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COLLECTIVE COMPLAINT

European Roma Rights Centre v. the Czech Republic

For failure to provide equal access to pre-school education for Romani children and children facing poverty and social exclusion

Violation of Article 16 and the equality principle of the European Social Charter

COMPLAINANT:

European Roma Rights Centre

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I. PARTIES TO THE COMPLAINT

(a) The complainant organisation

1. The European Roma Rights Centre (*hereinafter* “the ERRC”) is a Roma-led international public interest law non-governmental organisation aiming to combating antigypsyism in Europe, including by providing legal representation to victims of human rights violations. The ERRC has already submitted several collective complaints to the European Committee of Social Rights (*hereinafter* “the Committee”) focusing mainly on discrimination, housing, and social protection.¹ The ERRC has consultative status with the Council of Europe and is thus entitled to submit collective complaints under Article 1(b) of the Additional Protocol of 1995.
2. Taking into account the above-mentioned information and the fact that Czechia ratified the European Social Charter (1961) (*hereinafter* “the 1961 ESC”) and accepted the obligations in Article 16 of the 1961 ESC to which this complaint is related, the complainant organisation submits that **this complaint is admissible**.
3. The ERRC is supported in this collective complaint by the Central European non-governmental organisation, Forum for Human Rights (*hereinafter* “FORUM”). FORUM works to ensure that human rights are respected, protected, and fulfilled in accordance with relevant international human rights standards, using litigation and advocacy to promote human rights before national and international human rights bodies. FORUM provides support to domestic and international NGOs and conducts and supervises domestic and international litigation and advocacy activities. FORUM has cooperated with different non-governmental organisations and jointly submitted several collective complaints.

(b) The respondent State’s European Social Charter obligations

4. This collective complaint has been lodged against Czechia on the grounds of failure to discharge its obligations under Article 16 of the 1961 ESC: the right of families to social, legal and economic protection. The ERRC as the complainant organisation claims that the Czechia failed in their duty to provide Romani children and children facing poverty and social exclusion and their families with **an available, accessible and affordable system of pre-school education and ensure that these children can enjoy their right to access to quality pre-school education at kindergartens on an equal basis with others**.
5. Czechia ratified the 1961 ESC on 3 November 1999, accepting 52 of its 72 paragraphs, **including Article 16**. Czechia ratified the Amending Protocol to the Charter on 17 November 1999. It signed the Revised Charter on 4 November 2000 but has not ratified it yet. Czechia ratified the 1995 Additional Protocol providing for a system of collective complaints on 4 April 2012. Consequently, this complaint should be considered **admissible**.

II. OBLIGATIONS OF THE STATE PARTY

¹ The list of cases is available online at: <http://www.errc.org/strategic-litigation-european-social-charter>.

6. Given its multiple roles, the right to pre-school education has a specific nature. It is not explicitly guaranteed in any binding international treaty, but it is still commonly considered as an **inherent part of the rights of the child, especially the child's rights related to their development and education on the one side and to the assistance to their parents in care for them on the other side**. The UN Committee on the Rights of the Child (hereinafter "the CRC Committee") has described this comprehensive nature of the child's right to pre-school education by the term "Educare" combining the terms "education" and "care". The CRC Committee has commented on the term as follows: "acknowledging that traditional divisions between "care" and "education" services have not always been in children's best interests, the concept of "Educare" is sometimes used to signal a shift towards integrated services, and reinforces the recognition of the need for coordinated, holistic and multisectoral approach to early childhood."² Thus, when summarizing below the relevant human rights standards, we will follow the concept of "Educare".

(a) The right to pre-school education under the 1961 ESC

7. The 1961 ESC does not explicitly guarantee the right to education in general terms. It explicitly recognizes the right to vocational training (Article 10) and the right to education in the context of health (Article 11). Furthermore, it mentions education in the context of the protection of children in employment and on the labour market [Article 7 (1) and (3)]. The FORM for the reports to be submitted in pursuance of the 1961 European Social Charter and the 1988 Additional Protocol adopted by the Committee of Ministers on 26 March 2008 (hereinafter "the FORM") makes it clear that the 1961 ESC covers the right to education also as an inherent part of the right of persons with disabilities to vocational training, rehabilitation, and social resettlement, guaranteed under Article 15 since the Committee has recognized that the right to education "plays an obviously important role in advancing" the rights of "independence, social integration and participation" of persons with disabilities "in the life of the community".³
8. The right to pre-school education is thus guaranteed under the 1961 ESC especially in its **"care" dimension – as part of the right of the family to social, legal, and economic protection under Article 16**. The FORM, as well as the Digest (2018), clearly state that social protection under Article 16 includes also the right of the family to "financially affordable childcare facilities of a suitable standard, measured in terms of the number of children aged 0-6 years covered, staff-child ratios, staff training, availability of suitable premises and the cost for parents".⁴
9. Nevertheless, we argue that Article 16 of the 1961 ESC **also covers the educational dimension of the right to pre-school education**. The Digest reminds us that "the

² CRC/C/GC/7/Rev.1, para. 30.

³ *Autism-Europe v. France*, decision on the merits of 4 November 2003, complaint no. 13/2002, § 48. The FORM makes it clear that the cited Committee's findings are valid also for 1961 ESC – see footnote no. 6.

⁴ Cited according to the FORM, p. 33.

Committee interprets the Charter in the light of other international treaties which are relevant in the field of rights guaranteed by the Charter as well in the light of the interpretation given to these treaties by their respective monitoring bodies”.⁵ Thus, the UN Convention on the Rights of the Child (hereinafter “the CRC”) and its interpretation by the CRC Committee given especially in its General Comments and Concluding Observations as described below (see paras. 18–28) represent an important interpretative framework for the 1961 ESC⁶ and may provide appropriate guidance on how to interpret the above-cited requirement of the “suitable standard” of childcare facilities.

10. Specifically, concerning Czechia, the Committee has recognized pre-school educational facilities – kindergartens as part of the State Party’s fulfilment of its commitments under Article 16 of the 1961 ESC in its Conclusions. The Committee’s latest conclusions on Article 16 of December 2015 mention, *inter alia*, the increase in the number of kindergartens and their capacities.
11. With respect to the Revised Charter and the right to education explicitly guaranteed in its Article 17 (contrary to the 1961 ESC), the Committee has stated, based on the framework given by the International Covenant on Economic, Social and Cultural Rights and its interpretation by the UN Committee on Economic, Social and Cultural Rights, that “all education provided by states must fulfil the criteria of availability, accessibility, acceptability and adaptability”.⁷ The Committee thus integrated into the Charter’s framework the so-called **4-A scheme**, formulated for the first time, by the UN Special Rapporteur on the right to education, Katarina Tomasevski, in her report of 1999⁸ and further elaborated by her successors, including the current UN Special Rapporteur on the right to education, Ms. Koumbou Boly Barry.⁹
12. This scheme should be applicable also in the context of the 1961 ESC, including the right to pre-school education as part of the right of the family to social protection under article 16. Also, the pre-school education should thus be:
 - 1) **available**, i.e. free, with adequate infrastructure and trained teachers;¹⁰
 - 2) **accessible**, i.e. non-discriminatory and open to everyone, with positive measures to include marginalized students;¹¹

⁵ Digest of the case law of the European Committee of Social Rights, December 2018, p. 48.

⁶ This had been confirmed by the Committee in its decision on the merits in *Defence for Children International (DCI) v. The Netherlands*, decision on the merits of 20 October 2010, complaint no. 47/2008, § 48. The decision has concerned the Revised Charter but we argue that the Committee’s conclusions on the impact of the CRC on the interpretation of the Charter are also applicable to 1961 ESC.

⁷ *Mental Disability Advocacy Centre (MDAC) v. Bulgaria*, decision on the merits of 3 June 2008, complaint no. 41/2007, § 37.

⁸ E/CN.4/1999/49.

⁹ See for instance her report on Governance and the right to education of 2018, A/HRC/38/32.

¹⁰ Cited according to the thematic report of the UN Special Rapporteur on the right to education, Ms. Koumbou Boly Barry, on Governance and the right to education, A/HRC/38/32, para. 40.

¹¹ *Ibid.*, para. 40.

- 3) **acceptable**, i.e. with the content that is relevant, non-discriminatory, culturally appropriate, and of good quality;¹²
- 4) **adaptable**, i.e. evolving with the changing needs of society, contributing to challenging inequalities, and continually being adapted locally to suit the specific context.¹³

13. Unfortunately, Czechia fails to meet these requirements, especially the requirement of availability and accessibility of pre-school education for all groups of children as **Romani children, and children facing poverty and social exclusion are often denied effective access to pre-school education** (see below part IV.).

(b) The protection of diversity, right to non-discrimination, and promotion of social inclusion under the 1961 ESC

14. Since this collective complaint concerns the right to pre-school education of children who are Roma or who face poverty or social exclusion, we find it crucial to focus on how the 1961 ESC protects diversity and promotes social inclusion of minorities and groups in vulnerable situations. The Committee has emphasised, specifically in the context of the right of the family to social, legal, and economic protection under Article 16 of the 1961 ESC, in its decision on the merits in *European Roma Rights Centre v. Greece*, complaint no. 15/2003, that “one of the underlying purposes of the social rights protected by the Charter is to express solidarity and promote social inclusion. It follows that States must respect difference and ensure that social arrangements are not such as would effectively lead to or reinforce social exclusion.” When formulating this general aim of the 1961 ESC the Committee has referred to its Preamble stating, *inter alia*, that “the enjoyment of social rights should be secured without discrimination on grounds of race, colour, sex, religion, political opinion, national extraction or social origin; (...)”¹⁴

15. In the cited decision, the Committee has relied on relevant case-law of the European Court of Human Rights (hereinafter “the ECtHR”) concerning the rights of Roma, namely the ECtHR’s judgment in *Connors v. the United Kingdom*¹⁵, referring to the previous judgments in *Buckley v. the United Kingdom*¹⁶ and *Chapman v. the United Kingdom*¹⁷. All these cases concern the right to housing/right to respect for the person’s home but the ECtHR’s conclusions on the right to respect for diversity may be understood **more broadly and applied in other contexts**. Based on the Connors judgment the Committee has reminded us that **the needs and the different lifestyle**

¹² Ibid., para. 40.

¹³ Ibid., para. 40.

¹⁴ *European Roma Rights Centre v. Greece*, complaint no. 15/2003, decision on the merits of 8 December 2004, § 19.

¹⁵ *Connors v. the United Kingdom*, judgment of 27 May 2004, complaint no. 66746/01.

¹⁶ *Buckley v. the United Kingdom*, judgment of 25 September 1996, complaint no. 20348/92.

¹⁷ *Chapman v. the United Kingdom*, judgment [Grand Chamber] of 18 January 2001, complaint no. 27238/95.

of Roma must be given special consideration both in the regulatory framework and in reaching decisions in particular cases.¹⁸

16. Following the cited case-law of the ECtHR the Committee has argued that although social rights may be subjected to the fulfilment of a certain number of conditions, **these must not lead to social exclusion, disrespect of difference, and discrimination of minorities, in this specific case of Roma.**¹⁹
17. It is worth noting that when formulating the cited non-discriminatory obligations deriving from the 1961 ESC, the Committee has referred also to its case-law concerning the rights of persons with disabilities and based on the Revised Charter which contains anti-discriminatory clause as a specific provision (Article E).²⁰ These arguments are very important since they show that **if it comes to the right to non-discrimination, respect for diversity, and promotion of social inclusion, the applicable concepts do not distinguish between the different vulnerable situations and apply to all of them.** Below (see paras. 32–38) we will focus especially on one of the disability law concepts – **inclusive equality.**

(c) The right to pre-school education under the CRC

18. Not even the CRC explicitly provides children with the right to pre-school education. Nevertheless, the General Comments and Concluding Observations by the CRC Committee leave no doubt that **the CRC guarantees this right to every child on a non-discriminatory basis.** As mentioned above, the CRC Committee has adopted the concept of “Educare” and from the perspective of this concept the right to pre-school education may be understood as being an inherent part of the right of the child:

- 1) in its care dimension
 - i. **to development to the maximum extent possible** [Article 6 (2)];
 - ii. **to appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and to the development of institutions, facilities, and services for the care of children** [Article 18 (2)]; and
 - iii. **to all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible** [Article 18 (3)];
- 2) in its education dimension
 - iv. **to development to the maximum extent possible** [Article 6 (2)];
 - v. **to education** (Article 28), especially to measures to encourage regular attendance at schools and the reduction of drop-out [Article 28 (1) (e)];
 - vi. **to education aiming to develop the child’s personality, talents, and mental and physical abilities to their fullest potential; the respect for human rights and fundamental freedoms and for the principles enshrined in the Charter of the United Nations; the respect for the child’s parents, their own cultural**

¹⁸ European Roma Rights Centre v. Greece, complaint no. 15/2003, decision on the merits of 8 December 2004, § 20.

¹⁹ Ibid., § 22.

²⁰ Ibid., § 21.

identity, language, and values, for the national values of the country in which the child is living, the country from which they may originate, and for civilizations different from their own; the respect for the natural environment; and to prepare the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin [Article 29 (1)].

19. The CRC Committee has addressed the right of the child to pre-school education most directly in its General Comment no. 7 on the implementation of the right of the child in early childhood. There, the CRC Committee has confirmed the above-mentioned interrelation between the child's right to maximum development, to education, and to education supporting the child's comprehensive development according to their individual and cultural needs. The CRC Committee has referred in this context to its General Comment no. 1 on the aims of education reminding us that the goal of the education is to "empower the child by developing his or her skills, learning and other capacities, human dignity, self-esteem, and self-confidence" and that this must be achieved in ways that are child-centred, child-friendly and reflect the rights and inherent dignity of the child (para. 2)."²¹
20. The CRC Committee has further confirmed that young children have the right to education "in the broadest sense" which also includes the right to **"programmes of early childhood education provided by the State, the community or civil society institutions."** In addition, the CRC Committee has pointed out that "research evidence demonstrates the potential for quality education programmes to have a positive impact on young children's successful transition to primary school, their educational progress, and their long-term social adjustment."²²
21. Concerning the care dimension of the right to pre-school education, the CRC Committee has underlined the importance of access to appropriate support services, especially for children in the most vulnerable situations. In concrete, the CRC Committee has called on the State Parties to ensure that **all young children and their primary caregivers have access to services, including educational services, and that these services must be appropriate and effective for the child and must promote the child's well-being.** The CRC Committee has also **emphasised the role these services may play to promote equality and non-discrimination** by stating that "particular attention should be paid to the most vulnerable groups of young children and to those who are at risk of discrimination (art. 2)." The CRC Committee has listed among those children, *inter alia*, "children living in poverty and children belonging to indigenous or minority groups."²³
22. Other important conclusions of the CRC Committee applicable in the context of the present collective complaint have been adopted in relation to the rights of indigenous

²¹ CRC/C/GC/7/Rev.1, para. 28.

²² Ibid., para. 30.

²³ Ibid., para. 24.

children in the CRC Committee's General Comment no. 11. We are fully aware that Romani children and children living in poverty and social exclusion do not fall within the definition of indigenous children, but their situation may not be so different. In the cited General Comment, the CRC Committee has emphasised that indigenous children "face significant challenges in exercising their rights (...). Indigenous children continue to experience serious discrimination contrary to article 2 of the Convention in a range of areas, including in their access to health care and education, (...)." ²⁴ **The same problems may be faced also by children belonging to ethnic, racial, or social minorities** on whose access to pre-school education this collective complaint focuses.

23. In the cited General Comment no. 11, the CRC Committee **has highly rated the right to education as a means for inclusion of indigenous children and effective fulfilment of their rights**. The CRC Committee has stressed that "the education of indigenous children contributes both to their individual and community development as well as to their participation in the wider society. Quality education enables indigenous children to exercise and enjoy economic, social, and cultural rights for their personal benefit as well as for the benefit of their community. Furthermore, it strengthens children's ability to exercise their civil rights in order to influence political policy processes for improved protection of human rights. Thus, the implementation of the right to education of indigenous children is an essential means of achieving individual empowerment and self-determination of indigenous peoples."²⁵
24. The CRC Committee has, nevertheless, recognised that indigenous children may face **structural barriers in the access to quality and appropriate education**, including "insufficient educational facilities and teachers, direct or indirect costs for education as well as a lack of culturally adjusted and bilingual curricula in accordance with article 30." The CRC Committee has also reminded us that indigenous children "are frequently confronted with discrimination and racism in the school setting."²⁶
25. The CRC Committee has urged the States to adopt **special measures to address the described discrimination** and disadvantage of indigenous children in access to education. These special measures should include allocation of financial, material, and human resources "to implement policies and programmes which specifically seek to improve the access to education for indigenous children".²⁷ States must also ensure that education is accessible for indigenous children in the place where these children live.²⁸
26. As stated above, Romani children as children belonging to the biggest and most discriminated ethnic minority in Europe may face very similar barriers in the access to education, including pre-school education, and many of these barriers may be also faced by children who, although ethnically belonging to the majority, are socially

²⁴ CRC/C/GC/11, para. 5.

²⁵ Ibid., para. 57.

²⁶ Ibid., para. 59.

²⁷ Ibid., para. 60.

²⁸ Ibid., para. 61.

exposed to poverty and social exclusion. The CRC Committee's conclusions on the cited States' obligations in this regard adopted with respect to indigenous children are thus valid also for these groups of children in vulnerable situations, especially in a country like Czechia with no indigenous people but with a strong ethnic minority of Roma and a high rate of poor and socially excluded people, including families with children.

