly available. The government has, however, indicated to civil society in the Czech Republic that a new plan is under development which has short term goals (achievable in the coming 12 months) as well as long term ambitions (looking towards 2020). It also remains unclear whether the new plan essentially replaces, or should be seen in addition to, the current National Action Plan for Inclusive Education (NAPIE), nor how it relates to the Czech Strategy for Combating Social Exclusion 2011-2015 (which addressed Roma inclusion in education, and was adopted by the Czech Government in September 2011, but remains unfunded and unimplemented).

The Czech government told the U.N. Human Rights Council during its Universal Periodic Review in Geneva on October 22, 2012 that it did plan to abolish temporary placements of “socially disadvantaged children into practical schools” and focus on “individual integration into mainstream schools.” It also told the Council that “the methods and tests of assessing children are being revised to be non-discriminatory and culturally neutral” as well as responsive to the “needs of every child regardless of his or her disability or disadvantage.” The government also said that it planned to “introduce monitoring of the ethnicity of children in practical schools to be able to evaluate the progress of integration of children with special needs into mainstream education.” During its response to State questions, it also stated that practical schools will be abolished, and that the government plans to establish a standing forum with civil society to follow up on the implementation of the *D.H.* judgment.²⁴

Each of these proposals, if true, would appear to be a promising development which we would welcome. To assess their true value, however, they must be seen in the context of a broader, strategic plan, which incorporates concrete benchmarks, indicators, timelines and secured funding — which currently do not exist. Moreover, demonstrated political will by the Ministry of Education in Prague to implement such a plan is still needed. Little evidence exists to give confidence that high-level policy statements will be translated into genuine change on the ground.

Meanwhile, implementation of the current NAPIE has effectively ground to a halt since the expert platform comprised of NGOs, teachers and pedagogues, engaged to help the Czech Ministry of Education to develop the NAPIE, resigned in protest in May 2011, citing the lack of governmental political will to implement an inclusive education agenda.

C. No Concrete Implementation Progress felt on the Ground

The achievement of “concrete progress on the ground” must be the fundamental test for whether an ECHR judgment is executed in practice. To assess such progress, clear monitoring systems must be in place, as well as effective safeguards that work to protect Roma children in practice.

In the Czech Republic, no such monitoring systems — such as the annual collection of data disaggregated by ethnicity, as well as disability and gender (in compliance with the European Union’s data protection requirements) — are yet in place. All the assessments undertaken by government bodies to date have employed vastly different methods, making it difficult to measure progress accurately.

Moreover, the safeguards required by the Grand Chamber in the *D.H.* decision — as a means of determining whether any differential treatment of an ethnic group has a “legitimate aim” which can be objectively and reasonably justified — are also not effectively in place. The Department of Execution of Judgments noted three specific safeguards in schooling arrangements which would meet the criteria laid down in the *D.H.* judgment: (1) inclusion in mainstream education as a goal for any segregated education system; (2) non-discriminatory testing; and (3) informed parental consent (already addressed above). The *D.H.* judgment also notes that procedural safeguards are “especially material.” In December 2011, this Committee determined that the adoption of the Czech *Anti-Discrimination Act 2009* constituted such a procedural safeguard.²⁵ The degree to which this legislation can act as a protective measure in practice is yet to be tested. As discussed below, discriminatory attitudes and actions of schools and teachers are consequently allowed to flourish unchecked.

In order to assess the implementation of the *D.H.* judgment on the ground — and whether these safeguards are in fact working — Amnesty International and ERRC conducted field research in Ostrava (the region in which the *D.H.* case originated) during June and July 2012. They looked at four schools — commonly referred to as “Roma-only” schools,²⁶ as Romani children amount to more than 90 per cent of the pupils. Three of the schools were mainstream elementary schools (however two out of those three schools were also offering education in practical classes), one was a former special school, now practical elementary school. The names of these schools have been withheld in this submission, but they are representative of the discrimination faced by Romani children in access to education. This research suggests that the safeguards required by the *D.H.* judgment are either not in place, or not working effectively in practice. It concludes that much more is needed before the impact of the *D.H.* decision can be felt on the ground by Romani children and their families.

