

WRITTEN COMMENTS

BY THE EUROPEAN ROMA RIGHTS CENTRE CONCERNING THE CZECH REPUBLIC

For Consideration by the European Commission on the Transposition and Application of the Race Directive and on the Legal Issues Relevant to Roma Integration.



CHALLENGING DISCRIMINATION PROMOTING EQUALITY

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Czech Republic

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Czech Republic

CASE REVIEW: CZECH REPUBLIC

This submission focuses on the situation of Roma in the Czech Republic and shortcomings in the transposition and implementation of the Race Equality Directive, which has particular impact on Roma. This review includes broader elements of the anti-discrimination framework in the Czech Republic, but does not purport to be comprehensive. It also has a heavy focus on discrimination against Roma in education. This does not suggest that this is the only form of discrimination Roma face in the Czech Republic; it simply reflects the focus of the ERRRC's work in Czech Republic.

1 TRANSPOSITION OF THE RACE EQUALITY DIRECTIVE INTO NATIONAL LEGISLATION

1.1 A GENERAL FRAMEWORK ON FUNDAMENTAL AND BASIC FREEDOMS

The Charter of Fundamental and Basic Freedoms¹ forms a part of the constitutional order of the Czech Republic and it incorporates the protection of a wide range of human rights. The Charter, *inter alia*, prohibits discrimination,² addresses the right to property³, refers to centres on the inviolability of dwelling⁴ and states that a person's affiliation to a national and/or ethnic minority may not be to his or her detriment.⁵ The Charter furthermore protects the right to health,⁶ a right to family life⁷ and the right to education.⁸

The Czech Republic was the last country in the EU to adopt legislation to implement the requirements of the EU anti-discrimination legislation.⁹ Adoption of the law was a necessary step to avoid legal proceedings by the European Commission for failing to implement the obligations contained in the EU Equality Directives.¹⁰ The ADL was adopted as late as 17 June 2009 by the Czech Chamber of Deputies breaking the President's veto and came into force on 1 September 2009.

The Charter together with the Act on equal treatment and on legal means of protection against discrimination (ADL)¹¹ constitutes the general framework of the anti-discrimination law in the Czech Republic.

1.2 THE CZECH ANTI-DISCRIMINATION LAW

According to the Czech ADL: "A private person has the right to equal treatment within legal relations governed by this Act as well as not to be discriminated against."¹² The prohibition of discrimination covers the following grounds: race, ethnicity, nationality, gender, sexual orientation, age, disability, religion, faith or belief.¹³ It is applicable in the field of the right to employment and access to employment, access to a profession, business

1 Resolution of the Presidium of the Czech National Council of 16 December 1992 on the declaration of the CHARTER OF FUNDAMENTAL RIGHTS AND BASIC FREEDOMS as a part of the constitutional order of the Czech Republic, available at: <http://legislationline.org/documents/section/constitutions>.

2 *Ibid*, Article 3(1).

3 *Ibid*, Article 8.

4 *Ibid*, Article 12.

5 *Ibid*, Article 14.

6 *Ibid*, Article 31.

7 *Ibid*, Article 32.

8 *Ibid*, Article 33.

9 Trust for Civil Society in Central and eastern Europe, "Czech Republic becomes last EU state to adopt anti-discrimination law", 25 June 2009, available at: <http://www.ceetrust.org/article/306>.

10 Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, and Council Directive 2000/78/EC of 27 November 2000 establishing a general framework of equal treatment in employment and occupation.

11 Act no. 198/2009 Coll.

12 Act no. 198/2009 Coll., Article 1(3).

13 *Ibid.*, Article 2(1).

or other self-employment, social security, access to education and its provision, access to goods and services including housing (if they are offered to the public or at the time when they are being provided).¹⁴

Anyone claiming that rights and duties arising from the right to equal treatment have been breached and who is affected by such breach or who is discriminated against has the right to defend his/her rights before courts¹⁵. More specifically, the person injured can ask the court to order cessation of actions infringing the principle of equal treatment; to remedy the illegal situation and to be granted due satisfaction.¹⁶ If the aforementioned remedies are considered to be unsatisfactory, in particular because the discrimination resulted in considerable interference with one's dignity, reputation or seriousness within society, the injured party shall have also the right to compensation for the non-pecuniary damage suffered.¹⁷

