

WRITTEN SUBMISSION

BY THE EUROPEAN ROMA RIGHTS CENTRE CONCERNING THE
CZECH REPUBLIC

For Consideration by the Committee on the Rights of the Child at the Working
Group of the 88th session (06 September - 24 September 2021)

CHALLENGING DISCRIMINATION PROMOTING EQUALITY

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INTRODUCTION

1. The European Roma Rights Centre (hereinafter also referred to as the “ERRC”)¹ hereby submits this list of issues concerning the Czech Republic to the United Nations Committee on the Rights of the Child (hereinafter also referred to as “Committee”) for the consideration by the Committee on the Rights of the Child at the Working Group of the 88th session (06 – 24 September 2021). The submission focuses on the situation of Romani children, in particular on their overrepresentation in state care, segregation in education, access to public services including health and housing.

GENERAL MEASURES OF IMPLEMENTATION (ARTS. 4, 42 AND 44 (6) OF THE CONVENTION)

2. Roma make up the largest ethnic minority in the Czech Republic. According to official estimates in 2017, there were 240,300 Roma, which is approximately 2.2% of the entire population. The majority live in two regions; the Moravian-Silesian region (northeast) and Usti nad Labem region (northwest). According to the EU-Midis II survey, 58% of Roma in the Czech Republic had incomes below the national income poverty threshold, which was almost six times higher than that of the general population.²
3. The Analysis of Socially Excluded Localities in the Czech Republic showed that the number of socially excluded localities has doubled between 2006 and 2015, with a total of 606 socially excluded localities reported in 297 municipalities. The analysis found that roughly half of the Roma in the Czech Republic are “socially excluded or are in danger of social exclusion.”³ Roma in social exclusion often face discriminatory practices in accessing municipal housing. Testing carried out by the Public Defender of Rights in 2012 and 2013 confirmed discriminatory practices towards Roma are also present in the commercial rental market. These findings were further confirmed by the 2013 government housing report, which also confirmed that Roma cannot access the Czech housing market as a result of their ethnicity and lesser economic status.⁴
4. Fourteen years after the European Court’s landmark ruling that ruled school segregation in the Czech Republic to be discriminatory and illegal, the practice persists and in 2014 the European Commission launched an infringement procedure against the Czech Republic, targeting the existence of the “special” schools or classes where some 30 % of Romani children are still educated. According to many surveys of the Czech public, respondents like Roma the least of any group; typically, some 75% of the general public dislike Roma or would not agree to have a Romani neighbour. A 2019 Pew Research poll found that 66% of the Czech population holds an unfavourable view of Roma.⁵
5. Such negative perceptions are amplified by hate speech from both extreme and mainstream political parties, and ECRI noted with particular concern that the use of the term “inadaptable” to refer to Roma in particular has become a normal expression in public discourse, and has even been employed officially: “ECRI considers this form of expression extremely dangerous; by attempting to justify prejudice and intolerance against Roma, it perpetuates and increases them.”⁶ FRA found that the measure of harassment

1 The ERRC is a Roma-led international public interest law organisation working to combat anti-Romani racism and human rights abuse of Roma through strategic litigation, research and policy development, advocacy and human rights education. Since its establishment in 1996, the ERRC has endeavored to provide Roma with the tools necessary to combat discrimination and achieve equal access to justice, education, housing, health care and public services. The ERRC has consultative status with the Council of Europe, as well as with the Economic and Social Council of the United Nations. More information is available at: www.errc.org.

2 Fundamental Rights Agency, Second European Union Minorities and Discrimination Survey Roma – Selected findings. 29 November 2016. Available at: <https://fra.europa.eu/en/publication/2016/eumidis-ii-romaselected-findings>.

3 Čada, K. et al. 2015. Analýza sociálně vyloučených lokalit v ČR. Available at: <http://www.esfcr.cz/file/9089/>.

4 Romea.cz, Czech Gov’t report finds Roma cannot access ordinary housing. 2 November 2016. Available at: <http://www.romea.cz/en/news/czech/czech-gov-t-report-finds-roma-cannot-access-ordinary-housing>.