a) Assessing Whether the Goal of Any Segregated Education System is Inclusion in Mainstream Education

According to the recent research by Amnesty International and ERRC, the way in which the former “special schools” are “transforming” themselves — and the lack of an adequate system to monitor these changes — is actually making it more difficult to track the placement of Romani children in segregated schools or classes, or adequately calculate the over-representation of Romani children studying the limited “practical” curricula. The purported “transformation” of former special schools often comes in the form of a name change — either to a “practical”

elementary school or a “mainstream” elementary school. The changed name, however, does not necessarily indicate whether the school’s students are in fact being taught a “practical” or mainstream curriculum.

The research by the European Roma Rights Centre and Amnesty International further indicates that Romani children in Ostrava (the region in which the *D.H.* case originated) are now being placed in Roma-only classes, or studying a limited “practical” curriculum, in schools identifying themselves as *mainstream* elementary schools. The result is that the practice of segregation and discrimination in access to quality education may simply become more challenging to monitor with accuracy.

This is also the conclusion of the Ombudsman in his recent report. He stated in his recommendations that “if the purpose of the *Education Act* was to transform elementary education by abolishing special schools.... it is necessary to note that in practical terms their profile has remained unchanged.”²⁷ Special schools, he said, “were merely renamed, wholly inconsistently, with some now bearing the name elementary school and some as practical elementary schools.” The result, according to his report, is that schools named as “elementary schools” do not necessarily “make it clear which education programme the pupils at the school are taught under.” **Moreover, the Ministry of Education “does not even have a complete list of these [former special] schools.”**²⁸

Interviews with the Czech Ministry of Education by ERRC and Amnesty International in June 2012 revealed that no available evidence exists of the number of children actually taught the limited curriculum.²⁹ Meanwhile, Romani parents are often not clear about the type of school or class in which their child is enrolled. At the same time, the two organizations found no evidence that the transformation of the education system has translated into the transfer of any significant number of pupils from former special schools to inclusive mainstream schools, nor from studying a reduced curriculum to a full curriculum. In the light of these analyses, the Czech government needs to do more to demonstrate that the goal of inclusion in mainstream education is being met in practice.

b) *Persistent Use of Inappropriate Diagnostic Testing Processes that Result in Indirect Discrimination*

Upon finding that the percentage of Romani children placed in practical schools was still disproportionately high (between 32-35%), the Ombudsman’s report questioned the testing process in place in the Czech Republic. The only possible explanation for such disproportionate results, he states, is “indirect discriminatory practice on the part of the bodies involved in deciding on the placement of pupils into special education.”³⁰

In July 2012, and in response to the Ombudsman’s report, the Czech Association of Psychological-Pedagogical Centres (the Association) raised serious concerns over the accuracy and adequacy of the current assessment practices, especially when it comes to Romani pupils. The Association reviewed the test they use most frequently for assessment in diagnostic centres (based on the Wechsler Intelligence Scale for Children), which had been adapted for the Czech context in 1997-2000. It concluded the tests were imperfectly adapted and failed to adequately address the specific situation of Romani children. The Association concluded that “[A]t the

moment we have no relevant information on how [accurately] the test measures intelligence of Romani children.”³¹

Yet a change in the tests alone will not fully address the problem in the Czech Republic. A structural problem also exists: in short, Special Education Centres (SECs) are charged with assessing children for the existence of mental disabilities. Yet these centres are attached to special (and also practical) schools, with the director of the school also holding the post of SEC director. The potential for a conflict of interest is clear: the best interests of the child sent for testing may not be in the best interests of the school to which the testing centre is attached, given that the school is dependent on ongoing diagnoses of “mild mental disability” to stay open and receive funding. Yet the government has provided no indication of its intention to address this structural problem that contains the potential to perpetuate the ongoing placement of children into practical and special schools.