27. The last concept we would like to mention concerning the CRC is the **child rights-based approach** which informs us about the necessary parameters the above-mentioned policies and programmes should meet to comply with the CRC and not to become a new source of repression or discrimination for children in vulnerable situations. The CRC Committee has first defined the child rights-based approach in its General Comment no. 13 to **conceptualise the paradigmatic shift embodied by the CRC and to highlight the position of the child as a rights holder and not as a mere object of care and protection.**²⁹ The child rights-based approach should make it clear that fulfilling the rights of the child is not a kind of favour conferred on the child, but **a legal entitlement of the child.** In its General Comment no. 21 focused on the rights of children in street situations the CRC Committee has distinguished the child rights-based approach from the repressive and the welfare approaches. Although the aims of these two more traditional approaches may seem very remoted (to punish the child v. to protect the child), their approach to the child and the means they rely on may be very similar. In both approaches, the child has a position of the passive object of the intervention, and they rely to a great extent on coercive measures applied against the child and their family.³⁰ The child rights-based approach, on the contrary, recognises the human dignity of the child especially by recognising the relevance of the child's authentic views (decisions *with* the child and not just *for* the child) and the child's rights. It put emphasis on the obligations of the child's environment which is

²⁹ The definition has been formulated as follows: "Respect for the dignity, life, survival, wellbeing, health, development, participation and non-discrimination of the child as a rights bearing person should be established and championed as the pre-eminent goal of States parties' policies concerning children. This is best realized by respecting, protecting and fulfilling all of the rights in the Convention (and its Optional Protocols). It requires a paradigm shift away from child protection approaches in which children are perceived and treated as "objects" in need of assistance rather than as rights holders entitled to non-negotiable rights to protection. A child rights based approach is one which furthers the realization of the rights of all children as set out in the Convention by developing the capacity of rights holders to claim their rights, guided at all times by the rights to non-discrimination (art. 2), consideration of the best interests of the child (art. 3, para. 1), life, survival and development (art. 6), and respect for the views of the child (art. 12). Children also have the right to be directed and guided in the exercise of their rights by caregivers, parents and community members, in line with children's evolving capacities (art. 5). This child rights approach is holistic and places emphasis on supporting the strengths and resources of the child him/herself and all social systems of which the child is a part: family, school, community, institutions, religions and cultural system." – CRC/C/GC/13, para. 59.

³⁰ "There are different approaches used with respect to children in street situations, sometimes in combination. They include a child rights approach, whereby the child is respected as a rights holder and decisions are often made with the child; a welfare approach, involving the "rescue" of children perceived to be an object or victim from the street and whereby decisions are made for the child without serious consideration for her or his views; and a repressive approach, whereby the child is perceived to be a delinquent. The welfare and repressive approaches fail to take into account the child as a rights holder and result in the forcible removal of children from the streets, which further violates their rights. Indeed, claiming that welfare and repressive approaches are in the best interests of the child doesn't make them rights based. To apply the Convention, it is essential to use a child rights approach." – CRC/C/GC/21, para. 5.

understood in the broadest sense of the term and thus includes primarily the State.³¹ Under the child rights-based approach, the child is not a mere beneficiary of “social favours” and the child’s environment, including the State, is not a mere provider of these “favours” who may impose any condition for their provision.

28. The child rights-based approach thus teaches us that any special policies or programmes designed to address structural failures to meet the rights of the child must be designed in such a way that they will provide the child with **clear and appropriate legal claims**. These **policies and programmes cannot place the child and their family in a subordinate position by making them dependent on the discretion of the duty bearers, including public authorities and representatives of the system**. Neither may they allow to condition the fulfilment of the rights of the child by any requirements concerning the family’s lifestyle if it does not violate the rights of the child. Otherwise, these policies and programmes could easily work in reverse, i.e., as a tool to discipline and reinforce systemic discrimination against children in vulnerable situations.

(d) The right to pre-school education under the UN Convention on the Elimination of All Forms of Racial Discrimination

29. As far as this collective complaint concerns Romani children, the framework of the UN Convention on the Elimination of All Forms of Racial Discrimination (hereinafter “CERD”) is also relevant. Not even this convention mentions specifically the right to pre-school education, but in its article 5 (e) (v) it guarantees the right to education in general terms to all people, without distinction as to race, colour, or national or ethnic origin. The importance of CERD lies further in its commitments addressing discrimination based on racial, ethnic, or national grounds in general. In article 4 (1) it provides for **the right of racial or ethnic groups or individuals to special measures ensuring their equal enjoyment or exercise** of human rights and fundamental freedoms under the condition that such measures do not lead to maintenance of separate rights for different racial groups and are not continued after the objectives for which they were taken have been achieved. Article 2 (1) (c) further guarantees the right of racial or ethnic groups or individuals to effective measures taken by the state to review governmental, national, and local policies and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists. According to Article 2 (2), the “States Parties shall, when the circumstances so warrant, take, in the social, economic, cultural, and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups or individual belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms. These measures shall in no case entail as a consequence the maintenance of unequal or separate rights for different racial groups after the objectives for which they were taken have been achieved.”

³¹ Ibid., paras. 5, 10 and 11.

30. In its General Recommendation no. 32, the UN Committee on the Elimination of Racial Discrimination (hereinafter “the CERD Committee”) has listed **education as one of the eligible fields for the implementation of special measures**³² aiming to alleviate or remedy disparities in the enjoyment of human rights and fundamental freedoms affecting particular groups and individuals on the ground of their racial or ethnic origin.³³ The CERD Committee has emphasised that special measures “should be designed and implemented on the basis of need, grounded in a realistic appraisal of the current situation of the individuals and communities concerned”³⁴ while the “appraisals of the need for special measures should be carried out on the basis of accurate data, disaggregated by race, colour, descent and ethnic or national origin and incorporating a gender perspective, on the socio-economic and cultural status and conditions of the various groups in the population and their participation in the social and economic development of the country.”³⁵ In other words, **the special measures should be determined on basis of relevant, up-to-date, and appropriately disaggregated statistical data.**

31. The CERD Committee has further focused one of its general recommendations specifically on Roma and their right to non-discrimination in which it has also specifically addressed the inclusion of Romani children in mainstream education. The CERD Committee has called the States Parties, *inter alia*, to “support the inclusion in the school system of all children of Roma origin and to act to reduce drop-out rates, (...)”,³⁶ “prevent and avoid as much as possible the segregation of Roma students, (...)”,³⁷ “consider adopting measures in favour of Roma children, in cooperation with their parents, in the field of education”,³⁸ “act with determination to eliminate any discrimination or racial harassment of Roma students”.³⁹ The CERD Committee has thus underlined **the importance of inclusive education of Romani children in mainstream education for the social inclusion of Roma in general and ending their long-term discrimination.**

(e) The concept of inclusive equality and its relevance for the right of ethnic, racial, and social minorities to equality and non-discrimination

32. Finally, we would like to focus on non-discriminatory concepts and commitments enshrined in the UN Convention on the Rights of Persons with Disabilities (hereinafter “CRPD”) and the relevant documents adopted by the UN Committee on the Rights of Persons with Disabilities (hereinafter “the CRPD Committee”). Of course, we do not want to claim that belonging to ethnic, racial, or social minorities is a disability, but the vulnerability of the situation of these minorities deriving from the structural barriers they face due to their difference may be the same as the vulnerability of the situation

³² CERD/C/GC/32, para. 13.

³³ Ibid., para. 22.

³⁴ Ibid., para. 16.

³⁵ Ibid., para. 17.

³⁶ General Recommendation of the CERD Committee no. 27 on discrimination against Roma, 2000, para. 17.

³⁷ Ibid., para. 18.

³⁸ Ibid., para. 19.

³⁹ Ibid., para. 20.

of persons with different types of physical, mental, psychosocial, or sensory impairments. We would like to emphasise particularly **the concept of inclusive equality** formulated by the CRPD Committee in its General Comment no. 6 based especially on the submission by Oxford Human Rights Hub.⁴⁰

33. The concept of inclusive equality aims to **elaborate on substantive equality by underlying its multidimensional nature**. The CRPD Committee has determined **4 dimensions** constituting inclusive equality: “a) a fair redistributive dimension to address socioeconomic disadvantages; (b) a recognition dimension to combat stigma, stereotyping, prejudice and violence and to recognize the dignity of human beings and their intersectionality; (c) a participative dimension to reaffirm the social nature of people as members of social groups and the full recognition of humanity through inclusion in society; and (d) an accommodating dimension to make space for difference as a matter of human dignity.”⁴¹
34. As mentioned above, the idea of the multidimensional nature of substantive equality seems to go beyond the rights of persons with disabilities and be similarly beneficial for other groups in vulnerable situations facing structural discrimination. The idea is based on the recognition that **the difference**, given by the person’s impairment, or if we can generalise, any other characteristic protected by anti-discrimination law **may never become a legitimate reason for lowering the person’s opportunity to enjoy their human rights and freedoms on an equal basis with others**. In other words, the person’s difference protected by the right not to be discriminated against delegitimises any exclusionary or restrictive practices, either direct or indirect. And the concept of inclusive equality expresses that to achieve this aim, i.e., to eliminate all the exclusionary or restrictive practices as a response to the person’s difference, requires adopting measures of various forms and in various fields and as well as attitudes respecting the person’s diversity.
35. The concept of inclusive equality goes fully in line with **the principle of interdependence and indivisibility of human rights and freedoms**. Its multidimensional nature shows well that **its achievement requires commitments traditionally connected with both the so-called “civil and political rights” and the so-called “economic, social and cultural rights”**. Furthermore, it also fully corresponds to the aim of the 1961 ESC to promote social inclusion, respect difference and “ensure that social arrangements are not such as would effectively lead to reinforce social exclusion.” As the Committee has emphasised “this requirement is exemplified in the proscription against discrimination in the Preamble and in its interaction with the substantive rights of the Charter.”⁴²

⁴⁰ The submission is available at:

<https://www.ohchr.org/EN/HRBodies/CRPD/Pages/WSPersonsDisabilitiesEqualityResponsability.aspx> .

⁴¹ CRPD/C/GC/6, para. 11.

⁴² *European Roma Rights Centre v. Greece*, decision on the merits of 8 December 2004, complaint no. 15/2003, § 19.

36. The importance of the CRPD also lies in **the comprehensive anchoring of the basic modern anti-discrimination concepts** which enables to promote and implement inclusive equality, namely **the accessibility, reasonable accommodation, procedural accommodations, and specific measures**. Concerning the subject matter of this collective complaint, the concepts of accessibility and specific measures seem to be especially crucial.
37. The CRPD Committee has defined accessibility as an *ex ante*, proactive and systemic duty. As such, accessibility “must be built into systems and processes without regard to the need of a particular person with a disability”.⁴³ It must be implemented gradually but unconditionally.⁴⁴ It is worth noting that accessibility as an antidiscrimination commitment closely relates also to the concepts of availability and usability of the environment, public transport, and information and communication for persons with disabilities.⁴⁵
38. Specific measures under the CRPD equate to special measures enshrined in CERD⁴⁶ and referred to by the Committee, including in the context of the right of vulnerable children to inclusive education.⁴⁷ The CRPD Committee has defined specific measures as “a preferential treatment of persons with disabilities over others to address historic and/or systematic/systemic exclusion from the benefits of exercising rights.”⁴⁸ Among the examples of specific measures, the CRPD Committee has listed, *inter alia*, support programmes and allocation and/or reallocation of resources.⁴⁹ The CRPD Committee has also emphasised that specific measures “must not result in perpetuation of isolation, segregation, stereotyping, stigmatization or otherwise discrimination against persons with disabilities.”⁵⁰ The same conclusions must be similarly valid also for other persons in a vulnerable situation, including ethnic, social, and cultural minorities.

(f) The right to pre-school education under the UN Convention on the Elimination of All Forms of Discrimination against Women

39. Another important binding document relating to the right of the child to pre-school education is the UN Convention on the Elimination of All Forms of Discrimination against Women (hereinafter “CEDAW”). CEDAW explicitly addresses pre-school education in its article 10 (a) as part of measures aiming to ensure equal rights between women and men in the field of education. Here, pre-school education is thus mentioned especially in its education dimension. Article 10 (a) requires the same conditions for access to pre-school education for women and men.

⁴³ CRPD/C/GC/6, para. 24 (a).

⁴⁴ *Ibid.*, para. 41.

⁴⁵ *Ibid.*, para. 40.

⁴⁶ CRPD/C/GC/6., para. 28.

⁴⁷ *Mental Disability Advocacy Centre (MDAC) v. Bulgaria*, decision on the merits of 3 June 2006, complaint no. 41/2007, § 34.

⁴⁸ CRPD/C/GC/6. 25 (c).

⁴⁹ *Ibid.*, para. 28.

⁵⁰ *Ibid.*, para. 29.

40. Nevertheless, CEDAW as such, regarding its leading objective to ensure **substantive equality of women**⁵¹, surely provides us with a strong ground to argue to right of the child to pre-school education also in its care dimension, in this context as **an important measure to promote equality of women and men in the field of labour outcomes and economic equality**. It explicitly reflects that maternity may lead to specific forms of discrimination against women. Thus, in article 11 it requires the State parties to **take appropriate measures to prevent discrimination against women on the grounds of marriage or maternity**, while under paragraph 2 (c) these measures should include **necessary supporting social services** to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities. CEDAW conceptualises childcare facilities as an issue of **work-life balance** and an important measure promoting equal opportunities for women in the field of career and economic autonomy. Article 11 (2) (c) thus can be read as a reaction to the impact of the stereotyped role of women in the household as it has been described by the Committee on the Elimination of Discrimination against Women (hereinafter “the CEDAW Committee”) in its General Recommendation no. 29 on economic consequences of marriage, family relations and their dissolution.⁵²
41. Although article 11 (2) (c) explicitly mentions only social services, it should be interpreted broadly to **cover also educational services**, including **pre-school educational facilities**, i.e., kindergartens. The impact of the availability of both categories of services on women’s position in the labour market and their opportunity to enjoy their right to work and gain economic autonomy is the same. The difference between the services is mostly felt by children for whom, from a certain moment of their development, **educational facilities may be more appropriate than social ones**. That is why the CRC Committee has formulated the concept of “Educare” (see above para. 6). Furthermore, the availability and accessibility of kindergartens seem crucial especially in a country where, as in Czechia, these are used by the majority of the population as the primary way of looking after children over 3 years old.
42. Furthermore, article 4 of the CEDAW seems equally important as article 11 (2) (c). The CEDAW Committee has emphasised the difference between the two paragraphs of article 4. The first paragraph should cover only **temporary special measures** to remedy historical and structural discrimination against women and not “the provision of general conditions in order to guarantee the civil, political, economic, social and cultural rights of women and the girl child, designed to ensure for them a life of dignity

⁵¹ For instance, in its General recommendation no. 25, the CEDAW Committee has clearly indicated that the CEDAW aims to achieve both de jure and de facto equality, while de facto equality should be understood as substantive equality of results for women compared to men. See General Recommendation of the CEDAW Committee no. 25: Article 4, paragraph 1, of the Convention (temporary special measures), 2004, paras. 4 and 8.

⁵² There, the CEDAW Committee has emphasised that women’s disadvantage and exclusion may be also given by gender stereotypes about the roles of men and women in the household which may hinder women’s economic capacity. The CEDAW Committee thus identified “the compatibility of work requirements and family needs” as an important aspect of substantive equality for women. - CEDAW/C/GC/29. para. 8.

and non-discrimination”.⁵³ On the contrary, the second paragraph covers **favourable conditions for women directly related to their maternity which may be permanent**. The availability and accessibility of quality pre-school education on the general level should thus qualify as a special measure in terms of article 4 (2) at least as long as childcare for young children is still considered mothers’ rather than fathers’ task.

43. Nevertheless, article 4 (1) of the CEDAW and temporary special measures enshrined therein may be relevant in the context of the availability and accessibility of quality pre-school education for **women who face multiple or intersectional vulnerabilities**. Regarding the subject matter of this collective complaint, we will focus especially on **women facing poverty and/or social exclusion**, who are often in Czechia, as described below, of Romani origin. Quality pre-school education facilities may be crucially important especially for women in the described vulnerable situations because they enable them to return to the labour market and gain economic autonomy. Article 4 (1) may then be interpreted as providing these women with **the right to special support for the availability and accessibility of such facilities to address their multiple or intersectional vulnerabilities** given by their gender and social situation and/or their ethnicity. Concerning multiple or intersectional vulnerabilities, the CEDAW Committee has emphasised that “the discrimination of women based on sex and gender is inextricably linked with other factors that affect women, such as (...) status, (...) class, caste (...). Discrimination on the basis on sex or gender may affect women belonging to such groups to a different degree or in different ways to men. States parties must legally recognize such intersecting forms of discrimination and their compounded negative impact on the women concerned and prohibit them. They also need to adopt and pursue policies and programmes designed to eliminate such occurrences, including, where appropriate, temporary special measures in accordance with article 4, paragraph 1, of the Convention and general recommendation No. 25.”^{54 55}

44. To conclude, CEDAW provides us with a **mothers’ rights perspective** which directly connects pre-school education facilities with **the mother’s career and economic opportunities**. Its provisions enable us to argue for the availability and accessibility of quality pre-school education in general as a special measure protecting women’s maternity in terms of article 4 (2) and as a measure eliminating discrimination against women in the enjoyment of their right to work in terms of article 11 (2) (c). In addition, CEDAW also provides us with a strong ground to argue for **special support for the**

⁵³ General Recommendation of the CEDAW Committee no. 25: Article 4, paragraph 1, of the Convention (temporary special measures), 2004, para. 19.