The ADL does not provide for *actio popularis* that would make it possible to file legal action in discrimination cases with higher numbers and unknown identities of victims (e.g. in cases of discrimination in advertisements, systemic discrimination, etc.). However, Article 11 of the ADL allows legal entities which were established for the protection of victims of discrimination or whose official activities according to their articles of association, bylaws or specific law, to provide information about the possibilities of legal assistance and cooperation in drafting or amending proposals and submissions for persons claiming protection against discrimination.¹⁸ The legal entities mentioned are also authorised to submit suggestions for exercising supervision in this field, or to submit incentives to initiate administrative proceedings to administrative bodies exercising supervision over the compliance with anti-discrimination legislation.¹⁹

1.3 NO SUBSTANTIVE CASE TESTING THE ANTI-DISCRIMINATION LAW

The text of the Czech ADL, when taken together with other related Czech law (including Act No. 40/1964 Coll, Civil Code, the Education Act, Decree No. 72/2005 on the Provision of Counselling Services in Schools and School Counselling Facilities and Decree No. 73/2005 Coll on the Education of Children, Pupils and Students with Special Education Needs and Children, Pupils and Students, who are Exceptionally Gifted) does in fact appear to provide substantive protections and adequate procedures against discrimination as required by RED. The Act, which came into force on September 1, 2009, is a comprehensive legal act prohibiting direct and indirect discrimination generally. That said, no known case testing its provisions as a safeguard against discrimination in education has been brought in the Czech courts. For example, the Act does not contain any express provisions which would directly prevent the segregation of Romani children into separate schools, classes or study groups. But so far there is no Czech case law which clearly condemns or forbids segregation. In practice, it can be said the ADL's ability to serve as an effective safeguard against discrimination in education is still to be proven.²⁰

2 THE CZECH EQUALITY BODY: OPDR

2.1 THE ESTABLISHMENT OF A STATE INSTITUTION TO DEAL WITH EQUALITY AND NON-DISCRIMINATION

The institution of the Ombudsman was established in the Czech Republic in 2000, with the stated aim to assist individuals who were treated unlawfully by official State authorities. The competences of the Ombudsman are defined in the Act on Public Defender of Rights.²¹ Later, the ADL established the Office of the Public Defender of Rights (Czech Ombudsman) as the equality body according to the requirements of the Article 13 of RED. Accordingly, the Public Defender of Rights contributes to combating racism and xenophobia and the promotion of equal treatment.

¹⁴ *Ibid.*, Article 1(1).

¹⁵ *Ibid.*, Article 10(1).

¹⁶ *Ibid.*

¹⁷ *Ibid.*, Article 10(2).

¹⁸ *Ibid.*, Article 11(1).

¹⁹ *Ibid.*, Article 11(2).

²⁰ See: OSJI, ERRC, COSIV, *Eighth Communication to the Committee of Ministers on the DH Judgment Implementation*, available at: <http://www.errc.org/cms/upload/file/eighth-communication-to-the-committee-of-ministers-on-judgment-implementation-18-may-2012.pdf>.

²¹ Act no. 349/1999 Coll.

The Ombudsman is mandated to address the right to equal treatment of all persons irrespective of their racial or ethnic origin, nationality, gender, sexual orientation, age, disability, religion, faith or belief.²² More specifically, to fulfil the aforementioned duty, the Ombudsman shall: provide methodological assistance to victims of discrimination in pursuing their complaints about discrimination, conduct research, publish reports and makes recommendations on issues related to discrimination, ensure the exchange of available information with the relevant European bodies.²³ The office does not have any form of judicial function.

The Ombudsman is elected by the Chamber of Deputies for a term of six years. There are four candidates of whom two are proposed by the President and two are proposed by the Senate (identical proposals are acceptable).²⁴ The Ombudsman can be elected only for a maximum of two immediately consecutive terms.²⁵ The seat of the Ombudsman's Office is in Brno.²⁶ The costs and expenses of the Ombudsman's Office are funded through the budget of the Czech Republic.²⁷

2.2 ENFORCEMENT OF THE RIGHT TO EQUALITY

The system of laws in the Czech Republic provides for civil, criminal and administrative enforcement of the right to equal treatment, but in practice civil enforcement is considered to be the only effective method. Civil actions may be brought under special anti-discrimination provisions of the Anti-discrimination Law. The Civil Procedure Code refers to the principle of shifting the burden of proof.²⁸ The Criminal Code (Act no. 40/2009 Coll.) includes several provisions related to discrimination regulating criminal offences such as “apartheid and discrimination of a group of people”.²⁹ The criminal law also makes provision for strict definitions of crimes affecting life, health or personal freedom when motivated by racist or religious hatred.³⁰