The testing process adopted in the Czech Republic, then, is both inconsistent with pedagogical best practice and international human rights law and standards. These standards presume that all children have a right to inclusive education in a mainstream school setting, regardless of disability, ethnicity or gender.³² Article 24 of the *Convention on the Rights of Persons with Disabilities*, for example, obliges States Parties – including the Czech Republic – to provide an “inclusive education system” which ensures “the development by persons with disabilities of their personality, talents and creativity, as well as their mental and physical abilities, to their fullest potential.” It further requires that States Parties ensure reasonable accommodation and the provision of individualized support within the inclusive setting.³³ That the testing process in the Czech Republic has focused on determining whether any child should be placed in segregated “practical” schools appears to be incompatible with inclusive education norms.

To the extent that tests implemented in the Czech Republic meet a “legitimate, educational need” as required by the *D.H.* judgment, the focus of these tests should be on the ability of such tests to adequately assess, in a non-discriminatory way, the educational support mechanisms needed by each child on an individualized basis to succeed within integrated mainstream education. At the same time, such tests should be designed with particular regard for the special needs of disadvantaged groups, such as Romani communities, as required by the *D.H.* judgment. Such tests should be coupled with adequate funding to ensure the support mechanisms can in fact be put in place to help Romani, and other children from disadvantaged groups, succeed in integrated mainstream education settings – such as individualized lesson plans, tutoring, and Roma teaching assistants.

c) *Effectiveness of Procedural Safeguards Against Openly Discriminatory Attitudes of Schools towards Roma Children*

Blatantly discriminatory attitudes towards Roma exist even on official school websites in the Czech Republic. Three out of the four Roma-only schools in Ostrava researched by Amnesty International and ERRC³⁴ showed a high degree of prejudice and openly expressed discriminatory attitudes towards Roma.³⁵ For example, a Roma-only school in the Ostrava district of Vitkovice states on its website that the majority of pupils (90%) come from “large families from [a] socially disadvantaged environment,” a proxy commonly used by the authorities to describe Roma. The school presents its pupils as having a “different hierarchy of values, different lifestyle, deficient

language skills, zero pre-school preparation or preparation for school at home.” It states its pupils are “not interested in education,” but that they “are educable if the school provides them with specific conditions and curriculum.” In all but the first and second grades the school provides education also in practical classes. The school presents its ambition as ensuring that all pupils – including the “less talented” – manage the basics which are “important for life.” When it comes to further description of the pupil’s characteristics, the school alleges that the pupils are exposed to “negative examples in families... [T]hey are hot-tempered, have no inhibitions and habits.”³⁶ In previous submissions, our organizations have also highlighted reports from Romani families about bullying and racist remarks by teachers towards Romani children, calling them “animals” who will “never succeed.” This sets the foundation for the approach to educating Romani students in these schools.

These examples highlight one of the long-standing criticisms of the Czech government’s National Plan for Inclusive Education (NAPIE): its failure to explicitly address the racial discrimination within the Czech educational system (including in mainstream elementary schools) that was at the core of the *D.H.* judgment. Ensuring teachers and school administrators are trained in relevant human rights standards, including non-discrimination, is one important step towards combating these attitudes and creating an environment free from discrimination for Romani children. Such an element should be included in any revised NAPIE provided to the Committee of Ministers. However, the training needs to be combined with regular monitoring, as part of the school inspection process, to ensure that it is being translated into practice.

Not only is the current NAPIE insufficient to address this flagrant discrimination, but the procedural safeguards the Czech government has put in place have not yet been tested to determine whether they do in fact operate effectively to combat open forms of discrimination and hostility against Roma children in schools.