5 Pew Research Centre, Global Attitudes & Trends, October 14, 2019. Available at: <https://www.pewresearch.org/global/2019/10/14/minority-groups/#many-in-europe-view-roma-unfavorably>.

6 ECRI Report on the Czech Republic (5th monitoring cycle). Published on 13 October 2015, p. 15. Available at: <https://rm.coe.int/fifth-report-on-the-czech-republic/16808b5664>.

experienced due to being Roma over a 12-month period was 56% in the Czech Republic, the highest of nine EU Member States surveyed.⁷

GENERAL PRINCIPLES (ARTS 2,3, 6 AND 12 OF THE CONVENTION)

DISCRIMINATION AGAINST ROMANI CHILDREN

6. In its concluding observations at the 57th session in 2011, the UNCRC urged the State party to establish a clear method for identifying the Roma minority in its data collection to facilitate the clarity and effectiveness of policymaking; and also ensure that such a definition is complemented by adequate support and protection mechanisms to prevent the discriminatory abuse of such data.
7. The Committee was deeply concerned that in spite of its previous recommendations and the 2007 decision of the European Court of Human Rights, *D.H. and Others v. the Czech Republic*, there continue to be serious and widespread issues of discrimination, particularly against the minority Roma children in the State party, including the systemic and unlawful segregation of children of Roma origin from mainstream education.
8. The CRC expressed its concern about the continued lack of reference to the principle of the best interests of the child in most of the legislation concerning children, as well as in judicial and administrative decisions, and policies and programmes relevant to children. In its recommendation: “The Committee urged the State party to step up its efforts to ensure that the principle of the best interests of the child is appropriately integrated and consistently applied in all legislative, administrative, and judicial proceedings as well as in all policies, programmes and projects relevant to and with an impact on children. The legal reasoning of all judicial and administrative judgments and decisions should also be based on this principle.”
9. The CRC urged the State party to expeditiously take all measures necessary to ensure the effective elimination of any and all forms of segregation of children of Roma origin, especially the discriminatory practices against them in the education system, and the provision of essential services and housing in accordance with its commitments under the Strasbourg Declaration on Roma (2010).
10. The ERRC is deeply concerned at the failure of the Czech authorities to heed the 2011 recommendations of the CRC; a full decade later, based on the evidence provided, the ERRC’s firm assertion is that the state authorities has failed “to ensure the elimination of any and all forms of segregation of children of Roma origin”, and continue to fail in the equitable provision of essential services and housing to Romani children and their families.

FAMILY ENVIRONMENT AND ALTERNATIVE CARE (ARTS. 5, 9–11, 18 (1 AND 2), 20, 21, 25 AND 27 (4) OF THE CONVENTION)

11. In its concluding 2011 observations, the UNCRC noted a widespread attitude of accepting institutionalised care as a primary alternative to the family environment. Regarding children of Romani origin, the CRC stipulated that there is a lack of preventive services and admission criteria for placement into institutional care, which results in large numbers of children, especially children with disabilities and/or of Romani origin, being placed in care outside their home, particularly in institutional care, and that in the majority of such cases the material and financial situation of the family has been the main basis for such removal.
12. As mentioned earlier the CRC was concerned at the low level of socio-economic support for vulnerable families, inadequate efforts to enable children to maintain contact with their parents or be reintegrated into their biological families, and that most children only leave institutional care after they attain the age of majority. The CRC was also concerned that there was no central mechanism to regulate care providers or coordinate programming and provision to ensure consistent standards of childcare.

7 FRA, A persisting concern: anti-Gypsyism as a barrier to Roma inclusion. 2018. Available at: https://fra.europa.eu/sites/default/files/fra_uploads/fra-2018-anti-gypsyism-barrier-roma-inclusion_en.pdf.