The Ombudsman has carried out and published important research on Roma discrimination issues, notably a report on coercive sterilisation in 2006 and a report on segregation in education in 2012.³¹ However, its mandate is limited. The Ombudsman can provide independent methodological assistance to victims, conduct research and publish independent reports and make recommendations. However, he is neither entitled to represent victims of discrimination nor to take part in court proceedings. Due to the facts mentioned, alleged victims of discrimination, as well as potential victims, have enormous difficulty enforcing their right to equal treatment.

3 GENERAL OVERVIEW OF ROMA POLICIES AND LEGISLATIVE FRAMEWORK

3.1 ROMA IN THE CZECH REPUBLIC

According to estimates, there are between 150,000 and 300,000 Roma living in the Czech Republic (1.4 to 2.8 per cent of the population).³² The official data from the 2011 National Census, however, refers to 13,109 Czech citizens who declared Roma origin (5,199 declared Roma-only origin without any mixed background). The official

²² *Ibid.*, Article 21b.

²³ *Ibid.*

²⁴ *Ibid.*, Article 2(1).

²⁵ *Ibid.*

²⁶ *Ibid.*, Article 2(3).

²⁷ *Ibid.*, Article 26.

²⁸ Act no. 99/1963 Coll. Code of Civil Procedure, Article 133a.

²⁹ Act no. 40/2009 Coll., Article 402.

³⁰ For example the criminal offence of “murder” - *Ibid.*, Article 104 (3,(g)).

³¹ Report of the Public Defender of Rights on the ethnic composition of pupils in the former special schools. June 2012. Available at: http://www.ochrance.cz/fileadmin/user_upload/DISKRIMINACE/Vyzkum/Vyzkum_skoly-zprava.pdf.

³² Minister for Human Rights, *The Roma Integration Concept 2010-2013*, available at: http://ec.europa.eu/justice/discrimination/files/roma_czech_republic_strategy_en.pdf. See also European Commission, Framework for National Roma Integration Strategies' Annex: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0173:FIN:EN:PDF>.

figures are considered underestimation, in part because the majority of Roma declare themselves as non-Roma in official surveys.³³ According to the research findings, at least 60,000 to 80,000 Roma has lived in about 310 socially excluded – segregated and poor – communities in 2006.³⁴ The 2011 census data indicates that the Roma population is relatively dispersed throughout the Czech Republic, with higher concentrations of Roma in the Ustecký Region, Moravia-Silesia Region (Moravskoslezsko) and Central Bohemia Region (Stredočeský kraj).³⁵ Statistical information on Roma in the Czech Republic is limited at best due to both legal prohibitions and a lack of commissions for conducting representative statistical research in this area.

In the Czech Republic there is no annual collection of disaggregated data by ethnicity in compliance with the EU data protection requirements. Public authorities continue opposing ethnically disaggregated data collection, stating that such surveys would be in breach of the Czech Personal Data Protection Act. The notable exceptions are surveys of different state institutions or research centres contracted by state institutions to look into the ethnic composition of practical schools³⁶ (schools designed for the children with mild mental disabilities), which are part of the Czech government's commitment towards the execution of the DH judgment.³⁷ However, the results of these inquiries are estimates based on other than self-identification methods and are treated by authorities as inadequate to inform public policy. The new consolidated Action Plan for the Implementation of the DH judgment³⁸ promises annual statistical surveys into the ethnic composition of pupils following practical school curricula starting in 2013. This may respond to the Czech Republic's National Action Plan for the Decade of Roma Inclusion calls for improvements in data collection, with a focus on education data.³⁹ To date, there is no information on how such surveys will be conducted.

3.2 LACK OF IMPLEMENTATION ON ROMA INCLUSION POLICIES

As a member of the Decade of Roma Inclusion 2005 - 2015, the Czech Republic has politically committed to improving the socio-economic status and social inclusion of its Roma citizens. The government submitted the National Action Plan for the Decade of Roma Inclusion, which sketches the intended policies in the four target areas of employment, education, housing and health.⁴⁰ The Czech Government Plenipotentiary for Human Rights was designated a role of the National Coordinator of the Decade.