As noted above, the key procedural safeguard identified by the Committee of Ministers is the *Anti-Discrimination Act 2009*.³⁷ The text of the *Act*, when taken together with other related Czech law (including *Act No. 40/1964 Coll*, *Civil Code*, the *Education Act*, *Decree No. 116/2011 on the Provision of Counselling Services in Schools and School Counselling Facilities* and *Decree No. 147/2011 Coll on the Education of Children, Pupils and Students with Special Education Needs and Children, Pupils and Students who are Exceptionally Gifted*) does, at least in theory, appear to provide protection against discrimination as required by the European Union’s Race Equality Directive which the *Act* transposed into domestic law. The *Act*, which came into force on September 1, 2009, prohibits both direct and indirect discrimination in the provision of *inter alia* education. However, no case testing its provisions as a safeguard against discrimination in education has, to our knowledge, been brought in the Czech courts. Despite the *Act* being a significant step forward in addressing race discrimination, it contains some serious deficiencies — it does not include any express provisions which would directly prevent the discriminatory segregation of Romani children into separate schools, classes or study groups; nor does it provide for public interest litigation in the form of collective complaints, despite the recommendation by the European Union’s Fundamental Rights Agency that such a provision would make it easier for the victims of discrimination to challenge a rights violation without exposing themselves. Similarly, we are not aware of any Czech case law which clearly condemns or forbids segregation. In practice, then, the *Act*’s ability to serve as an effective safeguard against discrimination in education, and particularly segregation, has still to be proven. The submitting NGOs are also concerned over the lack of response by the Czech authorities to the repeated

findings of monitoring bodies – such as the Ombudsman – about the over-representation of Romani pupils in practical school. Despite the Ombudsman’s clarification in 2010 that the over-representation (which does not correspond to the numerical representation of Roma in the Czech society) amounts to discrimination, the authorities have so far failed to take measures to address this problem.³⁸

At the same time, even if victims are able to bring cases to the courts, there are no effective mechanisms to secure enforcement of relevant judicial decisions. The continuing failure of the authorities to implement both the *D.H.* decision and the Czech Republic’s own independent monitoring bodies’ recommendations, such as the Ombudsman, bears testament to a system which is failing to secure justice for victims of systemic human rights violations.

III. Conclusion

That the Czech government is publicly recognizing the importance of putting effective policies in place to properly execute the *D.H.* judgment is a welcome step. However, the creation of yet another new policy document (the third in three years) is insufficient. A proper assessment of the quality and shortcomings of the government’s plans can only be made once the plan itself becomes public. The real proof that the government is serious about implementing the Court’s judgment on *D.H.* will only become clear when the government presents ethnically disaggregated data from a broad cross-section of the country to demonstrate that Roma are no longer suffering from over-representation in practical schools and classes, and are not disproportionately educated according to a limited curriculum. To date, no real change has happened. The time to act — to implement a plan that addresses the violations found by the Court in the *D.H.* judgment, complete with benchmarks, timelines and a secure budget — is long overdue. The Committee of Ministers must hold the Czech Republic to account for failing to implement the Court’s judgment and maintain its vigilance in ensuring that any positive policy developments are translated into action that concretely and effectively benefits Romani children and take the necessary measures to secure compliance.

Endnotes

¹ *D.H. and Others v. the Czech Republic*, European Court of Human Rights Grand Chamber judgment, November 13, 2007, available at: [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-83256#{"itemid":\["001-83256"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-83256#{).

² The *Education Act*, which entered into force in January 2005, abolished the remedial special schools which were renamed practical schools.. The new legislation had also removed the formal barriers between the completion of education at a primary school of any type and the possibility to continue at a general secondary school.

³ Adopted by the government in September 2011, the Strategy acknowledged that the educational system “lacks the ability to keep in its mainstream a number of specific groups of children, who are then exposed to segregation in separate groups or schools and often don’t receive adequate regular education.” See: Agency for Social Inclusion, *Strategy for Combating Social Exclusion 2011-2015*, p. 19. (Copy [in Czech] on file with authors and available upon request).

⁴ Committee of Ministers Decision, *D.H. and Others v. the Czech Republic*, June 6, 2012, available at: [https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/Dec\(2011\)1144/9&Language=lanFrench&Ver=original&Site=&BackColorInternet=B9BDEE&BackColorIntranet=FFCD4F&BackColorLogged=FFC679](https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/Dec(2011)1144/9&Language=lanFrench&Ver=original&Site=&BackColorInternet=B9BDEE&BackColorIntranet=FFCD4F&BackColorLogged=FFC679).