⁵⁴ CEDAW/C/GC/28, para. 18.

⁵⁵ In the General recommendation no. 28 on the core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, the CEDAW Committee has explicitly mentioned only the intersectionality and not the multiplicity of the discrimination these women may face. Nevertheless, in its General recommendation no. 25, the CEDAW Committee has applied practically the same definition in the context of multiple discrimination. We thus argue that it is correct to use the Committee’s conclusions on State parties’ obligations for both – the multiple as well as intersectional discrimination. See the General Recommendation of the CEDAW Committee no. 25: Article 4, paragraph 1, of the Convention (temporary special measures), 2004, para. 12.

availability and accessibility of quality pre-school education for women who face multiple or intersectional vulnerabilities, especially as regards their economic and social situation such as mothers facing poverty and/or social exclusion.

(f) Summary of the relevant international standards

45. The above-described international human rights standards show that the right of the child to pre-school education, albeit not mentioned explicitly in any binding human rights convention, except for the CEDAW in terms of equal access to pre-school education for women and men, inherently belongs among the rights of the child. They also confirm that like the right to education in general, the right to pre-school education has a **comprehensive nature and underlines the interdependence and indivisibility of all human rights and freedoms**. It promotes the **social inclusion** of children from racial, ethnic, or social minorities and plays a crucial role in their empowerment as rights holders. As such it becomes an important **means to promote equal opportunities to enjoy and exercise their human rights and freedoms for all children, regardless of their vulnerable situations**.
46. The CEDAW further makes it clear that the availability and accessibility of pre-school education facilities for children is also **a human rights issue for children's mothers** since it is an important measure to equalise their situation in the labour market to that of men – fathers.
47. The CERD then provides strong legal grounds for the right of children and families belonging to ethnic or national minorities to **special measures making pre-school education facilities available and accessible to them**. The CEDAW then provides us with **a more universal applicability of the right to special measures for women who finds themselves in a situation of multiple or intersectional vulnerabilities** among whom there may be not only Romani women, but also women who ethnically belong to the majority population but face poverty and/or social exclusion. The CEDAW thus enables us to argue for special measures for the availability and accessibility of pre-school educational facilities for all children and their families who face multiple or intersectional vulnerabilities.
48. Nevertheless, to be able to really fulfil this role, the right to pre-school education must be first understood as **a right of the child and their mother and not just as a mere issue of public policies or social programmes**. That means that the system of pre-school education must **meet certain requirements** to ensure that the pre-school education itself does not work as an exclusive, discriminatory, and segregating factor and does not further deepen the subordinate and dependent situation of children in vulnerable situations and their families. These requirements have been conceptualised as the 4-A scheme, but we may find other relevant human rights concepts such as the concept of inclusive equality or the already mentioned child rights-based approach.
49. All these concepts make us know that respecting the child and their mother as rights holders means **providing them with clear legal entitlements and corresponding legal**

obligations of their environment. The inclusive equality and all the modern anti-discrimination concepts, formulated most comprehensively in the area of disability rights but being also relevant for other persons in vulnerable situations, then make it clear that the entitlements have **multidimensional nature and cover all types of commitments deriving from human rights**: the commitment to respect, protect and fulfil. All the above-mentioned concepts also express that recognising a person as a rights holder means **respecting them in their diversity** and addressing failures in fulfilment of their rights by requirements to change of their environments (by promoting its accessibility and inclusivity) and not to change themselves.

III. PRE-SCHOOL EDUCATION IN TERMS OF PUBLIC POLICIES

50. The view of rights of the child may be well completed by the importance of pre-school education in terms of public policies. The European Commission has recently published **new research mapping the existing evidence on the impact of early childhood education and care⁵⁶ on child's labour and educational outcomes as well as parent's labour outcomes.** The research has confirmed that the available evidence proves the positive impact of quality early childhood education and care on the child's educational and labour outcomes. In concrete, it has mentioned a positive impact on the child's cognitive and non-cognitive acquisition, attendance, lower absences and fewer disciplinary referrals, attainment in high school and university, higher socioeconomic wellbeing, higher wages and job outcomes, and lower dependency on welfare later in life.⁵⁷ The research specifically mentions the evidence proving greater positive outcomes of participation in early childhood education and care for children "from disadvantaged backgrounds" and children belonging to ethnic minorities.⁵⁸
51. The research has also mentioned evidence proving the positive impact on parent's labour outcomes. It explicitly marked early childhood education and care as "a key facilitator of parental employment outcomes, particularly for mothers."⁵⁹
52. These findings support the argument that the provision of quality early childhood education and care, including pre-school education, may be a suitable special or specific measure to address vulnerability of children facing systemic discrimination, including Romani children and children facing poverty and social exclusion. Quality early childhood education and care **may open the future of children in vulnerable situations and equate their life opportunities** compared to their peers who are not victims of systemic discrimination. It can be also **an effective tool to address transgenerational poverty**, not only because it increases the educational and labour

⁵⁶ Defined as „any regulated arrangement providing education and care for children from birth up to compulsory primary age“. – See the European Commission, 'Building a better understanding of the impact of Early Childhood Education and Care on medium- and longterm educational and labour market outcomes in Europe, 2022, p. 3. Available at:

https://ec.europa.eu/social/main.jsp?catId=738&langId=en&pubId=8447&furtherPubs=yes&utm_source=email&utm_campaign=FirstYearsFirstPriority%20The%20Year%20Ahead&utm_medium=email.

⁵⁷ Ibid., pp. 5-6.

⁵⁸ Ibid., p. 7.

⁵⁹ Ibid., p. 6.

outcomes for children but also because it improves parents' position on the labour market, especially for mothers.

IV. THE SITUATION IN CZECHIA – FAILURE TO ENSURE EQUAL ACCESS TO PRE-SCHOOL EDUCATION FOR ROMA CHILDREN AND CHILDREN FACING POVERTY AND SOCIAL EXCLUSION

53. In the present collective complaint, we would like to address the vulnerable situation of Romani children as the biggest ethnic minority in Czechia and children facing poverty⁶⁰ and social exclusion⁶¹ and their families, in the context of the enjoyment of the right of the child to pre-school education on an equal basis with others. The target groups of this collective complaint are often largely overlapping⁶² since Romani people, including families with children, face in the Czech society long-term structural discrimination, also affecting the attitudes of the majority and thus putting Romani people in a very precarious situation in many areas of life, including housing, employment, and education (for more information see below paras. 59–60, 98, 110–111). Nevertheless, children living in poverty and social exclusion may face similar barriers in the access to pre-school education even if they are not of Romani origin. That is why we prefer to mention this group of children separately from Romani children. We would also like to emphasise that Romani children may face significant structural barriers given by the attitudes of the representatives of the pre-school educational system even if not living in poverty and social exclusion. This concerns especially the third of the below-listed issues.

54. We would like to concentrate particularly on **three separate, albeit interrelated barriers to the effective access of Romani children and children living in poverty and social exclusion to pre-school education**, namely:

- 1) failure of Czechia to ensure **affordability** of pre-school education in kindergartens for these children;
- 2) failure of Czechia to ensure **availability** of pre-school education in kindergartens for these children by subjecting the legal claim of the child to be admitted to a

⁶⁰ We define poverty as „destabilizing poverty“ which is a term appearing in national analytical documents in the field of education. ‘The Map of Education’ [Mapa vzdělávání] prepared by research organisation PAQ Research defines the destabilizing poverty as poverty which is closely related to foreclosures and housing need of families, living in socially excluded environments and unemployment in times of recession. It mainly affects poor regions but is also common in larger cities such as Ostrava, Plzeň and Brno. – The Map of Education, including the definition of destabilizing poverty is available in Czech at: <https://www.mapavzdelavani.cz/socialni-problemy>.

⁶¹ We define social exclusion in compliance with the definition used in the analysis of socially excluded localities as a locality where the concentration of more than 20 persons living in substandard conditions (indicated by the number of recipients of the substance allowance) occupying a physically or symbolically confined space (indicated by external identification). - GAC spol. s r. o., ‘Analýza sociálně vyloučených lokalit v ČR’ [Analysis of socially excluded localities in the Czech Republic], 2015, p. 11. The analysis is available in Czech at: https://www.gac.cz/userfiles/File/nase_prace_vystupy/Analiza_socialne_vyloucenych_lokalit_GAC.pdf.

⁶² See, *inter alia*, ‘Zpráva o stavu romské menšiny v České republice v roce 2020’ [2020 Report on the situation of Roma minority in the Czech Republic]. Available in Czech at: <https://www.vlada.cz/assets/ppov/zalezitosti-romske-komunity/aktuality/Zprava-o-stavu-romske-mensiny-2020.pdf>.

kindergarten to a criterion that is not adequate for these children (the criterion of permanent residence);

- 3) failure of Czechia to provide these children with **effective protection from arbitrariness and discriminatory attitudes** in the process of admission of a child to pre-school education at kindergartens.

55. The common denominator of all the listed failures is that **Czechia fails to meet its commitment to ensuring access to pre-school education also to children from ethnic, racial, or social minorities on an equal basis with others** by ensuring, *inter alia*, that the availability and accessibility of the system for these children and by **adopting concrete preferential measures to address the prevailing historical and/or systemic discrimination of these children that would have the nature of legal entitlements of the child**, in line with the child rights-based approach.

56. It is worth noting that recent research data confirms that in Czechia, there is a **very strong correlation between where and to what family the child is born and their educational outcomes**. A recent study prepared by renowned Czech sociologists shows that children who face poverty in Czechia are much more likely to have poor education outcomes than children living for instance in Estonia or Poland which are also post-communist countries. The educational system thus often becomes a **tool of reproduction of poverty**.⁶³ Similarly, the Ministry of Education has confirmed in its response to FORUM's query when summarizing an analysis (see below paras. 88–89) that there is a correlation between the child's abilities (mathematical preliteracy and phonemic awareness) and their socio-economic status. The Ministry has stated that "children from socially disadvantaged backgrounds perform worse on average. It has also been shown that the level of pre-literacy and pre-math skills is significantly better for children who attend kindergartens for longer (especially 3 years or more). This was also confirmed for socially disadvantaged children. Although the effectiveness of pre-school attendance on children's acquired skills cannot be considered a causal inference methodologically, a positive correlation is evident here."⁶⁴ Finally, the national strategic documents admit that in Czechia there is a **very low intergenerational educational mobility** and that "the socio-economic status of families today accounts for about 40 to 45% of the variance in mathematical, reading and science literacy test scores compared to the standard of about 30% in other European countries."⁶⁵

57. The unaffordability or unavailability of quality pre-school education for children in vulnerable situations or their effective protection from arbitrariness in their admission to kindergartens may amplify this phenomenon. An analysis of the availability of early childhood care and education facilities prepared by the Ministry of Labour and Social Affairs in January 2020 showed that **the regions suffering from structural problems**

⁶³ D. Prokop, V. Korbel, T. Dvořák, L. Marková, D. Gardošíková, J. Grossmann, J. Krajčová, D. München, 'Nerovnosti ve vzdělání jako zdroj neefektivity' [Inequalities in education as a source of inefficiency], Summary analysis for Česká spořitelna Foundation, 2020. Available in Czech at:

https://drive.google.com/file/d/1rXqtU61XHqgro--5mOESo7zwAJKrJ_-g/view.

⁶⁴ Response of the Ministry of Education at the FORUM's request sent by e-mail in September 2022.

⁶⁵ The Strategy of the Czech Republic's Educational Policy until 2030+, p. 45. The Strategy is available in English at: https://www.msmt.cz/uploads/brozura_S2030_en_fin_online.pdf.

(Ústí nad Labem Region, Moravian-Silesian Region and Karlovy Vary Region), including the existence of the greatest socially excluded localities⁶⁶, **and with a high proportion of Roma population**⁶⁷ are those with **the lowest representation of young children in kindergartens**.⁶⁸ The authors of the analysis explain this finding by either “enormous lack of capacity of kindergartens” or lower motivation of the parents to use these facilities for their children.⁶⁹ The authors of the study note that it is not possible to determine which of these two factors play the role⁷⁰ but we may put their findings in the context of other findings. The 2015 analysis of socially excluded localities in the Czech Republic confirms **the insufficient capacity of kindergartens in these areas** when stating that “children from socially excluded families and from ordinary families in attendance at kindergartens limit the capacity of nearby kindergartens. In rural areas the barriers mentioned include the fact that in the vicinity of socially excluded localities, there is no readily accessible kindergarten. Another barrier is the readiness of pre-school facilities to accept children from disadvantaged backgrounds.”⁷¹

58. In light of these findings, **the lack of effective legislation** providing children with clear legal claims as to the affordability and availability of quality pre-school education at kindergartens and their effective protection from arbitrariness in admission to kindergartens **makes the situation of children in vulnerable situations even more precarious**. The greater the lack of capacity of kindergartens, the greater the risk of kindergartens “cherry-picking” children and preferring those who are not as vulnerable as children and families facing poverty and social exclusion and Romani children. Instead of profiting from beneficial treatment as part of their right to special/specific measures, these children are **disadvantaged already in their preschool age which has a strong determining impact on their future educational opportunities**. Although the role of pre-school education should be exactly the opposite.

59. The precarity of the situation of Romani children given by the lack of clear legal claims as to the affordability, and availability of pre-school education at kindergartens, and their protection from arbitrariness in the admission to kindergartens is **exacerbated**

⁶⁶ See the map of socially excluded localities in the Czech Republic in the 2015 analysis - GAC spol. s r. o., ‘Analýza sociálně vyloučených lokalit v ČR’ [Analysis of socially excluded localities in the Czech Republic], 2015, p. 35. The Karlovy Vary and Ústí nad Labem Regions are situated in the North-West and Moravian-Silesian Region in the North-East of the Czech Republic. The analysis is available in Czech at: https://www.gac.cz/userfiles/File/nase_prace_vystupy/Analyza_socialne_vyloucenych_lokalit_GAC.pdf.

⁶⁷ The 2015 analysis of socially excluded localities in the Czech Republic indicates that “in more than half of socially excluded localities, the majority are Romani”. - Ibid., p. 6.

⁶⁸ T. Zykanová, K. Janhubová, ‘Analýza dostupnosti zařízení péče o děti v předškolním věku. Se zaměřením na mateřské školy a dětské skupiny’ [Analysis of the availability of early childhood care and education facilities. With a focus on kindergartens and child groups]. Ministry of Labour and Social Affairs, 2020, p. 22. The Analysis is available in Czech at: http://www.dsmpsv.cz/images/ke_stazeni/Anal%C3%BDza_dostupnosti_za%C5%99%C3%ADzen%C3%AD_p%C3%A9%C4%8De_o_p%C5%99ed%C5%A1koln%C3%AD_d%C4%9Bti.pdf.

⁶⁹ Ibid., p. 21.

⁷⁰ Ibid., p. 21.

⁷¹ GAC spol. s r. o., ‘Analýza sociálně vyloučených lokalit v ČR’ [Analysis of socially excluded localities in the Czech Republic], 2015, p. 75. The analysis is available in Czech at: https://www.gac.cz/userfiles/File/nase_prace_vystupy/Analyza_socialne_vyloucenych_lokalit_GAC.pdf.

by strong antigypsyism. In Czechia, **anti-Romani attitudes are common** not only among right-wing extremists, but also **among general population and even in public institutions and among public officials.** For instance, the 2020 report on the situation of the Roma minority in Czechia mentioned the annual survey on attitudes of the majority towards national and ethnic minorities. The survey was carried out by the Public Opinion Research Centre (Centrum pro výzkum veřejného mínění) of the Czech Academy of Sciences. The survey showed that out of 14 listed nationalities or ethnicities constituting the Czech society, including the Czech nationality, Roma have been considered as “very unpleasant/unliked” or “rather unpleasant/unliked” by the largest proportion of respondents (35 % and 36 %; in total 71 % of the respondents). The only group that has equated to Roma in this regard were persons of Arabic ethnicity who have been very disliked by 34 % of the respondents and rather disliked by 35 % (in total 69 % of the respondents). All the other national or ethnic minorities received much lower scores, for instance, the third most disliked minority - persons of Romanian nationality have been very disliked by “only” 10 % of the respondents and rather disliked by 30 % of the respondents (in total 40 % of the respondents).⁷²

60. The report has further referred to anti-Romani sentiment in election campaigns of some political entities and the statements of some politicians or public figures in the public space, like mayors⁷³ or **even the Public Defender of Rights, Stanislav Křeček.**⁷⁴ In 2022 the Public Defender of Rights has published another anti-Romani text: a post on his blog claiming that the socially excluded localities have been created by their inhabitants and that there is a strong link to the Romani ethnicity. In the cited post, the Public Defender of Rights has further stated that these people are uneducated and not willing to change anything about it or at least to make some efforts to change the lives of their children. Lastly, the Public Defender of Rights has categorised criticism of so-called practical schools which have been abolished following the judgment of the Grand Chamber of the ECtHR in the case of *D. H. and others v. the Czech Republic*, as “elitist” because, in his view, these schools offered to Romani children “at least something”.⁷⁵ The cited post of the Public Defender of Rights was widely shared and promoted on social media, even though there were also critical voices, especially from the organisations and activists already fighting for the rights of Roma. **Nevertheless, it showed how widespread the negative attitudes against Roma in the Czech society**

⁷² Zpráva o stavu romské menšiny v České republice v roce 2020' [2020 Report on the situation of Roma minority in the Czech Republic], p. 5. Available in Czech at: <https://www.vlada.cz/assets/ppov/zalezitosti-romske-komunity/aktuality/Zprava-o-stavu-romske-mensiny-2020.pdf>.