13. According to data from the Collective Complaint by the ERRC and MDAC v. the Czech Republic, the number of places in child care institutions has gradually decreased, from 1,963 places in 2010 to 1,470 in 2015. There has been a decrease in the number of institutionalised infants, from 2,077 in 2010 to 1,666 in 2015. However, the number of institutionalised Romani children remained almost the same; 433 in 2010, compared to 406 in 2015. Moreover, reasons for admission show that the vast majority of children are admitted either solely for health reasons (958 in 2011, decreasing to 567 in 2015), or for social reasons (954 in 2010 to 568 in 2015). The remainder of the children are admitted on the grounds of health and social reasons combined.⁸
14. It is clear from the data that Romani children and children with disabilities are grossly overrepresented. Considering the data from the perspective of ethnicity and disability, Romani children consistently make up approximately 24% of all children placed in these early childhood care institutions for children under 3 years of age. Considering that approximately 1.4–2.8% of the population in the Czech Republic is Romani, this represents a significantly disproportionate number of institutionalised children. For children with disabilities, who consistently make up approximately 40% of the children in these institutions, the disproportionate representation appears to be even higher; children born with disabilities constitute approximately 4% of all children born in the Czech Republic.⁹
15. In conclusion, the complainants stated that the institutionalisation of children – especially Romani children and children with disabilities – causes emotional deprivation and suffering which constitutes a form of violence. These early childhood medical care institutions cannot be regarded as appropriate within the meaning of Article 17 of the European Social Charter.
16. Combined with the failure of the State to remedy this situation, ban the institutionalisation of children, and put in place a sufficient network of family and community-based support services, the NGOs asked the European Committee of Social Rights to find:
 - a violation of Article 17 of the European Social Charter;
 - a violation of Article 17 of the European Social Charter read in conjunction with the principle of non-discrimination as enshrined in the Preamble to the Charter.
17. The collective complaint was fully vindicated in November 2020, when the ECSR issued its ruling. In all, the ECSR considered that “the Government has failed to take significant and targeted steps to deinstitutionalise the existing system of early childhood care, and to provide young children with services in family-based and community-based family-type settings. For this reason, the Committee holds that the obligation to take appropriate measures to ensure the effective exercise of the right of young children to protection, has not been fulfilled and there is therefore a violation of Article 17 of the 1961 Charter in this respect.”¹⁰
18. Open conflict and competition between ministries ensured that the best interests of the child were not prioritized. As Labour Minister Michaela Marksova explained back in 2017, while the Ministry of Labour supported the unification of care system under one authority: “other ministries do not. I feel that a conservative attitude prevails there.” She stated that the system of childcare and child protection in Czech Republic was not able to transform as “the interests of the employees prevailed over best interests of children.”¹¹
19. Representatives from the Ministry of Health and the Ministry of Education, responsible for the infant homes and correctional facilities for children, defended institutional care settings run under their competences. They stated that institutions for babies and infants and the diagnostic centres are important and set a good practice of care for children deprived of parental care.
20. In their collective complaint against the Czech Republic, the ERRC and Validity stated that institutionalisation of young children as a form of violence is not dependent on material conditions because the culture of violence is inherent to even well-equipped institutions, as the deprivation and suffering is caused predominantly by emotional, mental, or physical neglect, the non-existence of a primary caregiving person, and the lack of stability.

8 European Committee of Social Rights, Complaint: European Roma Rights Centre & Mental Disability Advocacy Centre v. the Czech Republic: For failure to ensure social and economic protection of young children who are segregated in child-care institutions. 26 October 2016. Available at: <https://rm.coe.int/complaint-157-2017-european-roma-rightscentre-mental-disability-advoc/1680761626>.

9 *Ibid.*

10 European Committee of Social Rights, Decision on the Merits of European Roma Rights Centre (ERRC) and Mental Disability Advocacy Centre (MDAC) v. Czech Republic. Complaint No. 157/2017. 23 November 2020. Available at: <https://hudoc.esc.coe.int/eng#?%7B%22sort%22:%5B%22ESCPublicationDate%20Descending%22%2C%22ESCDIdentifier%22:%5B%22cc-157-2017-dmerits-en%22%7D>.