⁵ Communication from the Czech Republic concerning the case of *D.H. and others against Czech Republic*, September 4, 2012, available at [https://wcd.coe.int/ViewDoc.jsp?Ref=DH-DD\(2012\)803&Language=lanFrench&Ver=original&Site=&BackColorInternet=B9BDEE&BackColorIntranet=FFCD4F&BackColorLogged=FFC679](https://wcd.coe.int/ViewDoc.jsp?Ref=DH-DD(2012)803&Language=lanFrench&Ver=original&Site=&BackColorInternet=B9BDEE&BackColorIntranet=FFCD4F&BackColorLogged=FFC679)

⁶ Decree 72/2005 on the *Provision of Counseling Services in Schools and School Counseling Facilities* (“Decree on Counseling (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)”).

⁷ Communication from the Czech Republic concerning the case of *D.H. and others against Czech Republic*, “Survey of the Public Defender of Rights into the Ethnic Composition of Pupils of Former Special Schools: Final Report”, Document no. DH-DD(2012)803E, June 2012, available at

<https://wcd.coe.int/com.intranet.InstraServlet?command=com.intranet.CmdBlobGet&IntranetImage=2153914&SecMode=1&DocId=1924992&Usage=2>.

⁸ It should be noted here that the Ombudsman’s distinction between children with physical and mental disabilities in his conclusions is troubling. Under the *Convention on the Rights of the Child* and the *Convention on the Rights of Persons with Disabilities (CRPD)*, both ratified by the Czech Republic, an inclusive education system must be ensured at all levels. The obligation to ensure inclusive education applies to all children, including children with disabilities (no distinction is made between the types of disabilities). Czech Republic is required to provide reasonable accommodation of each individual’s requirements and to ensure that persons with disabilities receive the support required, within the general education system, to facilitate their effective education. Making distinctions between children with physical and mental disabilities in terms of their right to be educated within an inclusive setting seems questionable in light of the standards of inclusive education under the CPRD.

⁹ Under the current provision pupils “with a different type of disability or with a physical handicap may be placed in class... for pupils with disabilities... Their number shall not exceed 25% of the maximum number of pupils in a class”. Section 10 of Decree 73/2005, above n. 6.

¹⁰ The report used two methods of third-party identification of the ethnicity of pupils: identification by the headteachers and identification by the staff of the Ombudsperson’s office. The results were 35 and 32 per cent respectively. See Report of the Public Defender of Rights (Ombudsperson) on the ethnic composition of pupils in the former special schools. Part II: The description of the method. June 2012, above n. 7.

¹¹ Report of the Public Defender of Rights included in the Communication from the Czech Government to the Committee of Ministers, above n.7, p15.

¹² Communication from the Czech Republic concerning the case of *D.H. and others against Czech Republic*, Czech School Inspectorate Thematic Report “Progress in Transformation of Former Special Schools in the School Year 2011/2012,” Document no. DH-DD(2012)803E, July 2012, available at <https://wcd.coe.int/com.intranet.InstraServlet?command=com.intranet.CmdBlobGet&IntranetImage=2153914&SecMode=1&DocId=1924992&Usage=2>, p.55.

¹³ Czech School Inspectorate, Thematic report 2012, above n 12, p.60.

¹⁴ Id. The Ombudsperson’s office instructed the teachers to identify the Romani pupils on the basis of indirect criteria, including nationality of parents, place of birth, mother tongue.

¹⁵ Czech School Inspectorate, Thematic report 2012. above n 12 p. 63.

¹⁶ Ibid p. 61.