In September 2011, the government adopted the Strategy for Combating Social Exclusion 2011-2015.⁴¹ The Strategy is a comprehensive document “of the Czech government to support the social inclusion of people in

33 UNDP, *Avoiding the Dependency Trap*, p. 22. Available at: <http://hdr.undp.org/en/reports/regional/europethecis/name,3203,en.html>.

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

35 Czech Statistical Office, 2011 National Census; available at: <http://vdb.czso.cz/sldbvo/#!stranka=podle-tematu&tu=30628&th=&v=&vo=null&vseu zemi=null&void>.

36 Ministry of Education 2009, *Education Paths and Education Chances of Roma Pupils in Elementary Schools in the Neighborhood of Socially Excluded Localities: The Final Report of the Czech Ministry of Education Project – Sociological Research Focused on Analysis of Forms and Causes of Segregation of Children, Pupils and Young People from Socially Disadvantaged Environment*, Prague, Ministry of Education, report available at: www.msmt.cz/uploads/Skupina_6/VZDELANOSTNI_DRAHY.pdf; Ministry of Education 2009, *Analysis of An individual teacher's approach to the Pupils with Special Educational Needs: The Final Report of the Czech Ministry of Education Project, Prague, 2009*, available at: <http://www.msmt.cz/strukturalni-fondy/analyza-individualniho-pristupu-pedagogu-k-zakum-se>; Institute for Information in Education 2009: *Monitoring of the General Education Program (RVP)*, Prague, Institute for Information in Education, available at: <http://www.ferovaskola.cz/data/downloads/monitoring%20RVP.pdf>. Czech School Inspectorate 2010: *General Information from the Thematic Inspection in the Former Special Schools*, Prague, Czech School Inspectorate, available at: <http://www.csicr.cz/cz/Dokumenty/Tematicke-zpravy/Zprava-z-kontrolni-cinnosti-v-byvalych-zvlastnich>; Public Defender of Rights 2012: *Research of the Public Defender of Rights into the Question of Ethnic Composition of Pupils of Former Special Schools*, Brno, Public Defender of Rights, available at: http://www.ochrance.cz/fileadmin/user_upload/DISKRIMINACE/Vyzkum/Vyzkum_skoly-zprava.pdf; Czech School Inspectorate 2012: *Thematic Report: Progress in Transformation of Former Special School in the School Year 2011/2012*, Prague, Czech School Inspectorate, report available at: <http://www.csicr.cz/cz/Dokumenty/Tematicke-zpravy/Tematicka-zprava-Postup-transformace-byvalych-zvla>.

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

38 Czech Government, *Communication from the Czech Republic concerning the case of D.H. and others against Czech Republic* (Application No. 57325/00); available at: <https://wcd.coe.int/ViewDoc.jsp?id=1846711&Site=CM&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864>.

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

40 Czech Republic, *Decade of Roma Inclusion 2005-2015: National Action Plan*.

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

socially excluded localities in the Czech Republic, which are currently mainly populated by the Roma. The Strategy lays down an action plan with 77 measures in the field of education, employment, housing, social services, family policy, healthcare, security and regional development.⁴² Despite the government's proclamation that the Strategy is a principal document to carry on social inclusion of Roma, the current Czech government decided to respond the European Commission's call for National Roma Integration Strategies up to 2020 by submitting a previous and outdated Roma Integration Concept for 2010-2013.⁴³ This can be classified as a 'plan for plan' and lacks clear measures, timelines and budget allocations as requested by the EU Framework.⁴⁴

Most of the Roma inclusion and antidiscrimination strategies approved by the Czech government in the last couple of years are not being enforced. To date, the Government has failed to end racial segregation in Czech schools and effectively implement its own inclusive education plans such as the National Action Plan for Inclusive Education (NAPIE), adopted in March 2010, which was in November 2012 reformulated yet again into a New Consolidated Action Plan for the Execution of the DH Judgement.⁴⁵ The implementation of the NAPIE has effectively stalled since the Education Expert Platform - the group of experts who originally worked with the Education Ministry - resigned in late May 2011, citing lack of political will on the part of the Ministry to pursue an inclusive agenda. The new leadership of the Ministry of Education plans to re-create an expert forum for equal opportunities in education, which should follow the implementation of the new Action Plan⁴⁶.