⁷³ The report has cited the mayor of Pospoloprty, a town in Ústí nad Labem Region with nearly 5 000 inhabitants, who has written on his Facebook profile that Romani persons „don't lift a finger for this society, and they go around with their large clan of children (who are their means of production) to collect many thousands of CZK in benefits, and they are still angry that they don't get them on time only to go and hang out in the streets and squares when a quarantine is declared.“ – See *ibid.*, pp. 9-10.

⁷⁴ The Public Defender of Rights has written an article for the daily Právo in which he compared the situation of Afroamericans in the USA and Romani people in Europe and in the Czech Republic while stating that contrary to Afroamericans, Romani people in Europe did not have a significant labour share of the wealth created. He has also recommended Romani people in the Czech Republic to employ themselves, if they face alleged discrimination on the labour market, and to build their own houses and apartments if they face alleged discrimination on the housing market. – See *ibid.*, p. 10.

⁷⁵ The post of the Public Defender of Rights is available in Czech at: <https://blog.aktualne.cz/blogy/stanislav-kreckek.php?itemid=41919>.

are and that they do not concern only extremist groups but are also common in public institutions and among public officials, including those that should promote equality and human rights.

61. Vis-à-vis the stigmatising and stereotyping environment, Romani children, as well as children facing poverty and social exclusion who may be similarly vulnerable, would need to be provided **with clear and enforceable legal claims to quality and inclusive pre-school education at kindergartens regarding its affordability, availability, and protection from arbitrariness**. Otherwise, the representatives of the system, including the directors of kindergartens, tend to use their discretion to prevent these children from attending kindergartens (see below) and make the kindergarten more attractive for the majority.
62. Below, we will elaborate on the unaffordability, and unavailability of the pre-school education at kindergartens for children in vulnerable situations, and on the lack of their protection from arbitrariness in more detail.

(a) General introduction to the situation of Roma children and children facing poverty and social exclusion in pre-school education at kindergartens

63. Before elaborating on the above-listed issues separately, it is worth noting that Czechia is a country with strong and long-term segregation of children in vulnerable situations in education. Already in 2007, the Grand Chamber of the ECtHR in its landmark judgment on indirect discrimination, *D. H. and Others v. the Czech Republic*⁷⁶ found that **Czechia systematically discriminated against Romani children by failing to provide them with access to quality education on an equal basis with others**. Although there have been several legislative reforms at the national level since the adoption of the Grand Chamber's judgment, the situation of Roma children and their educational prospects have not improved significantly. The review of the implementation of the judgment by the Committee of Ministers of the Council of Europe has not been closed yet and even the latest report by the Government proves that **Romani children are still disproportionately represented among children who are educated under educational programmes with adjusted (i.e., lower) learning outcomes** (25,3 % of Romani children in 2020 while the total proportion of Romani children among children at primary schools was only 3,6 %) **and approximately 75,7 % of these children are excluded from mainstream schools or classes**.⁷⁷
64. Furthermore, **Romani children are also disproportionately represented among children in so-called preparatory classes** which are designed, according to the national legislation, for children "whose inclusion in a preparatory class is expected to balance their development" and which admit preferentially children with deferred mandatory

⁷⁶ *D.H. and Others v. the Czech Republic*, judgment of the ECtHR (Grand Chamber) of 13/11/2007, complaint no. 57325/00.

⁷⁷ See Report of the Czech government on the execution of the judgment *D.H. and Others v. the Czech Republic* of 30 September 2021, available at: https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680a41672.

school attendance.⁷⁸ From the cited definition of the target group of preparatory classes, it is obvious that these do not meet the criteria of special/specific measures listed above, especially the requirement that special measures do not lead to perpetuated segregation. **They are not an adequate alternative to the inclusive pre-school education in kindergartens designed for all children.** In 2020 Romani children represented according to the qualified estimate 897 children⁷⁹ out of the total number of 4.424 children⁸⁰, i.e., 20,3% of the total number of children in preparatory classes. 79% of children (3 497 children) in the preparatory classes were over 6, i.e., have been already in the age of mandatory school attendance.

65. As mentioned above, the CRC Committee, as well as the CERD Committee, have highly appreciated education and availability of appropriate support services in early childhood for successful and dignified social inclusion of children from ethnic, racial, or social minorities who face a higher risk of social segregation and isolation. In 2016 Czechia adopted an amendment to the Education Act introducing **compulsory last year of pre-school education**, i.e., compulsory pre-school education in the school year following the day on which the child turns five until the beginning of the child's mandatory school attendance.⁸¹ The alleged aim of the amendment was, *inter alia*, to provide children from "socially disadvantaged backgrounds" with early education to mitigate their vulnerable situation and to raise their educational chances.⁸² **To the extent that pre-school education has become compulsory, it has been exempted from fees.** However, the families have not been systematically exempted from additional costs related to the child's attendance at kindergarten, like the costs connected with meals at the kindergarten or transport to the kindergarten.

66. Although the introduction of compulsory pre-school education should have targeted mainly children facing social disadvantages, including Romani children, research implemented by the Czech School Inspectorate in 2018 mapping the experience with the first half of the school year when the amendment was effective (2017/2018 school year) showed that **approximately 3% of the children for whom pre-school education was compulsory were not successfully enrolled in pre-school education, either in a kindergarten or its alternative forms (especially individual – domestic education).** The report of the Czech School Inspectorate further commented on this finding as follows: "However, these are often the very children who would benefit most from such education, as most of them come from socially and economically disadvantaged backgrounds that cannot respond adequately to their educational needs."⁸³ The report

⁷⁸ Act no. 561/2004 Coll., the Education Act, § 47 (1).

⁷⁹ Ibid.

⁸⁰ See the Statistical Yearbook of the Ministry of Education, Youth and Sports, table no. B2.3.1, for the school year 2020/2021. Available in Czech at: <https://statis.msmt.cz/rocenka/rocenka.asp>.

⁸¹ Amendment no. 178/2016 Coll.

⁸² See the explanatory report to the amendment no. 178/2016 Coll.

⁸³ Czech School Inspectorate, 'Dopady povinného předškolního vzdělávání na organizační a personální zajištění a výchovně vzdělávací činnost mateřských škol za období 1. pololetí školního roku 2017/2018' [Impact of compulsory pre-school education on organisational and personal provision and educational activities of kindergartens in the first half of the year of the school year 2017/2018], p. 4. Available in Czech at: https://www.csicr.cz/CSICR/media/Prilohy/2018_p%c5%99%c3%adlohy/Dokumenty/TZ-Dopady-povinneho-predskolniho-vzdelavani.pdf.

offered at least a partial explanation when stating that in the past the reasons for the non-involvement of these children in the pre-school education (when the final year of pre-school education was not compulsory) laid either in the attitudes of their parents who were not aware of the importance of pre-school education or in the economic situation of their families.

67. Concerning the latter reasons, the report pointed out **the lack of consistent studies mapping those issues**, but at the same time referred to a feasibility study on the introduction of the compulsory last year of pre-school education carried out by non-governmental organisations among mothers living in socially excluded localities in Karlovy Vary Region. The feasibility study showed that for those mothers whose children did not attend pre-school facilities **the major barriers laid in the fees (for the attendance and meal) as well as other costs related to the child's attendance at kindergarten like fees for trips, taking photos of the child and for clothes**. Those mothers were also afraid of stigmatisation connected with the lack of resources for all these fees, either direct or indirect.⁸⁴ Similarly, the 2015 analysis of socially excluded locations has mentioned **the economic reasons as one of the most important barriers in the children's attendance at kindergartens, at least for Romani children living in socially excluded localities**. The analysis has stated that: "for Romani families, the financial demands of pre-school education play a dominant role, which non-Romani families hardly mention it among the barriers. The financial aspect of the matter is thus a major obstacle for Roma than for their majority counterparts living near socially excluded localities."⁸⁵

68. As mentioned above, the introduction of the compulsory last year of pre-school education was associated with the exemption from the obligation to pay the fee for the child's attendance at kindergarten. However, the obligations to pay other fees, including fee for meals, remained unchanged. The Czech School Inspectorate has thus emphasised in the cited report that **the attendance of children from the socially disadvantaged environment could be supported by measures like subsidised meals and transport**. Nevertheless, the Inspectorate has pointed out at the same time that "targeted support for children from socially disadvantaged backgrounds in the form of subsidies for meal fees was recorded only sporadically in 7 regions, with interventions either by the maintainer of the pre-school facility or the non-profit sector. In three of the kindergartens visited, all children received a subsidised meal allowance (one school in the Pilsen Region and two schools in the Karlovy Vary Region). No transport subsidies were recorded. In the case of these forms of support, therefore, it is rather an individual effort of the maintainer or the legal representatives themselves (who apply for a social contribution for school meals)."⁸⁶

⁸⁴ Ibid., p. 6 and footnote no. 3.

⁸⁵ GAC spol. s r. o., 'Analýza sociálně vyloučených lokalit v ČR' [Analysis of socially excluded localities in the Czech Republic], 2015, p. 75. The analysis is available in Czech at: https://www.gac.cz/userfiles/File/nase_prace_vystupy/Analýza_sociálně_vyloučených_lokalit_GAC.pdf.

⁸⁶ Czech School Inspectorate, 'Dopady povinného předškolního vzdělávání na organizační a personální zajištění a výchovně vzdělávací činnost mateřských škol za období 1. pololetí školního roku 2017/2018' [Impact of compulsory pre-school education on organisational and personal provision and educational activities of kindergartens in the first half of the year of the school year 2017/2018], p. 16. Available in Czech at:

69. Specifically, concerning Romani children, the Government has highlighted the increasing number of Romani children in compulsory pre-school education in its Report on the Execution of the Judgment *D.H. and Others v. the Czech Republic* of 30 September 2021.⁸⁷ However, the national Strategy of Roma Equality, Inclusion, and Participation (Strategy of Roma Integration) 2021-2030 acknowledges **the underrepresentation of Romani children in compulsory pre-school education as a persistent problem**. The Strategy states that “in the school year 2018/2019, according to the qualified estimates of the Ministry of Education (...), 3,57 % of the total number (125.498) of children who were required to attend pre-school education were Romani children, which is lower than the representation of Romani children at primary schools (3,7 %). (...) Thus, if we assume that demographically there have been no significant changes, the participation rates of Romani children in pre-school and primary education should equal or be at least similar.”⁸⁸
70. Furthermore, the Strategy emphasises that **the proportion of Romani children in non-compulsory pre-school education is even lower – only about 1,37 % in the school year 2018/2019**.⁸⁹ This is also confirmed by the latest data contained in the Government’s Report on the Execution of the Judgment *D.H. and Others v. the Czech Republic* which mentions that according to the qualified estimates for the school year 2020/2021 there were 6,954 Romani children at kindergartens of whom 4,197 (60,4 %) were over five and thus at the age of compulsory pre-school education and **only 2,727 (39,2 %) were under five**.⁹⁰ Compared to the total number of children under five in kindergartens in the school year 2020/2021 (230 155⁹¹), **Romani children represented only 1,2 %**.
71. The significant underrepresentation of Romani children in pre-school education was most recently criticised by the CRC Committee in its Concluding Observations on the 5th and 6th periodic reports of Czechia of September 2021. In concrete, **the CRC Committee has identified the insufficient coverage of Romani children by pre-school education to be a consequence of the widespread discrimination and hate crimes perpetrated against the Romani population**. The CRC Committee has also warned that

https://www.csicr.cz/CSICR/media/Prilohy/2018_p%c5%99%c3%adlohy/Dokumenty/TZ-Dopady-povinneho-predskolniho-vzdelavani.pdf.

⁸⁷ 4,197 children in kindergartens in 2020 compared to 4,126 children in 2019 and 897 children in preparatory classes of primary schools compared to 888 in 2019. See Report of the Czech government on the execution of the judgment *D.H. and Others v. the Czech Republic* of 30 September 2021, available at:

https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680a41672.

⁸⁸ ‘Strategie rovnosti, začlenění a participace Romů (Strategie romské integrace) 2021-2030’ [Strategy of Roma Equality, Inclusion and Participation (Strategy of Roma Integration) 2021-2030], p. 48. The Strategy is available in Czech at: https://www.vlada.cz/assets/ppov/zalezitosti-romske-komunity/aktuality/Strategie-rovnosti--zacleseni-a-participace-Romu-2021---2030---textova-cast_OK_2.pdf.

⁸⁹ Ibid., p. 48.

⁹⁰ Report of the Czech government on the execution of the judgment *D.H. and Others v. the Czech Republic* of 30 September 2021, available at:

https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680a41672.

⁹¹ See the Statistical Yearbook of the Ministry of Education, Youth and Sports, table no. B1.4.1, for the school year 2020/2021. Available in Czech at: <https://statis.msmt.cz/rocenka/rocenka.asp>.

the insufficient representation of Romani children among children participating in pre-school education may increase the risk of school segregation and dropout.⁹² The CRC Committee has thus urged Czechia to “ensure that Roma children have access to high-quality education, including preschool education, (...).”⁹³

72. Similarly, the **UN Committee on Economic, Social and Cultural Rights** has expressed in its Concluding Observations on Czechia of March 2022 its concern “with the insufficient coverage of Roma children by preschool education, the high drop-out rates of these students, and the insufficient number of qualified Roma school mediators.”⁹⁴ The Committee has recommended to Czechia, *inter alia*, to “(a) intensify its efforts to ensure that Roma children have access to high-quality mainstream education, including preschool education; (b) take targeted measures to improve enrolment and completion rates among Roma children, in particular Roma girls, at various levels of education; and (c) allocate an adequate budget for ensuring an adequate number of qualified Roma school mediators, and provide support to children Roma living in poverty and excluded localities.”⁹⁵
73. Several national strategies address the attendance of Romani children and/or children facing poverty and social exclusion at kindergartens which may be separated into **two main groups**: (a) strategies in the field of Roma integration/inclusion and (b) strategies in the field of education. For the first group, the most relevant is the above-cited **Strategy of Roma Equality, Inclusion, and Participation (Strategy of Roma Integration) 2021-2030**, for the second group it is **the Long-term Plan of Education and Development of Educational System 2019-2023**⁹⁶ and **the Strategy of the Czech Republic’s Educational Policy until 2030+**.⁹⁷ Unfortunately, none of these strategies seems to address the problem in its complexity and to propose really effective and systemic measures to make pre-school education at kindergartens more available and accessible for all Romani children and children facing poverty and social exclusion, be they under or over five (see below in the relevant parts of the collective complaint).
74. Such measures are not even part of the **national Recovery and Resilience Plan** which is in general very poor in measures addressing structural social vulnerabilities of different population groups. It is true that the national Recovery and Resilience Plan plans investment in raising the capacity of care facilities for young children and ensuring sustainable financing of childcare facilities “to foster the availability of affordable childcare for children”⁹⁸, but it is referring primarily to childcare facilities for children under the age of 3. These are not kindergartens, but nurseries and child

⁹² CRC/C/CZE/CO/5-6, para. 45 (c).

⁹³ Ibid., para. 46 (b).

⁹⁴ E/C.12/CZE/CO/3, para. 48.

⁹⁵ Ibid., para. 49.

⁹⁶ The Long-term Plan of Education is available in Czech at:

<https://www.msmt.cz/vzdelavani/skolstvi-v-cr/dz-cr-2019-2023>.

⁹⁷ The Strategy is available in English at: https://www.msmt.cz/uploads/brozura_S2030_en_fin_online.pdf.

⁹⁸ ANNEX to the Council Implementing Decision on the approval of the assessment of the recovery and resilience plan for Czechia of 31 August 2021, 11047/21 ADD 1, p. 115. Available at: <https://data.consilium.europa.eu/doc/document/ST-11047-2021-ADD-1/en/pdf>.

groups as the plan explicitly mentions itself.⁹⁹ This investment thus may support the right of women guaranteed under article 11 (2) (c) of the CEDAW (see above paras. 40–41), but do not relate to the child’s right to education. The Recovery and Resilience Plan is clear on this by making these investments part of the component 3.3 modernisation of employment services and labour market development and formulating their aim as “tackling persistent gender inequalities in the labour market, in particular the low labour market participation of women with small children”.¹⁰⁰ Kindergartens as pre-school educational facilities for children, who are usually over three or at least about three, are mentioned in the plan only once and that together with primary and secondary schools in the context of the Component 3.1: Innovation in education in the context of digitalisation and its investment 2: Digital equipment for schools. In concrete, the plan aims to equip 9 260 kindergartens, primary and secondary schools out of the total of approximately 10 000 facilities with basic and advanced digital technologies by 31 March 2024.¹⁰¹ **Otherwise, the plan is silent on the current situation of kindergartens and their unaffordability and unavailability for children in vulnerable situations and their families.**

(b) Failure of Czechia to ensure affordability of pre-school education at kindergartens

75. One of the major barriers to access to pre-school education in kindergartens for children facing poverty and social exclusion is its **unaffordability**. As mentioned above, **consistent data on this issue are lacking**, but the available research findings confirm that **the fees for pre-school education, either direct or indirect, play an important role in why families facing poverty and social exclusion, including Romani families do not enrol their children in kindergartens** (see para. 79). The Strategy of the Czech Republic’s Educational Policy until 2030+ also admits that “one of the reasons for non-participation in pre-school education is the existence of objective financial barriers hampering access to education”.¹⁰²

76. The introduction of the last compulsory year of pre-school education connected with the exemption from the obligation to pay the attendance fee remedied the situation of these families only partially. First, it failed to consider that **the attendance at kindergartens is associated with additional costs, including meal fee, travel costs, and costs for other additional activities undertaken in kindergartens** like trips, taking photos, taking part in extra classes organised by kindergarten (like English courses, swimming, skiing, or other sports activities), etc. Although not obligatory, **non-participation in these activities may further stigmatise children in vulnerable situations** and may make them feel inferior to their peers and let them accept this feeling as the reality connected with their financial and social situation. This acceptance may make them incapable of identifying the systemic discrimination¹⁰³

⁹⁹ Ibid., p. 115.