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- ¹⁷ For the details of the description of the methodology see: Report of the Public Defender of Rights, above n.7, specifically see *Part II: The description of the method. June 2012.*
- ¹⁸ The increase has been found in the Liberecky and Pardubicky regions. Czech School Inspectorate, Thematic report 2012, above n. 12 Table 2.
- ¹⁹ *Decree On the Education of Children, Pupils and Students with Special Educational Needs, and Children, Pupils and Students who are Exceptionally Gifted*, above n.6.
- ²⁰ Czech School Inspectorate, Thematic report 2012. above n. 12 p. 59.
- ²¹ Czech School Inspectorate, Thematic report 2012. above n 12 p. 61.
- ²² *D.H. and Others v The Czech Republic*, above n 1, para. 204
- ²³ People in Need, *Pojďte do školy! Rovné šance na vzdělávání znevýhodněných dětí*. Prague 2011, pp. 87- 88. Available at: http://www.ptac.cz/data/Pojdte_do_skoly.pdf
- ²⁴ Opening Statement of Mr. Vladimír Galuška, Head of the Delegation of the Czech Republic at the Universal Periodic Review, October 22, 2012, Geneva, Switzerland, as well as notes from the discussion among States (copy on file with the Justice Initiative and available upon request).
- ²⁵ See Decision of the Committee of Ministers, *D.H. and Others v Czech Republic*, December 2, 2011, available at [https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/Dec\(2011\)1128/9&Language=lanEnglish&Ver=original&Site=&BackColorInternet=B9BDEE&BackColorIntranet=FFCD4F&BackColorLogged=FFC679](https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/Dec(2011)1128/9&Language=lanEnglish&Ver=original&Site=&BackColorInternet=B9BDEE&BackColorIntranet=FFCD4F&BackColorLogged=FFC679)
- ²⁶ It should be noted here that in addition to these schools, many other mainstream elementary schools provide education to predominantly or only Romani students as a result of residential segregation and the flight of non-Romani parents from those schools following a decision by their parents to move them away from Romani students.
- ²⁷ Report of the Public Defender of Rights, above n. 7, p. 19.
- ²⁸ *Ibid.*
- ²⁹ Interview with Amnesty International and ERRC, Prague, 22 June 2012 (copy of interview on file with Amnesty International and ERRC and available on request)
- ³⁰ Report of the Public Defender of Rights, above n. 7, p.14.
- ³¹ Roundtable on Inclusive Education at the Ministry of Education, Prague, July 24, 2012 (notes on file with European Roma Rights Centre and available upon request).
- ³² *Convention on the Rights of the Child*, Art. 23 (2); *Convention on the Rights of Persons with Disabilities*, Art. 24(1), (2)a, ; *Revised European Social Charter*, Art. 15(1).
- ³³ *Convention on the Rights of Persons with Disabilities*, Art. 24 (1) (chapeau) and (1)b, and (2)b, c, d and e.
- ³⁴ Amnesty International and ERRC. *Five more years of injustice: Segregated education of Roma in Czech Republic*. 8 November 2012. Available at: <http://www.amnesty.org/en/library/info/EUR71/006/2012/en>
- ³⁵ Educational programmes of schools no. 1,3 and 4. The names of the schools have been withheld in this submission, Amnesty International and ERRC have the information on file.
- ³⁶ Educational programme of School no. 4. Amnesty International and ERRC have the information on file.
- ³⁷ In its November 2011 decision on the *D.H.* case, the Committee of Ministers “welcomed the information provided by the Czech authorities on the *Anti-Discrimination Act*, which provides a procedural safeguard against discrimination in the area of education.” See the decision at [https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/Dec\(2011\)1128/9&Language=lanEnglish&Ver=original&Site=&BackColorInternet=B9BDEE&BackColorIntranet=FFCD4F&BackColorLogged=FFC679](https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/Dec(2011)1128/9&Language=lanEnglish&Ver=original&Site=&BackColorInternet=B9BDEE&BackColorIntranet=FFCD4F&BackColorLogged=FFC679).
- ³⁸ The opinion of the Public Defender of Rights on the appearance of discrimination against Romani children and pupils - findings from the report of the Czech School Inspectorate thematic inspection in practical elementary schools (Stanovisko veřejného ochránce práv k podezření na diskriminaci romských dětí a žáků - poznatky ze zpráv z tematické kontrolní činnosti České školní inspekce na základních školách praktických), 20 April 2010, p. 3. Available in Czech at: <http://www.csicr.cz/cz/85126-zprava-z-kontrolni-cinnosti-v-byvalych-zvlastnich-skolach>
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