The implementation of the measures of the Strategy for Combating Social Exclusion in 2011-2015 has been already in the first implementation year either delayed or entirely ignored. In November 2012, the Ministry of Education responsible for the implementation of education measures in the Strategy announced that the implementation timeline will be shifted by two years to 2017. Some measures however will be left out due to alleged conflict with the School Act. Neither the Roma Integration concept nor the Decade Action Plan is in the attention of the Czech Government offices and policy makers. It appears that the implementation of the measures in both documents is rather ignored.

4 DISCRIMINATION AGAINST ROMA

This submission, following the focus of the ERRC's work in the Czech Republic, concentrates on discrimination in education.

4.1 EDUCATION

Despite a landmark decision in 2007 by the European Court of Human Rights, in the case of *D.H. and Others v Czech Republic*,⁴⁷ the situation of Romani children in education has not been substantially improved. In 2000 a number of 18 Roma students represented by the ERRC⁴⁸ complained to the European Court of Human Rights arguing that their treatment amounted discrimination as their right to education had been denied. Applicant submissions to the European Court of Human Rights included extensive research indicating that Roma children were systematically assigned to segregated schools based on their racial or ethnic origin.⁴⁹ The Grand Chamber of the European Court ruled that the disproportionate assignment of Romani children into "special schools" – where they were segregated from mainstream students and taught a substandard curriculum – amounted to ethnic discrimination and violated their right to education. The Czech government was ordered to end the violation and redress so

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

43 Minister for Human Rights, *The Roma Integration Concept 2010-2013*.

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

45 Ministry of Education, *National Action Plan for Inclusive Education, 2010* available at: <http://www.msmt.cz/socialni-programy/narodniakcni-plan-inkluzivniho-vzdelavani>; Ministry of Education, *Consolidated Action Plan for the Execution of the Judgment of the European Court of Human Rights in the Case of D.H. and Others v. The Czech Republic*, available at: <https://wcd.coe.int/ViewDoc.jsp?id=1846711&Site=CM&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864>.

46 European Roma Rights Centre, Open Society Justice Initiative, Amnesty International, Česká Odborná Společnost Pro Onkluzivní Vzdělávání (COSIV) and the League of Human Rights, *Submission to the Committee of Ministers' 1157th CM-DH Meeting, Council of Europe, November 2012* available at: <http://www.errc.org/cms/upload/file/nineth-communication-to-the-committee-of-ministers-on-judgment-implementation-november-2012.pdf>.

47 *D.H. and Others v Czech Republic*, App. No. 57325/00, available at: <http://www.errc.org/cms/upload/media/02/D1/m000002D1.pdf>.

48 Applicants have been represented by the ERRC and the following lawyers: James Goldston, Lord Lester of Herne Hill QC, David Strupek.

49 ERRC, application to ECHR, available at: <http://www.errc.org/cms/upload/media/02/D9/m000002D9.pdf>.

far as possible its effects. Five years later, little has changed. Romani children are still being funnelled into “practical schools” (changed only in name from “special schools”) at a rate far surpassing their non-Romani peers. The inferior education they receive leaves them without qualifications for any job beyond the most menial and with no hope for the future. For many, this practice traps them and their families in a cycle of poverty and despair.⁵⁰

Since 2009, the Czech authorities carried out five inquiries (see table) into the ethnic composition of practical schools and classes. Although each survey was conducted with a different methodology, they all provided evidence that Romani children are over-represented in the education stream designed for children with disabilities. In the school year 2011/2012, the Ombudsman looked into 67 schools throughout the country which provide education under curricula for pupils with mild mental disabilities. According to the findings of the Ombudsman,⁵¹ 35 per cent of the pupils in practical schools and classes were Roma. These numbers are strikingly at odds with the official estimates according to which there are between 150,000 and 300,000 Roma – 1.4 or 2.8 per cent of the total population – living in Czech Republic. The Ombudsman concluded that Roma continue to be substantially overrepresented in classes with curricula for pupils with mild mental disability. Such overrepresentation, the Ombudsman stated, amounts to segregation which predestines future generations of Roma to a life in poverty. The Ombudsman’s report called on the government to take measures that will ensure inclusion of Romani pupils into the mainstream educational system. What is clear from the various inquiries carried out by Czech government bodies is that discrimination of Romani children continues.