¹⁰⁰ Ibid., p. 114.

¹⁰¹ Ibid., p. 105.

¹⁰² The Strategy of the Czech Republic’s Educational Policy until 2030+, p. 116. The Strategy is available in English at: https://www.msmt.cz/uploads/brozura_S2030_en_fin_online.pdf.

¹⁰³ The concept of systemic discrimination has been defined, inter alia, by the UN Committee on Economic, Social and Cultural Rights in its General Comment no. 20 as discrimination against some groups that is

they may be victims of and thus of claiming their rights.¹⁰⁴ Last, the non-attendance may significantly disadvantage these children in their further education because their peers, thanks to taking part in the additional courses and activities organised by the kindergarten, will have more developed skills in concerned areas. **For all these reasons, the exclusion of children in vulnerable situations from these activities due to their additional costs thus goes directly against the concept of specific/special measures, since it strengthens rather than eliminates the systemic discrimination of these children and their families.**

77. Furthermore, **the amendment addressed in no way the fees for the attendance at kindergartens for children below the age of compulsory pre-school education.** The families of these children are thus exempted from the obligation to pay the attendance fee if they comply with the conditions determined by ministerial decree no. 14/2005 Coll., on pre-school education, but only if the kindergarten is maintained by the state, a region, a municipality, or a union of municipalities. The cited ministerial decree exempts the child's family from the obligation to pay the attendance fee **if the child's parent is a beneficiary of a recurrent social benefit for persons in material distress** (substance allowance and/or supplement for housing).¹⁰⁵ Other cases of exemption cover situations **when the child or the child's parent has a disability or when the child is placed in foster care.**¹⁰⁶

78. The legislation allows parents to get back the money paid in attendance fees in the form of a tax rebate.¹⁰⁷ However, **this mechanism again favours children and families who do not face destabilising poverty or/and social exclusion and do not have troubles with their monthly expenses.** The tax rebate is reflected in the family's budget retroactively, after the attendance fee has been paid. Furthermore, it is

„pervasive and persistent and deeply entrenched in social behaviour and organization. (...) Such systemic discrimination can be understood as legal rules, policies, practices or predominant cultural attitudes in either the public or private sector which create relative disadvantages for some groups and privileges for other groups.“ The Committee has also emphasised that systemic discrimination may often take the form of unchallenged or indirect discrimination. – E/C.12/GC/20, para. 12.

¹⁰⁴ In 2015 the Office of the Public Defender of Rights which is, inter alia, the equality body published the findings of its research focused on victims of discrimination and the barriers they face in accessing justice. The findings prove that victims of discrimination may accepted the position of discriminated persons as part of their individual identity: „Even when they succeed in clearly defining and distinguishing how their position differs from that of persons who are not discriminated against in their reflection on the discriminatory situation, in many cases they subsequently try to rationalize or downplay the situation in order to avoid being included among the discriminated against. The principle of secondary stigmatisation is probably at work here, whereby they know that they have certain differences to the 'norm' which in themselves distinguish them and set them apart from the mainstream of society. Accepting the role of a discriminated person would then further reinforce this fact - I am not only different, but my difference has personal felt effects and I am not treated a priori as an equal. There is then a certain ambivalence, whereby although they can talk about discrimination in the case of persons with similar specificities, they clearly reject discrimination for themselves.“ – Office of the Public Defender of Rights, 'Diskriminace v ČR: oběť diskriminace a její překážky v přístupu ke spravedlnosti' [Discrimination in the Czech Republic: The Victim of Discrimination and Their Barriers in the Access to Justice], 2015, p. 33. The Report is available in Czech at: https://www.ochrance.cz/uploads-import/ESO/CZ_Diskriminace_v_CR_vyzkum_01.pdf.

¹⁰⁵ Ministerial Decree no. 14/2005 Coll., on Pre-School Education, § 6 (6) (a).

¹⁰⁶ Ibid., § 6 (6) (b) – (d).

¹⁰⁷ Act no. 586/1992 Coll., on taxes on income, § 35bb.

applicable once a year so the family may be forced to bear the expenses for attendance fee without any support the whole year. The tax rebate thus does not help families who face a monthly shortfall in resources to pay for attendance fee at kindergartens. Furthermore, the tax rebate do not cover meal fees or any additional expenses connected with the child's attendance at kindergarten.

79. This legislation is completed by **the power of the director of the kindergarten to reduce or waive the fees associated with the child's attendance at the kindergarten which is, however, formulated in very general terms and its exercise is thus fully dependent on the director's discretion.**¹⁰⁸ It is worth noting that the cited legislation, be it the ministerial decree or the director's power to reduce or waive the fees, has already been effective at the time of the implementation of research of 2015 which identified the attendance fee as one of the major financial barriers (together with the meal fee) in access to pre-school education for children facing poverty and social exclusion.¹⁰⁹ These findings may show the practical limits to the effectiveness of the cited legislation which may not be appropriate for all families who face poverty and social exclusion, including Romani families. Especially Romani families may be particularly vulnerable in this regard, since, as mentioned above (para. 67), Romani families living in socially excluded localities identify economic reasons as the major barrier in the access to kindergartens. This may suggest that the directors are not exercising their power as regards reduction of exemption from the fees associated with the child's attendance at the kindergarten. Such attitudes of the directors would correspond to the generally disadvantageous attitude towards Roma in Czech society, including the education system (for more information see paras. 59–60).

¹⁰⁸ Act no. 561/2004 Coll., the Education Act, § 123 (4). The Commentary on the Education Act comments on the cited power of the facility's director as follows: "Therefore, there are no specific procedural rules that principals of schools and educational establishments must respect when making this decision. This fact implies a certain legal uncertainty for the participants in education, as it is not guaranteed that the directors of schools and school establishments established by the state, a region, a municipality, or a union of municipalities will make the same decisions in similar cases (...). The power of the director of a school or educational facility to reduce or waive fees is defined very broadly in Section 123(4) of the Education Act. (...) The head of a school or educational facility is therefore entitled to decide to reduce or waive fees, (...). However, the fee may also be reduced in cases which are not explicitly mentioned in Section 123(4) of the Education Act. It is therefore up to the discretion of the head of the school or educational establishment in which specific cases he/she will use his/her powers." – See Katzová, P. § 123. In: Katzová, P. 'Školský zákon: Komentář.' [Education Act. Commentary] [ASPI System]. Wolters Kluwer [accessed 9 March 2022]. ASPI_ID KO561_2004CZ. Available at: www.aspi.cz. ISSN 2336-517X.

¹⁰⁹ The research showed that the research was conducted among 175 mothers of whom 41 % (approximately 72 mothers) sent at least one of their children to kindergartens. 41 % of those mothers (approximately 30 mothers) confirmed that the attendance of their children was expensive for them but that they were still able to pay somehow pay it. 82 % of those mothers whose children did not attend kindergartens (approximately 84 mothers) mentioned that the attendance at kindergartens was too expensive, addressing allowance fees (76 mothers) and meal fees (77 mothers) as the biggest financial burden. – See Hůle, D., Kaiserová, I., Kabelová, K., Mertl, J., Moravec, Š., Svobodová, K., Šťastná, A. et al. 'Zavedení povinného posledního roku předškolního vzdělávání před zahájením školní docházky (Studie proveditelnosti)' [Introduction of a compulsory final year of pre-school education before starting compulsory school attendance (feasibility study)], Společnost Tady a teď, o. p. s., Demografické informační centrum, o. s., 2015, pp. 96-97. The Study is available in Czech at: https://www.kudvyvedcesta.cz/sites/default/files/upload/studie_1_final.pdf.

80. Those families who are not exempted from the obligation to pay the attendance fee to kindergartens must rely especially on **the social benefits for persons in material distress**. The most important of them for this purpose is the so-called **extraordinary immediate assistance**. The extraordinary immediate assistance may be granted to persons, *inter alia*, when they do not have enough resources to cover justified costs relating to the education or special interests of dependent children.¹¹⁰ The amount of the benefit may be a maximum of the specific expense, but the sum of benefits granted must not exceed ten times the individual's subsistence minimum in one calendar year, i.e., the amount of CZK 38 600 (approximately EUR 1574,4¹¹¹).¹¹² Unfortunately, this social benefit is of one-off nature and there is **no legal claim for it and its granting is fully in the discretion of the relevant administrative body** (the Labour Office) which assesses if it is justified or not.¹¹³

81. **There are no systemic statistics on how extraordinary immediate assistance is granted in relation to the child's attendance at kindergartens.** In 2020, the Office of Public Defender of Rights published the findings of its research on the provision of extraordinary immediate assistance to children. The research showed that extraordinary immediate assistance is most often used to cover the costs of exercise books and textbooks (37 % of the monitored cases), or pens, drawing, and small school supplies (30 % of the monitored cases). In nearly one-fifth of all the cases extraordinary immediate assistance was granted for the purchase of a school bag (18 %) and in one-tenth of the cases for PE clothing (12 %), PE shoes (11 %), slippers (11 %), and pencil cases (11 %).¹¹⁴ These findings prove that **although theoretically the emergency immediate assistance may be used also to cover the attendance fee to kindergartens, it is not much used for this purpose in practice** and it rather serves to cover one-off costs related to the attendance at primary or secondary schools.

82. **Furthermore, the costs that are recurrent and relate to the necessities of life (meal or ordinary expenses (clothes, shoes, toiletries, towel) are not eligible to be covered by the extraordinary immediate assistance but should be covered by recurring benefits of assistance, especially by the so-called allowance for living,** even if their provision is necessary for ensuring the child's attendance at kindergartens. The above-cited research of the Office of the Public Defender of Rights mentions, for example, a case in which the Labour Office did not consider the costs for the pyjamas and tracksuits for kindergarten as extraordinary, as these costs are already reflected in allowance for living as a recurrent benefit.¹¹⁵ Nevertheless, the above-cited research

¹¹⁰ Act no. 111/2006 Coll., on Assistance in Material Need, § 2 (5) (c).

¹¹¹ Exchange rate of the European Central Bank on 16 September 2022 (EUR 1 = CZK 24,518).

¹¹² *Ibid.*, § 37 (d), in connection with Act no. 110/2006 Coll., on Subsistence Minimum, § 2.

¹¹³ Act no. 111/2006 Coll., on Assistance in Material Need, § 2 (5) (c). See also Beck, P., Grunerová, I., Pavelková, M., 'Zákon o pomoci v hmotné nouzi: Praktický komentář' [Act on Assistance in Material Need. Practical Commentary] [ASPI System]. Wolters Kluwer [accessed 4 March 2022]. ASPI_ID KO111_2006CZ. Available at: www.aspi.cz. ISSN 2336-517X.

¹¹⁴ Office of the Public Defender of Rights, 'Poskytování dávek mimořádné okamžité pomoci nezaopatřeným dětem' [Provision of Extraordinary Immediate Assistance to Dependent Children], 2020, p. 13. The research report is available in Czech at: https://www.ochrance.cz/uploads-import/ESO/SZD%2025-20-JH-doporu%C4%8Den%C3%AD_002.pdf.

¹¹⁵ *Ibid.*, p. 73.

conducted by non-governmental organisations among families facing social disadvantages proved that **the lack of appropriate clothes for children may also constitute a significant barrier in their access to pre-school education since the parents are afraid of their stigmatisation.**¹¹⁶ Furthermore, the report of the Office of the Public Defender of Rights also considers the practice of the Labour Office not to grant the extraordinary immediate assistance to cover meals or drinks with the justification that these costs should be covered by the allowance for living as legal.¹¹⁷ It is worth noting that the amount of allowance for living which should serve to cover all the necessities of the child, not only those related to the attendance at kindergarten, is for children under 6 CZK 1 970¹¹⁸ (approximately EUR 80,35¹¹⁹) a month.

83. To give complete information about all social benefits available in the Czech social security system aiming to support the family in financing the child's needs, we should also mention the so-called **child allowance**. Child allowance is a social benefit which is designed not for the poorest ones, as are the above-mentioned material need benefits (extraordinary immediate assistance, allowance for living), but the target group of its beneficiaries is broader and also contains lower middle-class families. Nevertheless, **the amount is quite low, and it is thus not able to effectively support families facing destabilising poverty and/or social exclusion in fulfilling their children's needs.** For children up to 6 years the amount is CZK 630 – approximately EUR 25,7¹²⁰ a month,¹²¹ In its increased form it is CZK 1130 - EUR 46,1 a month,¹²² but we must note that **the legal conditions for the increased form are set to favour people who are or were engaged on the labour market**¹²³ who often may not be people facing destabilising

¹¹⁶ In concrete, the report of the research states as follows: „A specific area is the cost of clothing. Respondent mothers mentioned that they were very concerned about that their children are not ridiculed just because they are poorer, and therefore consider the cost of good clothes for children as indispensable and in some cases, if they can't afford to buy clothes, they prefer not to enrol their child in kindergarten.“ – See Hůle, D., Kaiserová, I., Kabelová, K., Mertl, J., Moravec, Š., Svobodová, K., Šťastná, A. et al. 'Zavedení povinného posledního roku předškolního vzdělávání před zahájením školní docházky (Studie proveditelnosti)' [Introduction of a compulsory final year of pre-school education before starting compulsory school attendance (feasibility study)], Společnost Tady a teď, o. p. s., Demografické informační centrum, o. s., 2015, p. 97. The Study is available in Czech at: https://www.kudvyvedcesta.cz/sites/default/files/upload/studie_1_final.pdf.

¹¹⁷ Office of the Public Defender of Rights, 'Poskytování dávek mimořádné okamžité pomoci nezaopatřeným dětem' [Provision of Extraordinary Immediate Assistance to Dependent Children], 2020, p. 75. The research report is available in Czech at: https://www.ochrance.cz/uploads-import/ESO/SZD%2025-20-JH-doporu%C4%8Den%C3%AD_002.pdf.

¹¹⁸ Act no. 111/2006 Coll., on Assistance in Material Need, § 24 (1) (a) in connection with Act no. 110/2006 Coll., on Subsistence Minimum, § 3 (3) (d).

¹¹⁹ Exchange rate of the European Central Bank on 16 September 2022 (EUR 1 = CZK 24,518).

¹²⁰ Exchange rate of the European Central Bank on 16 September 2022 (EUR 1 = CZK 24,518).

¹²¹ Act no. 117/1995 Coll., on State Social Support, § 18 (1) (a).

¹²² Ibid., § 18 (3) (a).

¹²³ People who are employed or are doing business, people under sickness or pension insurance, people who have the right to unemployment benefit which is in Czechia granted only for 5 to 11 months depending on the person's age and only if the person was employed for at least 12 months in the last two years, and people who have right to the parental benefit but only if they were before under sickness insurance, i.e. if they were employed or did business. The only group who has the right to increased child benefit and did not have to be active on the labour market are beneficiaries of care allowance for children with disabilities up to 18 years. – See Act no. 117/1995 Coll., on State Social Support, § 18 (2). The explanatory note to the cited legislation explicitly states that the aim is to support those families „who raise their standard of living by working legally“.

poverty or social exclusion. This is because one of the phenomena connected with the situation of destabilising poverty or social exclusion is **discrimination on the labour market**¹²⁴ resulting in massive unemployment of these people.¹²⁵

84. In 2022, the Czech government supported families whose 2021 gross income did not exceed CZK 1 000 000 (EUR 40 786,4¹²⁶) with **one-off exceptional child allowance** of CZK 5 000 (EUR 203,9).¹²⁷ **Not even this social benefit is, however, able to effectively support families facing destabilising poverty and social exclusion and their children in the access to pre-school education.** Its main objective is to react to price spikes caused by high inflation.¹²⁸

85. **The national strategies do not address the issue of affordability of pre-school education in its complexity.** The Long-term Plan of Education and Development of Educational System 2019-2023 lists among its priority objectives specifically the increase of the proportion of children enrolled in compulsory pre-school education. **It thus fails to address the situation of younger children for whom pre-school education**

The legislation even contains safeguards against those who would try to get the increased child benefit by working only „symbolically“ by requiring that the person must earn at least the amount of the minimum subsistence level for an individual. – The explanatory note is available in Czech at:

<https://www.psp.cz/sqw/text/orig2.sqw?idd=130578&pdf=1>.

¹²⁴ Especially Roma people experience serious discrimination in the labour market, especially when looking for employment. The latest data from the State Labour Inspection Office show that discrimination in access to employment is still common in Czechia. In 2018, the Office found discrimination in 169 cases out of 221 controls (76,5%), in 2019 in 195 cases out of 267 controls (73%), and in 2020 in 150 cases out of 179 controls (83,8%). The statistical data are available in the activity reports of the State Labour Inspection Office for the respective years which are available in Czech at: <https://www.suip.cz/zpravy-o-cinnosti-suip>.