11 ERRC, *Blighted Lives: Romani Children In State Care*, January 2021. Available at: http://www.errc.org/uploads/upload_en/file/5284_file1_blighted-lives-romani-children-in-state-care.pdf.

21. It has been observed that “supporters of institutional care for children commonly argue that since conditions have significantly improved in institutional placements, these should now be regarded as safe and suitable places for children to stay”. However, this argument has been rejected, especially with regard to children under 3 years of age, because “their long-term stay in institutional care is always accompanied by emotional neglect, which is a form of violence – and therefore should not be tolerated.”¹²
22. The ERRC was pleased to note that on 6 May 2021, the Czech parliament passed an amendment to the Health Services Act to replace infant care facilities with care in family environments. It is to be hoped that such reforms will be implemented expeditiously, adequate resources allocated for family and community care, and that the government will adopt all the recommendations contained in the ECSR ruling.

RECOMMENDATIONS

23. Amend domestic legal standards to provide full and adequate protection to Romani children and families at risk of separation, to fully ensure that child removal on the basis of poverty or material concerns is prohibited in law and in practice, and ensure regular court review of administrative decisions to place children in state care. Close any legal loopholes that allow placement of Romani children in harmful institutions as a de facto ‘measure of first resort’.
24. Revise national child protection policy to include Romani children and families as at particular risk of endangerment; review all national policies and programs to assess whether seemingly neutral provisions have a deleterious or discriminatory impact on Roma. Collect comparable annual data that is disaggregated by ethnicity, gender, disability, and other relevant factors in the areas of child protection, education, housing, employment, and health care, with appropriate measures to protect the personal data of children and families.
25. Provide adequate information and guidance to Romani families at risk of separation about their rights and duties, and ensure free legal aid is available for such families.
26. Develop and adopt a detailed description of child endangerment and methodological guidance to facilitate objective and consistent assessment. Ensure regular and systematic monitoring and evaluation of both basic and the professional care services, including children’s rights representatives, which takes account of the perceptions of families and children and their level of satisfaction with child protection services.
27. Implement positive action programmes to facilitate the employment of Romani professionals in child protection services. Make anti-discrimination and multi-culturalism training an obligatory component of school curricula for child protection and social work professionals, and ensure care professionals meet consistent professional standards.
28. Prioritise funding for basic child welfare services on a service provision basis to ensure an adequate level of preventative work and avoid the under-financing of the regions and city districts most in need.
29. Prioritise national funding for preventative social work programmes to reduce the number of Romani children in state care, oblige and adequately finance social work and child protection authorities to implement programmes for the return of children in state care to their families, and increase the number of preventative social workers, enabling improved community social work by reducing the caseload per worker.
30. Bring local prevention services to marginalised neighbourhoods to support Romani families at risk of separation due to poverty, and ensure effective cooperation between public service providers such as schools, employment offices, housing authorities, and public health facilities to enable Romani families at risk to improve their living conditions.

¹² European Committee of Social Rights, Complaint: European Roma Rights Centre & Mental Disability Advocacy Centre v. the Czech Republic.

EDUCATION, LEISURE AND CULTURAL ACTIVITIES (ARTS. 28 AND 29 OF THE CONVENTION)