DISPROPORTIONATE NUMBERS OF ROMA PUPILS IN FORMER SPECIAL SCHOOLS: THE STATISTICAL EVIDENCE

Ministry of Education 2009a – 50% of the monitored schools had more than 50% Roma pupils;

Ministry of Education 2009b – 44%;

Institute for Info. in Education. 2009 – 35%

Czech School Inspectorate. 2010 – 35%

Ombudsperson 2012 – 32%

Czech School Inspectorate. 2012 – 26.4% (questionable methodology)

The total number of Roma in the Czech Republic is estimated between 150,000 and 300,000. The proportion of Roma on the total population (over 10 million) is thus estimated between 1.4 and 2.8%. The share of children attending elementary school (six to 14 years old) on the overall Roma population is estimated to be 2.3-times higher than in the majority population.

Ministry of Education 2009a: Education Paths and Education Chances of Roma Pupils in Elementary Schools in the Neighbourhood of Socially Excluded Localities. Half of the monitored schools had more than 50% Roma pupils.

Ministry of Education 2009b: Analysis of An individual teacher’s approach to the Pupils with Special Educational Needs. The monitored schools had more than 44 per cent Roma pupils.

Institute for Information in Education 2009: Monitoring of the General Education Program (RVP), Prague, Institute for Information in Education. The monitored schools had more than 35% Roma pupils.

Czech School Inspectorate 2010: General Information from the Thematic Inspection in the Former Special Schools, Prague, Czech School Inspectorate. The monitored schools had more than 35 %t Roma pupils.

Public Defender of Rights 2012: Research of the Public Defender of Rights into the Question of Ethnic Composition of Pupils of Former Special Schools, Brno, Public Defender of Rights. The monitored schools had more than 32% Roma pupils.

Czech School Inspectorate 2012: According to a thematic Report on the Progress in Transformation of Former Special School in the School Year 2011/2012, 26.4 % of the pupils were Roma. This methodological validity of this survey has been challenged by the Public Defender of Rights and ERRC.

⁵⁰ European Roma Rights Centre, Open Society Justice Initiative, Česká Odborná Společnost Pro Onkluzivní Vzdělávání (COSIV), Submission to the Committee of Ministers, Council of Europe, June 2012 available at: <http://www.errc.org/cms/upload/file/eighth-communication-to-the-committee-of-ministers-on-judgment-implementation-18-may-2012.pdf>.

⁵¹ Report of the Public Defender of Rights on the ethnic composition of pupils in the former special schools. June 2012, pp. 10, 19. Available at: http://www.ochrance.cz/fileadmin/user_upload/DISKRIMINACE/Vyzkum/Vyzkum_skoly-zprava.pdf.

4.2 GOVERNMENTAL PLANS AND MEASURES ON THE ACCESS TO EDUCATION OF ROMANI CHILDREN

To address the problem of discrimination of Romani children in access to education and to implement the European Court judgment in the DH case, the Czech Government adopted the National Action Plan on Inclusive Education (NAPIE) in March 2010.⁵² The Plan includes an unacceptably slow time frame for implementation given the urgency of the issue – practical effects on the ground were not anticipated until 2014- and it does not identify funding.⁵³ Furthermore, the NAPIE does not address the need for extra educational support structures for Romani children within mainstream education. Serious concerns remain regarding its content as it does not include concrete targets.⁵⁴ The document has been further criticised for its failure to explicitly address racial discrimination within the Czech educational system.⁵⁵

The Czech Republic has meanwhile developed a competing inclusive education plan amid a larger strategy for Roma generally. In September 2011 the Czech government approved the *Strategy for the Fight against Social Exclusion 2011-2015*.⁵⁶ The education component of the Strategy, developed by the Agency for Social Inclusion in Romani Localities, is regarded by Czech education experts and civil society actors alike as an impressive document that is premised on the notion that a fair and efficient education system is central to the fight against the perpetuation of social disadvantage from one generation to the next. It envisions a 50 percent increase in per capita financing available for socially disadvantaged children (including Romani children) and an array of support measures that would help children transition from “practical” schools to mainstream education. The Strategy includes plans for subsidies for meals, school supplies and transportation to ensure that all children are learning under the same conditions. Yet serious doubts remain as to its implementation too. Despite calling for an increase in funding to address exclusion, no budget has been allocated to implement this Strategy, nor is it binding on any government department. No consensus exists as to whether this Strategy, or the NAPIE, prevails or if either has any political or financial backing and support.⁵⁷

Finally, in November 2012, the Czech government submitted a New Consolidated Action Plan to the Council of Europe’s Committee of Ministers.⁵⁸ It remains unclear whether the new plan essentially replaces, or should be seen in addition to, the current National Action Plan for Inclusive Education (NAPIE), nor how it relates to the Czech Strategy for Combating Social Exclusion 2011-2015.