Descriptive data accompanying these findings confirm that Romani people are the most vulnerable concerning discrimination in access to employment. See for instance the article of the Czech Radio [Český rozhlas] which is a public media, which states that in 2018 the State Labour Inspection Office revealed the most cases of discrimination in access to employment in 4 years. And the above-cited statistical data confirm that this number kept growing in the following years, except for 2020 when, however, the State Labour Inspection carried out significantly fewer controls than normally, most probably due to COVID pandemics. All the revealed discriminatory cases do not concern Romani people, but Roma are ones of the most common victims. The article cites the spokesperson of the State Labour Inspection Office stating that “Employers advertise certain positions, for example, clerk, assistant, waitress, bricklayer and the advertisement itself states that they are looking for a woman, a man, a pensioner, or that they are not interested in employees of Romani origin. (...)” – See V. Štefan, ‘“Nechceme Roma.” Inspekce odhalila nejvíc discriminačních nabídek za čtyři roky.’ [“We don't want Roma.” Inspection reveals most discriminatory offers in four years], Český rozhlas, 2018. The article is available in Czech at: https://www.irozhlas.cz/zpravy-domov/diskriminace-romove-rasa-pohlavi-inspekce-prace_1804060625_pj.

¹²⁵ The 2015 analysis of socially excluded localities in Czechia has stated that “the proportion of the unemployed in socially excluded localities is on average around 80 to 85 percent. Unemployment is higher in ethnically homogeneous localities and in rural localities where jobs are scarce. The highest average unemployment was highest in the Moravskoslezský, Ústí nad Labem, Karlovy Vary a Olomouc regions.” - GAC spol. s r. o., ‘Analýza sociálně vyloučených lokalit v ČR’ [Analysis of socially excluded localities in the Czech Republic], 2015, p. 9. The analysis is available in Czech at:

https://www.gac.cz/userfiles/File/nase_prace_vystupy/Analýza_socialne_vyloucenych_lokalit_GAC.pdf.

¹²⁶ Exchange rate of the European Central Bank on 16 September 2022 (EUR 1 = CZK 24,518).

¹²⁷ See the Act no. 196/2022 Coll., on One-off Child Allowance.

¹²⁸ See the explanatory report to the Act no. 196/2022 Coll. The explanatory report is available in Czech at: <https://www.psp.cz/sqw/text/orig2.sqw?idd=207673>.

is not compulsory. It is true that when listing the measures to fulfil the mentioned priority objective, the Long-term Plan mentions that the Ministry of Education in cooperation with the Ministry of Labour and Social Affairs will adopt measures enabling the increase of the attendance of children at kindergartens (at least in the last school year before the start of obligatory school attendance) especially from “areas of social disparities” (Ústí nad Labem Region, Karlovy Vary Region, Moravian-Silesian Region) and from localities endangered by social exclusion and propose a system supporting the motivation of those parents whose children do not participate in pre-school education on a long-term basis. The Long-term Plan suggests that this support may consist of, for instance, free meals at kindergartens, reduction of the attendance fee, or exemption from the obligation to pay the attendance fee or support of a social worker. In addition to the cited supported measures **the Long-term Plan lists also repressive ones like conditioning the payment of social benefits on children’s attendance at kindergartens.**¹²⁹

86. Although some of the examples of supportive measures suggested in the Long-term Plan may seem promising, **they are not accompanied by concrete and targeted steps for their implementation.** In concrete, the Long-term Plan lists only one criterion to monitor the implementation of the cited measure B.2.3 which is the “joint position paper on the enrolment of children in compulsory pre-school education”. The government has also referred to this joint position paper in its Report on the execution of the judgment *D. H. and Others v. the Czech Republic*¹³⁰ where it has stated that “the purpose of this measure is to overcome the consequences of failure to meet the obligation of registering for compulsory preschool education, including situations indicating a serious breach or negligence of the parents’ obligations in looking after or upbringing their children.”¹³¹ But the truth is that the joint position paper was prepared **already in Spring 2019, i.e., before the adoption of the Long-term Plan,** especially by the Ministry of Labour and Social Affairs in the reaction to the then situation when kindergartens and education departments of municipal offices automatically considered the parents’ failure to enrol the child to compulsory pre-school education as a reason for supervision of the family by the public authorities for the protection of the child (in Czechia so-called authorities for the social and legal protection of the child). **Since the intervention of the public protection authorities in the child’s and their family’s life is always an authoritative act of public power and thus a public interference, it may be always considered as an act of repression against the child’s family for whom it may be at the same time stigmatising.**¹³² The Ministry of Labour and Social Affairs thus considered the then practice as

¹²⁹ Long-term Plan of Education and Development of Educational System 2019-2023, Measure B.2.3.

¹³⁰ Report of the Czech government on the execution of the judgment *D.H. and Others v. the Czech Republic* of 30 September 2021, available at: https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680a41672.

¹³¹ Report of the Czech government on the execution of the judgment *D.H. and Others v. the Czech Republic* of 30 September 2021, available at: https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680a41672.

¹³² See, *inter alia*, the statement of the Office of the Public Defender of Rights in its comments on the Draft Amendment to the Education Act proposing greater involvement of child protection authorities in dealing with “challenging behaviour” of the child at school, 2020. Available in Czech at: <https://eso.ochrance.cz/Nalezene/Edit/7942>.

disproportionate and tried to make it clear that the system of public protection of children should deal only with those cases when the child is maltreated or abused or seriously neglected by their parents and not when the parents just fail to enrol the child in compulsory pre-school education. The joint position paper¹³³ itself thus could not affect the establishment of the promised effective system of support for children facing poverty and social exclusion, including Romani children, and their families in the access to pre-school education because its objective is completely different.

87. In addition to the joint position paper of the Ministry of Education and the Ministry of Labour and Social Affairs, the Long-term Plan refers to the **research carried out by the Ministry of Education through the Technology Agency of the Czech Republic focused on the identification and description of the specific impacts of and obstacles to the implementation of compulsory pre-school education**. This research is a criterion for another measure of the Long-term Plan – measure B.2.1 consisting of the systemic evaluation of the implementation of the compulsory pre-school education based on social science research. This research is also strongly referred to by the government in its Report on the execution of the judgment *D. H. and Others v. the Czech Republic* which specifies that that “the research focuses on, inter alia, measures that should be adopted to ensure children’s access to preschool education at kindergarten located near their homes, since this is considered to be the ideal form of the fulfilment of the compulsory preschool education for children from socially disadvantaged environments.” The problem is that the scope of the research remains too narrow since it concentrates **only on compulsory pre-school education**, i.e., it only addresses the situation of children in the age of compulsory pre-school education but not that of younger children. Furthermore, it is still just research while for the moment **the government has not yet formulated the steps that it will adopt based on its findings**. In its report on the execution of the judgment *D.H. and Others v. the Czech Republic* the government states that it believes that the research findings “will help to adopt measures intended to increase the proportion of children attending preschool education, focusing on areas of social disparities”,¹³⁴ but regarding the limited scope of the research, this government’s statement should not be overestimated.

88. The findings of the research are not publicly available. In response to FORUM’s query the Ministry of Education has described some major findings. The analysis has **identified the most common barriers to compulsory pre-school education: low parental awareness of the obligation of pre-school education, physical inaccessibility of kindergartens, insufficient capacity of kindergartens and discriminatory admission criteria**. The directors of kindergartens addressed by researchers identified two main reasons for children’s absence from compulsory pre-school education: 1) that parents do not send their children to kindergartens, and 2) that families face problems with payments for meals. The Ministry has also informed FORUM that the final part of the analysis contains proposals for legislative and non-legislative measures. Unfortunately,

¹³³ The joint position paper may be downloaded in Czech from: <https://www.msmt.cz/file/50210/>.

¹³⁴ Report of the Czech government on the execution of the judgment *D.H. and Others v. the Czech Republic* of 30 September 2021, available at: https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680a41672.

the Ministry has not described all of them. There are five legislative measures. One of them which the Ministry has marked belonging among “the most important”, is a monitoring one. In concrete, expanding the range of data transmitted from school registers to allow more detailed monitoring of the impact of compulsory pre-school education. Among the non-legislative measures, identified by the Ministry as “not being primarily under its responsibility”, a change in funding is recommended. The analysis proposes templates of the Operational Programme Jan Amos Komenský. Unfortunately, not all of them should support inclusive measures. In addition to lunches or funding for extracurricular activities, the analysis also proposes support for compensatory kindergartens in excluded localities, i.e. segregated kindergartens for children facing social exclusion.¹³⁵ It is worth noting that except for the funding for lunches or extracurricular activities, none of the measures directly concern the issues addressed in this collective complaint.

89. Furthermore, the cited proposals still do not necessarily be implemented by the Ministry of Education in practice. The Ministry itself commented on the analysis’s findings that it “will continue to work with them”.¹³⁶ Concerning the proposals, the Ministry has emphasised that it has already partially implemented the recommendation for individual pedagogical diagnostics in the form of publishing the methodology of Pedagogical Diagnostics in Kindergarten on the website of Systemic Support Project and of creating its second part. The Ministry has also launched a call for proposals for subsidy calls for support to increase the participation of children in pre-school education in the Karlovy Vary and Ústí nad Labem Regions for the period from 1 July 2022 to 31 December 2022. This call relates to one measure of the Strategy of the Czech Republic’s Educational Policy until 2030+ (see below para. 93). The subsidy call provides school meals for children with social disadvantages and children whose family is in a long-term unfavourable financial situation or has temporarily found itself in an unfavourable financial situation in the two above-mentioned regions, and also finances activities aimed at increasing the participation of children from this target group in pre-school education (removal of other financial barriers, cooperation with the family, implementation of leisure activities).¹³⁷ Although this measure aims to address the unaffordability of pre-school education for children facing destabilising poverty and/or social exclusion, it still does not establish a clear legal entitlement directly for children and families. It thus makes them vulnerable to social disciplining and arbitrariness (see below paras. 96 and 101).

90. The Strategy of the Czech Republic’s Educational Policy until 2030+ underlines the importance of the child’s early participation in pre-school education and as part of its strategic objective no. 2: *Reduce inequalities in access to quality education and pave the way for the maximum development of the potential of children, pupils and students* promises to increase participation in pre-school education for children aged 3 to 4

¹³⁵ Response of the Ministry of Education at the FORUM’s request sent by e-mail in September 2022.

¹³⁶ *Ibid.*

¹³⁷ *Ibid.*

years.¹³⁸ The Strategy emphasises that “it is also essential to focus on measures strengthening the pre-school preparation of children from socio-economically disadvantaged backgrounds, as this is crucial for the successful completion of later stages of education, and on the support of these pupils throughout their attendance at primary and lower secondary schools as well as upper secondary school.”¹³⁹

91. The Strategy addresses the participation of children in pre-school education in two of its key measures for 2020-2030: (a) the key measure focusing on the support for pre-school education in general and (b) the key measure focusing on the improvements in the quality of education in structurally disadvantaged regions.
92. The first key measure (Support for Pre-school education) lists the increase in children’s participation in pre-school education as one of its measures for 2020-2030¹⁴⁰ but **it relies practically on the same steps as those listed in the Long-term Plan and described above**. The Strategy thus also refers to the above-mentioned research focused solely on compulsory pre-school education.¹⁴¹
93. The second key measure (Improvements in the quality of education in structurally disadvantaged regions) includes the measure focused on the increase in the participation of children in pre-school education in the Karlovy Vary and Ústí nad Labem Region, i.e., in two regions with a large population of people facing poverty and social exclusion. This measure consists of two key activities: 1) removal of an objective financial barrier preventing access to education, and 2) support for family and school cooperation.¹⁴² Although these key activities may seem more optimistic and more targeted to address the real financial barriers to access to pre-school education, **their impact is still limited**. The first of the mentioned key activities **focuses practically only on meal fee which it would like to address by programmes providing children from poor families with free lunches**.
94. These programmes already exist. In general, there are **two programmes run by the State**. One of these programmes is administered by the Ministry of Labour and Social Affairs and is funded by the Fund for European Aid to the Most Deprived (FEAD). Until the school year 2021/2022 only this programme enabled to support children at kindergartens if the child is over 3. Since 2021/2022 the Ministry of Education has enlarged its own programme for children in elementary schools funded from the State budget to also cover children in pre-school education, but so far **only in the two above mentioned regions – Karlovy Vary Region and Ústí nad Labem Region**.
95. Although both programmes have an undeniably positive effect on children facing poverty and social exclusion, **it is questionable if they are sufficient to ensure the**

¹³⁸ The Strategy of the Czech Republic’s Educational Policy until 2030+, p. 20. The Strategy is available in English at: https://www.msmt.cz/uploads/brozura_S2030_en_fin_online.pdf.

¹³⁹ Ibid., pp. 44-45.

¹⁴⁰ Measure 1 – Ibid., p. 80.

¹⁴¹ Ibid., p. 82.

¹⁴² Ibid., p. 112.

affordability of pre-school education for these children. Both programmes have significant limits, not only due to the **limited territorial and personal scope** of the programme run by the Ministry of Education but also due to **the lack of direct accessibility of both programmes for children facing poverty and social exclusion, including Romani children.** Concerning the Programme run by the Ministry of Labour and Social Affairs as part of FEAD, the child may become a beneficiary of a free meal at kindergarten (or another school facility) only on the condition that the kindergarten joins the project, and the region applies to the Ministry (since 2019 all regions participate in the programme). The programme is, furthermore, designed **only for those children whose families are beneficiaries of allowance for living as one of the social benefits for persons in material need** which may also limit its effectiveness for children facing poverty and social exclusion because the poverty and social exclusion, making the child's family incapable of paying the meal fee, may be a broader category than the situation of need for material assistance as defined in the national legislation.¹⁴³

96. Not even the programme of the Ministry of Education ensures that the child and their family have direct access to the material support it offers. Children may be **supported only through kindergartens or non-governmental organisations which are the only eligible applicants of the programme's call.**¹⁴⁴ The child's family must apply for support to the kindergarten or non-governmental organisation which participates in the programme. In addition to this condition, the child's family must fall in one of the two categories defining the target group of the programme: 1) children with social disadvantages; and 2) children whose families find themselves in a long-term or temporary unfavourable financial situation. The definitions of both target group make children and their families dependent on the discretion of kindergartens directors or other organisations – beneficiaries of the call.¹⁴⁵

¹⁴³ Act no. 111/2006 Coll., on Assistance in Material Need, § 2 (2) (a) in connection with § 24.

¹⁴⁴ Cited according to the Ministry of Education's Call for application for subsidies to non-governmental non-profit organisations „Support for increasing participation of children in pre-school education in the Karlovy Vary Region and Ústí nad Labem Region for 2022“ (ref.: MSMT-26568/2021-4), Article 4. The Call is available at: https://www.msmt.cz/uploads/O_200/Skolni_stravovani/2022_KVK_a_USK/Vyzva_Podpora_zvyseni_ucasti_de_ti_na_predskolnim_vzdelavani_v_KK_a_UK_v_roce_2022.pdf.

¹⁴⁵ The only category which is not dependent on the discretion of kindergartens directors or non-governmental organisations are children whose families are exempted from paying the attendance fee (see above para. 77). Otherwise, the assessment of kindergartens directors or non-governmental organisations – beneficiaries of the call is crucial. Children with social disadvantages are children:

- 1) living in an environment where there is insufficient long-term support to prepare for education (e.g. due to insufficient material facilities, inadequate housing conditions, time-consuming transport to kindergarten, lack of interest on the part of parents, family conflicts); and/or
- 2) living in socially excluded localities or localities of social exclusion at risk, in a family with a low socio-economic status; and/or
- 3) who are disadvantaged because of their belonging to an ethnic or national group or having a specific social background, in particular if the disadvantage is linked to a lack of knowledge of the language of instruction, due to the use of a different language or a specific form of the language of instruction in the child's home.

Children whose families find themselves in a long-term or temporary unfavourable financial situation are children:

97. Contrary to previous calls of the Ministry of Education this call enables to also support children and families in their additional expenses connected with children's attendance at kindergartens (travel expenses for one person accompanying a child to kindergarten by public transport; the purchase of equipment necessary for the child's full participation in pre-school education, e.g. slippers, pyjamas, exercise equipment; and payment of fees for activities under the kindergarten's educational programme that require the financial participation of the child's parents, e.g. cultural activities, trips, swimming, outdoor schools).¹⁴⁶ Furthermore, the call supports activities aimed at cooperating with children's families to inform them about the benefits of pre-school education (community meetings, seminars and group adaptation activities for families; individual communication with families; identification of relevant families).¹⁴⁷ Nevertheless, this support faces **the same limits as the support by free lunches – the call is limited only to two regions (out of 14) and its provision is widely dependent on the discretion of the call's beneficiaries which are not, however, directly children and their families.** Finally, the support available through the call is **time-limited** and there are no guarantees that the Ministry will systematically continue in its provision. For instance, the support provided through the cited call was available only from 1st July to 31st December 2022 although the name of the call referred to the whole year 2022. In other words, the first half of the year 2022 was not covered by any call.¹⁴⁸ There is no call available for 2023 yet.¹⁴⁹

98. The second of the above-mentioned key activities (see para. 91) **does include in no way the issue of affordability of pre-school education.** It rather focuses on supporting different organisations and subjects working with Romani children and families. The support of these organisations may, in certain cases, help to eliminate the financial barrier by informing the child's family about the existing options and/or supporting the family in using them but only on the condition that there are effective mechanisms which the child and their family may benefit from. **We argue that the existing**

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- 1) for whom the director has already decided on the reduction of the meal fee or the family's exemption from the obligation to pay for meals according to the Education Act, § 123 (4) (see above para. 79);
 - 2) whose family financial situation corresponds to the conditions defined in ministerial decree no. 14/2005 Coll., § 6 (6), and the family is thus exempted from paying the attendance fees (see above para. 77);
 - 3) whose family financial situation does not allow the child to participate in activities within the school's educational programme that require the child's financial participation (swimming, outdoor schools, theatre, exhibitions, etc.).