ACCESS TO EDUCATION AND SCHOOL SEGREGATION OF ROMANI PUPILS

31. Fourteen years after the European Court of Human Rights (ECtHR) announced its judgment in *D.H. and Others v the Czech Republic*, very little progress has been made in securing non-discriminatory access to education for all children and establishing an inclusive system of education, irrespective of social status, ethnicity or disability.
32. In September 2014, the European Commission initiated infringement proceedings against the Czech Republic, due to ongoing discrimination of Romani children in the Czech Republic in the field of education and non-compliance with relevant anti-discrimination EU law. The existence of schools with high Roma populations, as confirmed by the state's qualified estimates, is an indicator of ethnic, spatial and social status segregation within the school system. To date the authorities do not adequately monitor the impact of its education policy on Roma.
33. Roma access to education and support for their needs largely depends on whether they live in social exclusion, on their de facto segregation from preschool onward, and on attitudes towards the Roma as such, which are overwhelmingly negative. It has been pointed out by several UN bodies (including the CERD Committee) that, in addition to segregation of children with disabilities and Romani children misdiagnosed with mental disability, Romani children are also educated separately from their peers in mainstream elementary schools. In many towns and villages there are schools known as „Roma schools“, which are made up almost exclusively of Roma pupils while a few hundred metres away there are usually other schools which are attended by other pupils, the vast majority of who are non-Roma.
34. These segregated settings within mainstream education are usually caused by three main factors: residential segregation (the catchment area of a school is identical to that of the Roma neighbourhood/settlement); unwillingness of “non Roma elementary schools” to enrol Romani children; and enrolment and transfers of non Roma children to different catchment areas with “non-Roma schools”.
35. Roma remain disproportionately educated as ‘disabled’, and while the number of Roma incorrectly enrolled in education for children with disabilities is declining, the number of Roma attending mainstream primary schools with non-Roma is not growing. Non-Roma parents sometimes pressure schools to maintain ethnic segregation, and establishers and principals resist this pressure randomly. Nowhere is ethnic desegregation or the prevention of ethnic discrimination a driving force behind either policy or practice.
36. During the Covid-19 emergency, school closures and the sudden switch to online learning brought additional hardship, and exacerbated disadvantages for Romani children. Data collected by the Roma Education Fund (REF) covering six countries indicated that most Romani children and their families living in rural areas and in settlements have no access to internet, do not have computers and/or other electronic devices, and, in some cases, even electricity was not available.

RECOMMENDATIONS

37. The Government should take steps to dismantle the arrangements that result in Romani children's segregation, including in special education, and ensure the realisation of the right to inclusive education for all children by taking concrete, targeted legislative and administrative steps within a reasonable timeframe to achieve these goals;
38. The Government should amend the Education Act to ensure the right of all children to inclusive education, and enshrine the principle of inclusion to guide all system reforms. The law should also explicitly provide for the right to benefit from reasonable accommodations, individualised supports and establish the principle that children have a right to be educated in the least restrictive environment.
39. All legislative and policy changes should be accompanied by the allocation of necessary financial and human resources. The Government must allocate adequate resources to fully implement measures to end segregated educational provision and ensure that mainstream education is accessible to all Romani children; and

40. The Government should end segregation of Romani children in mainstream “Roma schools”. To achieve this aim, it should consider re-drawing catchment areas and adopt concrete plans of desegregation.
41. The authorities should ensure that all children receive financial, social, pedagogical and psychological support during and after the pandemic to mitigate the effects on education and health regardless of children’s school attendance. The European Commission and the national authority should ensure that adequate resources from the EU emergency funds are allocated to address the educational needs of Romani and other vulnerable children in the wake of the pandemic.