As part of its legal advocacy to end segregated education in Czech Republic, the ERRC regularly submitted reports on the status of implementation of the D.H. judgment by the Czech government to the Committee of Ministers at the Council of Europe, the body in charge of supervising the implementation and states’ compliance with ECtHR judgments.⁵⁹ The ERRC has also conducted advocacy efforts in meetings with country representatives in the Committee of Ministers together with D.H. applicants and other international and domestic non-governmental organisations. In the Czech Republic, the ERRC has worked to push for desegregation with the Together to School (Jekhetane Andre Škola) Coalition – a group consisting of 17 Roma and pro-Roma NGOs, advocating for DH judgement implementation and inclusive education reforms.⁶⁰

In response to numerous protests and submissions of several international and national institutions as well as NGOs in 2011 Czech Ministry of Education, Youth and Sport amended two decrees directly connected to the

52 <http://www.msmt.cz/socialni-programy/narodni-akcni-plan-inkluzivniho-vzdelavani>.

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

54 *Ibid.*

55 Amnesty International, Submission to the Committee of Ministers of the Council of Europe on *D.H. and Others v. The Czech Republic*, October 2011.

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

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

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

59 All ERRC submission to the Committee of Ministers related to the implementation of the DH case can be found here: <http://www.errc.org/cikk.php?cikk=3559>.

60 Coalition Together to School: <http://spolecnedoskoly.cz/koalice/>.

system of special education. Decree 72/2005 on the Provision of Counselling Services in Schools and School Counselling Facilities (“Decree on Counselling (No. 116/2011)”) and Decree 73/2005 on the Education of Children, Pupils and Students with Special Educational Needs and Exceptionally Gifted Children, Pupils and Students (“Decree on Special Education (No. 147/2011)”) with effect from 1 September 2011.⁶¹

Some of the most problematic provisions of these two decrees were amended before the decrees’ passage. For example, Section 10 of the Decree on Special Education (No. 73/2005) was modified so it no longer allows for children without disabilities to constitute up to 25 percent of classes for children with disabilities, absent safeguards to help to counter discrimination against Romani children.

Yet problems persist. The Decree on Special Education (No. 73/2005), for example, focuses mainly on children with disabilities and fails to sufficiently regulate measures required for “socially disadvantaged” children. Though the term “social disadvantage” is defined within the amended Decree (that is, as a student who lacks Czech language skills or who does not receive necessary educational support, including cooperation between their guardians and the school), the process and responsibility for determining which students would qualify as having a “social disadvantage” remains unclear. Thus, students who are entitled to support as a consequence of “social disadvantage” might miss out on the assistance they need. Such support could include measures such as an individual education plan, counselling services or the help of a teaching assistant. Even if children with a “social disadvantage” were adequately identified, no clear funding source exists to ensure that the services to which they are entitled would in fact be provided. To the extent that Romani pupils are affected by “social disadvantage,” this loophole in the Decree may mean its provisions will not act as an adequate safeguard to ensure affected Romani children get the support they need to succeed in mainstream schools. Such a situation could result in a breach of the Czech Education Act 2004, which grants a student the right to an education in line with her educational needs.⁶²

The unemployment rate among Roma in the Czech Republic continues to be high and is linked to the poor education afforded many Romani children. It is estimated that only 39 per cent of Roma in the working-age were employed at the formal labour market in 2010⁶³ and although the Fundamental Rights Agency (FRA)’s 2011 Roma Pilot Survey⁶⁴ found improvements – 41 per cent of Roma in the age of 20 to 64 were employed, the employment gap between Roma and Non-Roma remains large. According to the modelling calculated by the World Bank, the Czech Republic loses annually 367 million EUR due to insufficient inclusion of Roma population and their low education level.⁶⁵