Cited according to the Ministry of Education's Call for application for subsidies to non-governmental non-profit organisations „Support for increasing participation of children in pre-school education in the Karlovy Vary Region and Ústí nad Labem Region for 2022“ (ref.: MSMT-26568/2021-4), Article 6 (3) and (4). The Call is available at:

https://www.msmt.cz/uploads/O_200/Skolni_stravovani/2022_KVK_a_USK/Vyzva_Podpora_zvyseni_ucasti_de_ti_na_predskolnim_vzdelavani_v_KK_a_UK_v_roce_2022.pdf.

¹⁴⁶ Ibid., article 5 (1).

¹⁴⁷ Ibid., article 5 (1).

¹⁴⁸ The previous call covered the period from 1st July to 31st December 2022. The call may be downloaded in Czech from: <https://www.msmt.cz/file/55039/>.

¹⁴⁹ See the relevant website of the Ministry of Education: <https://www.msmt.cz/vzdelavani/predskolni-vzdelavani/dotace-a-granty>.

legislation and the existing programmes are not sufficient to establish an effective system of financial support for children facing financial barriers in the access to pre-school education at kindergartens since they do not eliminate existing blank spaces and make the support significantly dependent on the discretion of the relevant stakeholders (the director of the kindergarten, the region, the non-governmental organisation, etc.). This is very problematic if the concerned children and families are victims of systemic discrimination and thus very vulnerable to prevailing negative stereotypes and attitudes towards them (see above paras. 59–60). The UN Committee on Economic, Social, and Cultural Rights has recently emphasised that in Czechia **Romani people still face systemic discrimination which takes the form of their “stigmatization, poverty, and widespread discrimination in the areas of health, education, housing, and employment”**.¹⁵⁰

99. Not even the second group of strategies – strategies focused on Roma integration/inclusion address the issue of affordability of pre-school education for Roma facing poverty and social exclusion in any specific way. The Strategy of Roma Equality, Inclusion, and Participation (Strategy of Roma Integration) 2021-2030 formulates the increase in the participation of Roma children in pre-school education as its specific objective (objective C.1). Unfortunately, it formulates the measures to achieve this objective **in very general terms**. In concrete, the Strategy proposes to:

- 1) ensure in cooperation with other relevant ministries and NGOs to provide systemic solutions in the area of education and care for Romani children from 2 to 4 years (measure C.1.1);
- 2) provide support to ensure participation of Romani children in pre-school education through various mechanisms that are reflecting community work, family conditions, and educational needs of Romani children of pre-school age (measure C.1.2);
- 3) define and ensure coordinated cooperation to support the participation of Romani children in pre-school education within the agenda of the child protection authority, entities providing pre-school education under the Education Act, NGOs, and other entities providing outreach social services to families of pre-school children (measure C.1.3).¹⁵¹

100. Furthermore, although formulated in general terms, the measures include **controversial steps that can easily lead to further segregation of Romani children or repression against their families**. For instance, measure C.1.1 should lead, *inter alia*, to the development of programmes and measures aimed at increasing the number of children “from socio-culturally disadvantaged backgrounds” who will attend either kindergartens or preparatory classes, even though preparatory classes are designed, according to the national legislation, only for children in a particularly vulnerable situation and thus cannot be considered as a form of inclusion of these children. Measure C.1.3 then relies on the creation of so-called “multidisciplinary teams”, consisting of, *inter alia*, child protection authorities. Unfortunately, the child

¹⁵⁰ E/C.12/CZE/CO/3, para. 14.

¹⁵¹ The Strategy of Roma Equality, Inclusion and Participation (Strategy of Roma Integration) 2021 – 2030, The Task Part, Strategic Objective C.1. The Task part is available in Czech at: https://www.vlada.cz/assets/ppov/zalezitosti-romske-komunity/aktuality/05-Strategie-romske-rovnosti--zacleseni-a-participace-2021---2030---ukolova-cast_2.pdf.

protection authority is a representative of public power endowed with coercive powers over the child and their family. From the point of view of the child and their family, it is rather a form of repression and, as the Office of Public Defender of Rights pointed out in one of its statements, its intervention may be quite stigmatising.¹⁵²

101. We may thus conclude that even though there are some mechanisms enabling to overcome the barrier of fees related to attendance at kindergartens, either direct or indirect, these mechanisms are rather **fragmented and partial. They do not constitute a comprehensive system and in most cases do not give rise to enforceable legal claims of the child and their family.** On the contrary, they may associate the provision of material support with further conditions that may have a **disciplining and stigmatising effect** on the child and their family. Therefore, the existing supportive mechanisms do not comply either with the child rights-based approach or anti-discrimination commitments, including the right to the accessibility of the environment and the provision of specific/special measures to address historical and/or systemic discrimination.

(c) Failure of Czechia to ensure availability of pre-school education at kindergartens for Romani children and children living in poverty and social exclusion by subjecting the legal claim of the child to be admitted to a pre-school facility to an inadequate criterion

102. The second barrier in access to pre-school education for children facing poverty and social exclusion, including Romani children, we would like to address in this collective complaint, concerns the failure of Czechia to ensure its availability by subjecting the legal claim of the child to be admitted to a pre-school facility to an **inadequate criterion.** According to the current national legislation, the child has a legal claim to be admitted to pre-school education at kindergarten if they are over 3 and their place of permanent residence is at the catchment area of the specific kindergarten.¹⁵³ **The problem is that especially children who face poverty and social exclusion, including Romani children, often live in another place than their permanent residence, not rarely quite remoted from their place of permanent residence.**

103. The fact that the criterion of the place of permanent residence may not be adequate for certain groups of children, especially the above-mentioned one, is reflected in several national documents. The Office of the Public Defender of Rights has pointed out in its 2020 monitoring report on the right to equality and protection against discrimination that the capacities of kindergartens are not sufficient in many localities which causes that either certain children do not have the opportunity to attend them or there are too many children in one class which may negatively affect the quality of pre-school education. The Office has further emphasised the specific situation of Romani children when stating that “[t]his more general problem is

¹⁵² Office of the Public Defender of Rights. Comments on the Draft Amendment to the Education Act proposing greater involvement of child protection authorities in dealing with “challenging behaviour” of the child at school, 2020. Available in Czech at: <https://eso.ochrance.cz/Nalezene/Edit/7942>.

¹⁵³ Act no. 561/2004 Coll., Education Act, § 34 (3).

connected to the **problem of catchment areas**, which directly affects Romani children. Many of them have their place of permanent residence in a different municipality than where they actually live. However, according to the law, the catchment kindergartens are linked to the place of permanent residence. **Kindergartens in the vicinity of the actual residence, which are the most accessible for parents in terms of territory and finances (but not in terms of catchment area due to the difference between formal and actual residence, may not accept the child (e.g., due to full capacity).**"¹⁵⁴

104. The inadequacy of the criterion of the place of permanent residence is addressed also in the Task Part of the Strategy of Roma Equality, Inclusion, and Participation (Strategy of Roma Integration) 2021-2030, but only concerning Romani children in the age of compulsory pre-school attendance. The Strategy reminds us that **the criterion may constitute a significant barrier to the participation of Roma children in compulsory pre-school education in the form of attendance at kindergartens.** In concrete, the Strategy states that "many of the Romani 5-year-olds have their permanent residence in a different place than they are currently residing in. They are therefore not entitled to priority admission to the catchment kindergarten in their place of actual residence. Kindergartens that are the most accessible to parents in terms of territory and finances but are not in the catchment area due to different permanent and actual residence, may not admit the child, e.g., due to full capacity."¹⁵⁵

105. Unfortunately, **there are no comprehensive data on the extent of the problem and the number and age of Romani children and other children facing poverty and social exclusion for whom the pre-school education remains unavailable due to the different places of their actual and permanent residence.** The Ministry of Education only collects data on the number of successful and unsuccessful applications for admission to kindergartens, disaggregated by two criteria: (a) if the child has their place of permanent residence in the catchment area of the kindergarten or not; and (b) if the child is over 3. The data on the number of successful applications are further disaggregated to show if the child finally attended kindergarten or not. Nevertheless, the problem is that the child's family is not limited in the number of applications they can submit. **The number of rejected applications, therefore, does not correspond to the number of children who stay outside the pre-school education at kindergartens.** Furthermore, the statistical data does not allow us to deduce the number of children who are deprived of the opportunity to attend kindergartens and who are of Romani origin, and/or who face poverty and social exclusion. The data thus only show that, for instance, in the school year 2021/2022 the number of children who started attending kindergartens was 116 075 of whom 92 644 (79,8 %) lived in the kindergarten's catchment area and of whom 71 016 (61,2 %) were at the same time over 3 and thus

¹⁵⁴ Office of the Public Defender of Rights, 'Naplnování práva na rovné zacházení a ochrany před diskriminací. Monitorovací zpráva 2020' [Implementing the right to equal treatment and protection against discrimination. 2020 Monitoring report], 2021, p. 26. The report is available in Czech at: <https://www.ochrance.cz/uploads-import/ESO/62-20-DIS-DJ-monitorovac%C3%AD%20zpr%C3%A1va.pdf>.

¹⁵⁵ The Strategy of Roma Equality, Inclusion and Participation (Strategy of Roma Integration) 2021 – 2030, The Task Part, Strategic Objective C.1. The Task part is available in Czech at: https://www.vlada.cz/assets/ppov/zalezitosti-romske-komunity/aktuality/05-Strategie-romske-rovnosti--zacleneni-a-participace-2021---2030---ukolova-cast_2.pdf.

corresponded to the target group with the legal claim for the admission according to the national legislation. However, the data also confirm that 11 863 (25,7 %) out of the total number of 46 098 rejected applications were also submitted by children with a legal claim for admission, i.e., children over 3 having their permanent residence in the kindergarten's catchment area.¹⁵⁶ The total number of children having their place of permanent residence in the kindergarten's catchment area whose applications were rejected, i.e., children below and over 3, was 27 714 (60,1 %).¹⁵⁷ These data confirm that although in certain localities the child may be admitted to kindergarten even without their place of permanent residence in the kindergarten's catchment area, **there are other localities where the capacities of kindergartens are not sufficient, even for children with a legal claim for their admission.**¹⁵⁸

106. Despite the lack of appropriate data, the above-mentioned statements of the Office of the Public Defender of Rights and the Task Part of the Strategy of Roma Equality, Inclusion, and Participation (Strategy of Roma Integration) 2021-2030 about the precarious situation of Romani children may be confirmed by **experiences of specific children and their families** obtained thanks to non-governmental organisations providing these children and families with support and services. These organisations are often running clubs/preschool centres for children in vulnerable situations. Children who are not admitted to kindergartens, even in the age of compulsory pre-school attendance, then fulfil the compulsory pre-school attendance at these centres, being formally in the regime of "home schooling" as one of the legal alternatives to the attendance at kindergarten.¹⁵⁹ The problem is that **the attendance at the pre-school centre for children in vulnerable situations, often of Romani origin and facing poverty, social exclusion, and housing precarity, does not prepare these children for contact with the majority population, environment, and culture which they will experience at primary schools.** These children may thus face significant problems when they start attending primary school. These problems not rarely lead to an additional postponement of school attendance and the return of the child to pre-school education which the child, unfortunately, still cannot fulfil in the form of their attendance at kindergarten due to the kindergarten's insufficient capacity and the lack of the legal claim of the child for admission given by their place of permanent residence outside the catchment area of the kindergarten. It is worth noting that **even the Office of the Public Defender of Rights admits that the kindergarten may prefer children with the place of the permanent residence in the kindergarten's catchment area,**

¹⁵⁶ The legitimate reason for refusing an application of a child with a legal claim for admission is the insufficient capacity of the kindergarten. – For more information see para. 115 below.

¹⁵⁷ Data taken from the Statistical Yearbook of the Ministry of Education, Youth and Sports, table no. B1.14.1, for the school year 2021/2022. Available in Czech at: <https://statis.msmt.cz/rocenka/rocenka.asp>.

¹⁵⁸ Nevertheless, it should be noted that the catchment areas may be defined in such a way that the child has a legal claim for admission to more than one kindergarten in which case their application in one of these kindergartens may be rejected but the child is still admitted to a kindergarten in whose catchment area they have their place of the permanent residence.

¹⁵⁹ Act no. 561/2004 Coll., the Education Act, § 34a (5).

even if they are below 3 and thus do not have the legal claim for the admission, over children with the place of the permanent residence elsewhere.¹⁶⁰

107. To illustrate the described experience we can mention, for instance, the story of a Romani boy S. S. who, at the time of the record of the story, was 7 years old and lived all his life in one town, but unfortunately, due to the financial situation of his family and the lack of an effective system of social housing in a very precarious form of housing in a socially excluded locality. His family did not have the opportunity to register their permanent residence in the town since **the building in which they lived was not approved for housing and the proprietor of the building who accommodated them there refused to give them a lease contract.**¹⁶¹ S.'s family did not manage to find a place for S. in any kindergarten in the town due to their different place of permanent residence. **S. was not admitted to kindergarten even for the last compulsory year.** The kindergartens did not even consider in any way that S.'s compulsory school attendance was postponed which is an option for children who are not physically or mentally mature enough to start attending primary school.¹⁶² In the last year before starting compulsory school attendance, he was allowed, thanks to the support of a non-governmental organisation, to participate in pre-school education in a kindergarten at least in so-called adaptation days in the frequency of 3 hours every 14 days. Unfortunately, this was interrupted by the COVID-19 pandemic. **Formally, S. was in the regime of home schooling.** S. attended, from the age of 3 to 7, the pre-school centre run by a non-governmental organisation in which he developed his capacities, but unfortunately **did not have any opportunity to meet with other children than children living in similar conditions.** When he started to attend primary school, after one year of postponement of the compulsory school education, **he experienced a shock.** He was not used to meeting the majority and following its rules. For many children, the start of primary education is difficult since they must comply with many rules like sitting at a school desk, do not speak and play during the lesson, etc. **For S. it was even more difficult to cope with all these rules.** He did not understand the behaviour, expressions, and interests of other children in the class. He thus needed the presence of his close persons since, otherwise, he experienced anxiety, cried, and could be also aggressive which made him even less accepted by other children and the school environment. Furthermore, since S. was not attending a kindergarten, S.'s mother did not have the opportunity to adapt herself sensitively to separation from him. Her protectionist approach of her son was then considered by school representatives to exacerbate the situation although she made a real effort to ensure S.'s attendance at school. The psychologist from the centre of preventive educational care confirmed that **S. would need slow and non-violent adaptation, which was not,**

¹⁶⁰ Office of the Public Defender of Rights, 'Rovný přístup k předškolnímu vzdělávání. Doporučení veřejné ochránkyně práv' [Equal Access to Pre-school Education. Recommendations of the Public Defender of Rights], 2018, pp. 21-22. The Recommendations are available in Czech at: https://www.ochrance.cz/uploads-import/ESO/25-2017-DIS-JMK_Doporuzeni_k_rovnemu_pristupu_k_predskolnimu_vzdelavani.pdf.

¹⁶¹ Nevertheless, this is a legal condition for changing the place of permanent residence without the consent of the landlord. See Act no. 133/2000 Coll., on Population Registration and Birth Numbers, § 10 (6).

¹⁶² Act no. 561/2004 Coll., the Education Act, § 37 (1).

however, compatible with the school environment, its pace, and the approach of the primary school. The S.'s further educational career is thus questionable.¹⁶³

108. The Platform for Early Care carried out in 2020 a survey among its member organisations. Twenty-two organisations running in total 19 pre-school centres or clubs finally took part in the survey. Thirteen of them (59 %) replied that **in the pre-school centres/clubs, they worked with children who did not have their place of permanent residence in the catchment area of the kindergarten while 8 of them (36,4 %) had the experience even with children in the age of compulsory pre-school education.** According to these respondents, children in the age of compulsory pre-school education whose place of permanent residence is not in the catchment area of the kindergarten and who are thus not admitted there, **usually represent one-quarter of all the children in the pre-school centre/club a year, i.e., 2-3 children a year.** Three organisations replied that none of the children they worked with did attend a kindergarten while those children more often did not have their place of permanent residence in the catchment area of the kindergarten.¹⁶⁴ This survey also confirms that the above-mentioned statements of the Office of the Public Defender of Rights and the Task Part of the Strategy of Roma Equality, Inclusion, and Participation (Strategy of Roma Integration) 2021-2030 that the place of permanent residence is not an adequate criterion for Romani children.

109. The cited survey further showed that half of the respondent organisations experienced a situation when the kindergarten itself recommended the child to fulfil the compulsory pre-school attendance in the form of **an individual plan, i.e., home schooling, eventually in combination with the attendance at the pre-school centre/club, instead of the attendance at kindergarten.** Most of the pre-school centres/clubs with this experience have experienced such situations repeatedly. Three of the respondent organisations replied that they worked with children who were only in the regime of home schooling, without attending any pre-school centre/club. Furthermore, 9 of the respondent organisations also replied that they had the experience in their locality with a kindergarten that could be considered as segregated, i.e., where children facing poverty and social exclusion were disproportionately represented.¹⁶⁵

110. All these findings show the precarity of the situation of children facing poverty and social exclusion, including Roma children, in the access to pre-school education in kindergartens. **This precarity is given mainly by the precarious situation these children and their families face in housing.** The Committee has already recognised this precarious situation in its case-law relating to Czechia, namely in its decision on the merits in case *European Roma and Travellers Forum (ERTF) v. the Czech Republic* when deciding that “the situation is in violation of Article 16 of the 1961 Charter in light of its Preamble on the grounds that there is a lack of accessible housing, that residential

¹⁶³ Story got thanks to the non-governmental organisation Tosara.