HOUSING, FORCED EVICTIONS AND ADEQUATE LIVING CONDITIONS

42. The mental and physical health and wellbeing of Romani children is adversely affected by appalling living conditions, as is family life. The Czech Republic has a history of racial discrimination in terms of access to housing and exercise of housing rights, including patterns and practices of forced eviction concerning Roma and deepening segregation of housing on an ethnic and social status basis.
43. For the last 20 years, legal tenancy protections have been broadly eroded for all renters. Excluded segments of the population, Romani people in particular, have found housing of last resort in so-called “residential hotels” where they do not have rental contracts, are not registered as local residents, and frequently pay exorbitant rents for small rooms or flats with common cold-water sanitation facilities. It is very easy for the occupants of “residential hotels” to be evicted; as a result, those for whom this housing is the only option find it almost impossible to settle because they are more or less constantly searching for affordable accommodation and moving frequently to different parts of the country. Conditions for their social inclusion and stability are not being arranged. Frequent changes during the period at issue to the government policies subsidizing the housing of such persons and allowing local governments to curtail such benefits have made this precarity even more intense.
44. Concerning child removals, inadequate housing conditions resulting from poverty and indebtedness were the factors most frequently mentioned by Romani families, and children were often removed after electricity and water were cut off, or in the course of forced evictions from rental accommodation. Many of the most vulnerable were single parent families, where Romani mothers were in even worse housing and financial situations due to family break ups, or less able to support their children following their partners’ imprisonment.
45. Local authorities designate areas as ineligible for housing benefits: The explicit justification for allowing municipalities to designate certain addresses as ineligible for housing benefits has been to combat the exploitation of poor people, as the owners of residential hotels previously took advantage of the lack of any ceiling on the housing benefits to charge exorbitant rents, since the state was picking up the tab (restrictions have since been imposed). In fact, municipalities that have instituted these bans see them as a way to rid their territories of the mostly Romani people who draw such benefits.
46. The concluding observations of CERD from 2015 expressed concern at the residential segregation of Roma. CERD additionally expressed concern that some municipalities refuse to rent municipal housing to Roma which reinforces this segregation. The concluding observations further expressed concern at the absence of legislation or policy on social housing and the fact that Roma continue to be denied access to adequate housing, particularly social housing. CERD recommended that the Czech government adopts a social housing law and establishes a comprehensive social housing system with a particular focus on Roma and ethnic minorities in general.¹³
47. No progress has been made on this issue in the interim; on the contrary, indirect racial discrimination – the design and implementation of general, seemingly neutral policy measures, which have a disproportionately disadvantageous impact on Roma – has been refined.
48. According to the findings of the Roma Civil Monitor, it is local governments that decide on land use, what areas will be targeted for “development” and which communities will bear the brunt of those decisions, whether to provide social housing to the vulnerable or whether to make it impossible for welfare recipients to live on their territories.

13 UNCERD, 2015, Para. 11. 5 CERD, 2015, Para. 15(b). 6 CERD, 2015, Para. 16(b).

49. Landlord discrimination against Roma renters means Roma are forced to relocate more frequently than non-Roma and to accept poorer-quality housing, often under extremely unfavourable conditions, because their only other option is homelessness. Based on information from NGOs, municipal social workers and housing organisations, the housing rented to poor/socially excluded Roma generally does not meet the hygienic or technical standards for occupancy and the fittings of such housing (flooring, heating units, etc.) do not correspond to the normal standard of living required for occupancy.
50. The same applies to the location of such housing and its relative distance from amenities such as grocery stores, hospitals, schools, etc. Despite these shortcomings, the rents charged for such substandard housing are higher than the market rate, including rates charged for related services (building maintenance). Landlords also overcharge tenants who are eligible for housing welfare benefits.¹⁴

RECOMMENDATIONS

51. State authorities should 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, including ensuring that those evicted have access to effective remedies against forced eviction;
52. Engage meaningfully with representatives of the Roma community and local NGOs actively to seek solutions that fully satisfy the right to adequate housing;
53. Introduce adequate social housing policies without further delay, namely; adoption of legal provisions for social housing, which would detail the role of the state and municipalities, target groups and minimal standards of social housing;
54. Ensure funding schemes for the provision, reconstruction or construction of new social housing premises, in adequate scale and under conditions which meet the expectations of municipalities and civil society;
55. Ensure vulnerable Roma do not lose their eligibility to social housing. Test the use of socially innovative measures, specifically housing-led approaches, and social rent agencies and programmes of housing. Introduce eligibility criteria that could be met by vulnerable Roma; and
56. Develop and implement policies to address the vulnerabilities of persons with respect to security of tenure that take into consideration individual needs and characteristics.

¹⁴ Roma Civil Monitor, Civil society monitoring report on implementation of the national Roma integration strategy in the Czech Republic, 2019. Available at: <https://cps.ceu.edu/sites/cps.ceu.edu/files/attachment/basicpage/3034/rm-civil-society-monitoring-report-2-czech-republic-2018-eprint-fin.pdf>.