4.3 INCREASING INTERNATIONAL CONCERN OVER FAILURE TO ADDRESS DISCRIMINATION AGAINST ROMA CHILDREN

The Council of Europe Commissioner for Human Rights, Thomas Hammarberg, highlighted the D.H. judgment and the need for urgent reforms in the Czech school system in his February 2012 report Human Rights of Roma and Travellers in Europe.⁶⁶ He reiterated conclusions from his March 2011 Czech Republic country report, noting that “with thousands of Roma children effectively excluded from the mainstream education system in the Czech Republic and condemned to a future as second-class citizens every year ...it is now time to speed up the implementation of the inclusive education agenda.”⁶⁷

On August 2011 the Committee on the Rights of the Child (CRC) noted that despite the D.H. judgment, “there continue to be serious and widespread issues of discrimination, particularly against the minority Roma children

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

62 See: OSJI, ERR, COSIV, *Eight Communication to the Committee of Ministers on the DH Judgment Implementation*.

63 World Bank, *Economic Cost of Roma Exclusion, 2010*; available at: http://siteresources.worldbank.org/EXTROMA/Resources/Economic_Costs_Roma_Exclusion_Note_Final.pdf.

64 FRA, *The situation of Roma in 11 EU Member States*, p. 18, available at: http://fra.europa.eu/sites/default/files/fra_uploads/2099-FRA-2012-Roma-at-a-glance_EN.pdf.

65 World Bank, *Economic Cost of Roma Exclusion, 2010*, p. 3

66 Council of Europe Commissioner for Human Rights, *Human Rights of Roma and Travellers in Europe*, February 2012, available at http://www.coe.int/t/commissioner/source/prems/prems79611_GBR_CouvHumanRightsOfRoma_WEB.pdf at p. 126.

67 *Ibid.*

in the State party, including the systemic and unlawful segregation of children of Roma origin from mainstream education.”⁶⁸ The CRC recommended, among other measures to address this problem, that the Czech government ensure “the full and effective integration of children of Roma origin in the school system, and in doing so apply practical measures that facilitate diversity and inclusion in all schools for all children, regardless of their ethnic or sociocultural background.”⁶⁹

On September 2011, the Committee on the Elimination of Racial Discrimination (CERD) referenced the D.H. judgment and registered its “concern regarding the persistent segregation of Romani children in education.” The CERD recommended that the Czech government “take concrete steps to ensure effective de-segregation of Romani children and students and to ensure that they are not deprived of their rights to education of any type or at any level.”⁷⁰

In January 2012, the Organization for Economic Co-Operation and Development (OECD) released a report on education in the Czech Republic which concluded that for Romani children, “attendance of special schools is still very high in spite of the decision to progressively integrate disadvantaged students into mainstream schools.”⁷¹

In October 2012, within the UN Universal Periodic Review (UPR), 16 countries urged the Czech Republic to implement the National Action Plan for Inclusive Education and to eliminate continued segregation of Romani children at school. Czech Republic was also recommended to make available the necessary human and other resources and to set clear, measurable and ambitious targets for transfers of children to ordinary education and for overall de-segregation of the school system.⁷²

Similarly, in October 2012, in its field assessment visit report, the OSCE Office for Democratic Institutions and Human Rights (ODIHR) urged the Czech government ‘to do more to overcome the marginalization and segregation in schools of children from Roma and Sinti communities’. The report also ‘encourages the Education Ministry to assume a leadership role in the process and provide educators with clear guidelines regarding inclusive education’.⁷³

68 Available at: <http://www2.ohchr.org/english/bodies/crc/crcs57.htm>, para 30.

69 *Ibid*, para 62(a).

70 Committee on the Elimination of Racial Discrimination, Czech Republic – Concluding Observations, September 2, 2012, para 12, available at: <http://www2.ohchr.org/english/bodies/cerd/cerds79.htm>.

71 OECD Reviews of Evaluation and Assessment in Education, Czech Republic, “Main Conclusions” January 2012, available at: http://www.oecd.org/document/48/0,3746,en_2649_39263231_44567984_1_1_1_1,00.html, p.129.

72 Report of the Working Group on the UPR: Czech Republic. A/HRC/22/3, rec. 94.104.

73 OSCE/ODIHR, Equal Access to Quality Education for Roma Children: Field Assessment Visit to the Czech Republic, October 2012. Available at: <http://www.osce.org/odhr/96661>.