¹⁶⁴ Survey carried out by the Platform for Early Care [Platforma pro včasnou péči] among its member organisations in 2020.

¹⁶⁵ Ibid.

segregation of Roma persists, and that many Roma families live in inadequate conditions.”¹⁶⁶ The recent Concluding Observations of the UN Committee on Economic, Social and Cultural Rights confirm that the housing precarity of Romani people and also of persons facing poverty and social exclusion persists. The UN Committee has expressed its concern that Czechia “has not yet adopted a comprehensive social housing system and a social housing law. The Committee is concerned about the lack of availability of adequate housing, and that housing costs and rental prices are high and that funds for housing allowance are insufficient. While noting that the provision allowing for housing “benefit-free zones” was quashed in 2021 by the Constitutional Court, the Committee remains concerned by reports that Roma face multiple barriers to the realization of their right to housing. (...)”¹⁶⁷ It should be noted that although the findings of both committees address especially Romani people, **the situation of persons who face poverty and social exclusion is similarly precarious.**

111. Unstable housing makes the persons unable to exercise their right to choose their place of permanent residence. Contrary to the past, the place of permanent residence is no more dependent on the consent of the landlord. However, if the person does not have the consent, **they must prove that they use the dwelling legally, i.e., they must submit documents that prove that they are the owners of the dwelling or that they have a lease or other contract for the use of the dwelling.**¹⁶⁸ Persons living in poverty and social exclusion, including Romani persons, **often do not have any official documents related to the dwelling they live in.** Furthermore, to register the place where the person lives as their place of permanent residence requires that the house or apartment are designed for housing, accommodation, or individual recreation¹⁶⁹ and comply with the legal definition of a building.¹⁷⁰ People living in poverty and social exclusion, including Roma, **may live in buildings that are not designed for housing, accommodation, or individual recreation** as the boy S. in the case study mentioned above (see para. 107). In addition, a change of permanent residence is subject to a fee for persons over 15. The fee may seem quite low – it is only CZK 50 (EUR 1,95) but for persons living in extreme poverty, it may still constitute a significant barrier. Finally, persons facing poverty and social exclusion may be forced to often change the place where they live since even if they live in a house or apartment designed for housing or accommodation, **they are provided with only short-term contracts, especially if they become victims of the so-called “poverty trade”, i.e., the practice of accommodating people who are not able to find housing on the housing market in hostels at exorbitant fees to be covered by social benefits.**¹⁷¹

¹⁶⁶ *European Roma and Travellers Forum (ERTF) v. the Czech Republic*, decision on the merits of 17 May 2016, complaint no. 104/2014, § 79.

¹⁶⁷ E/C.12/CZE/CO/3, para. 36.

¹⁶⁸ Act no. 133/2000 Coll., on Population Registration and Birth Numbers, § 10 (6).

¹⁶⁹ *Ibid.*, § 10 (1).

¹⁷⁰ *Ibid.*, § 10 (1), in connection with the ministerial decree no. 326/2000 Coll., § 4, and Act no. 151/1997 Coll., on Valuation of Property, § 3 (1) (a).

¹⁷¹ See, for instance, Stanoev, M., ‘(Ne)dostupnost bydlení a sociální vyloučení. Tematický výzkum: Podkladová analýza pro koncipování sociálního bydlení v Bruntále’ [(Un)availability of housing and social exclusion.

112. Although the Task Part of the Strategy of Roma Equality, Inclusion, and Participation (Strategy of Roma Integration) 2021-2030 mentions the inappropriateness of the criterion of the place of permanent residence for children facing poverty and social exclusion, it does not address it with any specific measure. The problem is mentioned as part of the three above-listed measures formulated in very general terms (para. 99), in concrete, of measure C.1.3: Define and ensure coordinated cooperation to support the participation of Romani children in pre-school education within the agenda of the child protection authority, entities providing pre-school education under the Education Act, NGOs and other entities providing outreach social services to families of pre-school children. The criteria of the implementation of the cited measure **do not include any legislative amendment**, but again only in very general terms refer to the representative analysis which will identify the barriers to pre-school education for Romani children and to the “existence of methodological support for the creation of multidisciplinary teams (including the child protection authorities) in regions”.¹⁷²

113. Czechia is thus significantly failing to ensure the availability of pre-school education at kindergartens to all children on an equal basis. **Although the criterion of the place of permanent residence may seem neutral, it strongly disadvantages those children whose families find themselves in a precarious housing situation.** Czechia’s failure is even more serious considering that even this precarious housing situation is often the result of structural deficiencies of Czechia in meeting its obligations deriving from the human right to adequate housing. Instead of addressing these structural deficiencies and equalising the opportunities, **the inadequate criterion only deepens the vulnerability of the situation these children and their families face.** The national strategies do not prove that any amendment of the inadequate legislation is planned shortly.

(d) Failure of Czechia to provide these children with effective protection from arbitrariness and discriminatory attitudes in the process of admitting a child to pre-school education at kindergartens

114. The last issue we would like to address in this collective complaint is the failure of Czechia to provide children in vulnerable situations with effective protection from arbitrariness and discriminatory attitudes in the process of their admission to pre-school education at kindergartens. Many of the findings already mentioned above show that children facing poverty and social exclusion, including Romani children, experience **higher rejection of their applications for admission to standard pre-school education at kindergartens.** They are not victims of direct discrimination, but

Thematic research: Baseline analysis for the design of social housing in Bruntál], 2018, p. 20. The analysis is available in Czech at: <https://www.socialni-zaclenovani.cz/wp-content/uploads/Tematicky-vyzkum-Bruntal-2018.pdf>.

¹⁷² The Strategy of Roma Equality, Inclusion and Participation (Strategy of Roma Integration) 2021 – 2030, The Task Part, Strategic Objective C.1.3. The Task part is available in Czech at: https://www.vlada.cz/assets/ppov/zalezitosti-romske-komunity/aktuality/05-Strategie-romske-rovnosti--zacleneni-a-participace-2021---2030---ukolova-cast_2.pdf.

they are victims of less favourable conditions of access to pre-school education at kindergartens than other children. They may be more likely to be recommended home schooling (see above para. 109) or to be rejected on the grounds of their place of permanent residence.

115. The system of education, including pre-school education, as it is currently designed **does not provide children and their families with a strong legal position**. On the contrary, it still acknowledges **a wide discretion to the director of the kindergarten**. For instance, as mentioned above, the Education Act provides the child with a legal claim for admission at kindergarten if the child is over 3 and has the place of their permanent residence in the kindergarten's catchment area.¹⁷³ Nevertheless, the Education Act still enables the kindergarten to reject the child's application with the reference to the insufficient capacity of the kindergarten. In such a case, the municipality must ensure the education of the child in another kindergarten, maintained either by the municipality or another municipality or a union of municipalities, but again only if the child is over three and with the place of the permanent residence in the respective municipality.¹⁷⁴ **This legislation enables the school and the municipality to disadvantage certain groups of children, even with the legal claim for admission to kindergarten, in their access to pre-school education**. It factually allows the schools or the municipalities to delegate the choice of the kindergarten from the child's family to the kindergarten itself and/or the municipality, let them control which kindergarten the child will be admitted to, and **create segregated kindergartens for children facing poverty and social exclusion, including Romani children** (see above the experience of member organisations of the Platform for Early Care – para. 109).

116. Furthermore, even the child over 3 with the place of their permanent residence in the kindergarten's catchment area has the legal claim for admission to the kindergarten only if their parents apply for the admission **in the period announced by the kindergarten's director**. The legislation only requires that this period is from 2nd May to 16th May for the next school year (beginning on 1st September).¹⁷⁵ **The director may decide on the admission of the child during the school year, but it is completely up to their discretion**.¹⁷⁶ The lack of a clear legal claim for admission to a kindergarten during the school year may significantly disadvantage children who are granted an additional postponement of compulsory school attendance. The national legislation allows the primary school's director to decide, with the consent of the child's parents, to additionally postpone the child's school attendance during its first year due to the child's "insufficient physical or mental maturity to fulfil the compulsory school attendance".¹⁷⁷ In such a case the director must also inform the child's parents about

¹⁷³ Act no. 561/2004 Coll., Education Act, § 34 (3).

¹⁷⁴ Ibid., § 179 (2).

¹⁷⁵ Ibid., § 34 (2).

¹⁷⁶ Ibid., § 34 (7). See also the Commentary on the Education Act: "However, there is no legal entitlement to be admitted to pre-school education during the school year." – See Katzová, P. § 34. In: Katzová, P. 'Školský zákon: Komentář.' [Education Act. Commentary] [ASPI System]. Wolters Kluwer [accessed 9 March 2022]. ASPI_ID KO561_2004CZ. Available at: www.aspi.cz. ISSN 2336-517X.

¹⁷⁷ Ibid., § 37 (3).

the compulsory pre-school attendance and the options of its fulfilment.¹⁷⁸ Unfortunately, **the national legislation does not guarantee the child that they will be admitted to a kindergarten since the decision on the additional postponement is taken during the school year.** Again, there are no comprehensive data enabling us to follow the child's further educational way after they are granted the additional postponement. The only statistical data, that are available, are those on the number of such children. In the school year 2021/2022 there were 804 children with additional postponement.¹⁷⁹

117. Another area of decision-making in which the kindergarten's director disposes of a wide discretion is subjecting the child to so-called **"trial attendance" or "adaptation stay" which should not exceed 3 months.**¹⁸⁰ During that period, **the director is allowed, after written notice of the child's parents and on the recommendation of the child's doctor or school counselling facility, to decide on the termination of the child's attendance at kindergarten except for children who are in the age of compulsory pre-school attendance.**¹⁸¹ This is another example of how the child's family may be placed in a very vulnerable situation. Although the visit of the doctor or the school counselling centre depends on the parents' consent, in practice, it may be very difficult to resist such a request, especially for persons who are victims of systemic discrimination. And once there is a recommendation of the doctor or the school counselling centre to terminate the child's attendance, the child's parents cannot do anything about it but the decision is fully up to the kindergarten's director.
118. Last, **children who do not have the legal claim for admission to kindergarten, especially due to their place of permanent residence outside the kindergarten's catchment area, are fully dependent on the director's discretion.**¹⁸² The directors are allowed to formulate criteria they will use when deciding on the admission of the child. These criteria may be more or less legitimate. For instance, certain directors take into account the amount of time the child should spend in the kindergarten, **preferring children who are admitted for a full day¹⁸³ or more than 6,5 hours a day.**¹⁸⁴ Though not directly, this criterion may disadvantage children facing poverty since the full day

¹⁷⁸ Ibid., § 37 (4).

¹⁷⁹ Data taken from the Statistical Yearbook of the Ministry of Education, Youth and Sports, table no. C1.18.1, for the school year 2021/2022. Available in Czech at: <https://statis.msmt.cz/roценка/roценка.asp>.

¹⁸⁰ The Act no. 561/2004 Coll., Education Act, § 34 (3).

¹⁸¹ Ibid., § 35 (1) (c) and (2).

¹⁸² Ibid., § 164 (1) (a). The Education The Commentary on the Education Act clearly states that the determination of the criteria for the admission to kindergarten is fully in the competence of the kindergarten's director except for children who have the legal claim for the admission according to the Education Act. - Katzová, P. § 34. In: Katzová, P. 'Školský zákon: Komentář.' [Education Act. Commentary] [ASPI System]. Wolters Kluwer [accessed 9 March 2022]. ASPI_ID KO561_2004CZ. Available at: www.aspi.cz. ISSN 2336-517X.

¹⁸³ See the example of Kindergarten and Primary School Mosty u Jablunkova: <https://www.zsmostyujablunkova.cz/ms-dolni/aktuality/kriteria-pro-prijimani-deti-k-predskolnimu-vzdelavani-v-materske-skole.659>.

¹⁸⁴ See the example of Kindergarten Popůvky: https://www.mspopuvky.cz/e_download.php?file=data/editor/125cs_1.pdf&original=Krit%C3%A9ria%20p%C5%99ijet%C3%AD%20d%C4%9Bt%C3%AD%20do%20Mate%C5%99sk%C3%A9%20C5%A1koly%202021-2022.pdf.

attendance raises the meal fee.¹⁸⁵ The criteria also often include the reference to the child's vulnerable social situation but the positive impact of this criterion on children in situations of destabilising poverty and social exclusion, including Romani children, should not be overestimated. The key is the interpretation of this criterion in practice. There are no guarantees that the kindergarten's directors do not use this criterion to reflect only the vulnerable social situations of the majority, like the situations of single parents. The above-mentioned experience of member organisations of the Platform for Early Care documents that Romani children facing poverty and social exclusion were often recommended home schooling, even if they were in the age of compulsory pre-school education (see above para. 109), and shows the precarity of the situation of these children vis-à-vis the kindergarten's directors. The influence of systemic discrimination against Roma (see paras. 59, 60 and 98) and persons living in destabilising poverty and social exclusion should not be underestimated in this regard.

IV. CONCLUSION

119. Above, we focused on three issues that may seriously interfere with the **availability, accessibility, and affordability of quality and inclusive pre-school education at kindergartens** for Romani children and children facing poverty and social exclusion. As described above, mechanisms that enable overcoming these barriers exist, at least to a certain extent, but **their application is not as much in the hands of the child and their family as the hands of the representatives of the educational system**. In other words, there are no mechanisms that would ensure that the available support to promote the access of Romani children and children facing poverty and social exclusion to quality and inclusive pre-school education at kindergartens will be effective. On the contrary, the system of pre-school education, as it is currently designed, i.e., with the dominant role of kindergarten's directors, municipalities, and the State, **creates a space where discrimination of children in vulnerable situations may become common and where children and their families may be deprived of effective protection against that discrimination**. This discrimination is **indirect and material**. That risk is even more serious if the concerned group of children and their families is subjected to systemic discrimination as are Roma people in Czechia. Then, the available mechanisms initially designed as supportive can **easily begin to work in reverse: as mechanisms that allow the system to exclude a child from pre-school education in kindergartens, or to divert them into a segregated environment for children in vulnerable situations**. There are no comprehensive data on this so far, but the available data proving the low level of participation of Romani children in pre-school education at kindergartens and the specific experience of Romani children and their families may confirm this assumption.

120. Unfortunately, the current Czech system of pre-school education fails to provide children facing poverty and/or social exclusion and/or Romani children which clear legal claims and effectively protect them from biased exercise of the

¹⁸⁵ See again the example of the Kindergarten and Primary School Mosty u Jablunkova where the full day meal fee is CZK 32 and half-day meal fee is CZK 26. Available at: <https://www.zsmostyujablunkova.cz/ms-stred/jidelna>.

discretionary power of the representatives of the system, including directors of kindergartens and representatives of municipalities and regions. There are no signs that the Czech government is planning to adopt concrete, targeted, time-framed, and effective steps to change this situation.

121. Even those issues that are mentioned in national strategies and plans are addressed **in a very general and abstract way without any ambition to adopt the necessary legislative amendments and thus institute the child's legal claims in pre-school education**. Many of the programmes planned or already run by public institutions make again the child and their family dependent on the discretion of the representatives of the educational system and public institutions. These programmes are thus strongly based on the **asymmetry in power** which grants the child and their family a position of **the object of the programme** rather than the active, participating and respected partner. Material support these programmes offer to children and their families is often conditional on the use of services which may easily change the nature of the support to **a form of social control over these families and their cultural assimilation**. Furthermore, as described above, the educational system not rarely also relies on the intervention of the system of public protection of children although it should, as coercive exercise of public authority, intervene in families where the child suffers from maltreatment, abuse, or serious form of neglect (equating to maltreatment), and not in families who are "just" poor and socially excluded or culturally differ from the majority.

122. **Therefore, these programmes cannot be very often considered as special/specific measures to address historical and/or systemic discrimination**. Furthermore, they may also fail to address the 'accessibility of pre-school education as a specific non-discriminatory entitlement (see above para. 37). Effective promotion of equal access to quality and inclusive pre-school education at kindergartens requires in the first place to eliminate the above-described barriers. The key is to ensure that the new support mechanisms **do not lead to new forms of social control** for children in vulnerable situations and their families and do not make them use services against their will. The new support mechanisms must respect the **diversity and authentic voices** of all beneficiaries, regardless their ethnic, cultural or social background. To this end, **the discretion of the representatives of the system of pre-school education and public institutions should be reduced as much as possible and replaced with legal entitlements of the child and their family**. This is, unfortunately, not happening in Czechia.

123. To conclude, Czechia is seriously failing in its commitment to provide an effective system of Educare as part of the right of the family to social, legal, and economic protection under 1961 that would be available, accessible, and affordable for all children, including those in vulnerable situations, on an equal basis.

124. *For these reasons*, the European Roma Rights Centre, jointly with Forum for Human Rights, ask the European Committee of Social Rights to find:

- a violation of Article 16 of the European Social Charter;

- a violation of Article 16 of the European Social Charter read in conjunction with the principle of non-discrimination as enshrined in the Preamble to the Charter.

Brussels and Prague, 22.12.2022



Dordje Jovanovic
President

**EUROPEAN ROMA RIGHTS
CENTRE**



Anna Sležková
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FORUM FOR HUMAN RIGHTS