

PARALLEL REPORT

BY THE EUROPEAN ROMA RIGHTS CENTRE, LIFE TOGETHER AND THE GROUP OF WOMEN HARMED BY FORCED STERILIZATION CONCERNING THE CZECH REPUBLIC

To the Human Rights Council, within its Universal Periodic Review, for consideration at the 14th Session (22 October to 5 November 2012).



CHALLENGING DISCRIMINATION PROMOTING EQUALITY

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The European Roma Rights Centre (ERRC)¹, Life Together² and the Group of Women Harmed by Forced Sterilization³ submit this parallel report to highlight some key human rights concerns in the Czech Republic.

CONTINUING SEGREGATION OF ROMANI CHILDREN IN EDUCATION

The continuing segregation of Romani children in schools and the overrepresentation of Romani children in special schools in Czech Republic violate a host of international and regional human rights conventions.

In 2007, the European Court of Human Rights (ECtHR) pronounced the system of segregated education of Romani children in the Czech Republic to be illegal discrimination.⁴ Almost five years later, Romani children continue to be systematically segregated into substandard schools. These ongoing violations have been noted by two United Nations human rights treaty bodies.

The UN Committee on the Rights of the Child stated in its Concluding Observations in August 2011 that it remained “deeply concerned that in spite of its previous recommendations... and the 2007 decision of the European Court of Human Rights, *D.H. and Others v. the Czech Republic*, there continue to be serious and widespread issues of discrimination, particularly against the minority Roma children in the State party, including the systemic and unlawful segregation of children of Roma origin from mainstream education.”⁵

In 2011, the UN Committee on the Elimination of Racial Discrimination (CERD) also expressed its concern “regarding the persistent segregation of Romani children in education.” It recommended that the Czech Government “take concrete steps to ensure effective de-segregation of Romani children and students and to ensure they are not deprived of their rights to education of any type or at any level.”⁶

State monitoring bodies have confirmed the continuing problem of discrimination of Romani children, with no discernible improvement in recent years. In March 2010, the Czech School Inspection Authority issued a report indicating that 83% of practical schools (formerly called special schools, changed in 2005 with the adoption of the Education Act) had not changed substantively, describing them as “hidden special schools.” Romani children still constituted 35% of children diagnosed with light mental disability, while this number was as high as 50% in some regions. Furthermore, the report indicated that at least 5,000 children without any diagnosis of disability were placed in the former “special schools” for children categorised as having a disability.⁷

The Czech Government’s reforms have been grossly inadequate. Its National Action Plan of Inclusive Education (NAPIE), adopted in 2010, fails to embrace the fundamental principle of inclusive education whereby all children, Romani and non-Romani, those with disabilities and those without, should be educated together in a mainstream school setting with appropriate supports, and not separated out into schools or classes that carry the stigma of inferiority. The plan shows a lack of urgency in implementation. It was adopted in 2010 but has no concrete actions planned before 2014. At least two more classes of children will be wrongly placed into special education before the Ministry of Education takes any first real steps to improve the situation.

1 The European Roma Rights Centre (ERRC) is an international public interest law organisation working to combat anti-Romani racism and human rights abuse of Roma through strategic litigation, research and policy development, advocacy and human rights education.

2 Life Together is a Czech-Roma NGO working in the Czech town of Ostrava to strengthen confidence and co-operation between the marginalised Roma and the majority Czechs, and improve the living standards of Roma.

3 The Group of Women Harmed by Forced Sterilization is a group of community activists based in Ostrava.

4 European Court of Human Rights (ECtHR), *D.H. and Others v The Czech Republic*, Application no. 57325/00, 13 November 2007, available at: <http://cmiskp.echr.coe.int/tkp197/view.asp?%20action=html&documentId=825443&portal=hbkm&source=externalbydocnumber&table=?F69A27FD8FB86142BF01C1166DEA398649>.

5 See United Nations Committee on the Rights of the Child, *Concluding Observations: Czech Republic*, August 4, 2011, paras 30-31, available at: <http://www2.ohchr.org/english/bodies/crc/crcs57.htm>.

6 See United Nations Committee on the Elimination of Racial Discrimination, *Concluding Observations Czech Republic*, 2 September 2011, available at: http://www2.ohchr.org/english/bodies/cerd/docs/CZECH_REP_COBs_CERD79.pdf.

7 Czech School Inspection, *Thematic Report – Compendium of results from the thematic control activity in practical elementary schools*, (March 2010).

In September 2011 the Czech Government adopted a Strategy for the Fight Against Social Exclusion 2011-2015 (Strategy). This Strategy is vastly superior to the NAPIE, but many of its key provisions (such as the need to abolish the system of practical schools) were subsequently repudiated by Ministry of Education officials. Moreover, no budget has been allocated to put the Strategy into practice. European Union structural funds have not been deployed by the Government in support of meaningful reform.

The political context around school reform is turbulent, as evidenced by the contradictory policies contained in the NAPIE and the Strategy. This turbulence can be seen at the staff level as well. Since 2007, the team responsible for inclusion policy and programmes at the Ministry of Education has been decimated by restructuring, and several reformist staff members have resigned in protest against its failure to address segregation, including the Director of the Department for Special Education and Equal Opportunities.

Recently adopted legislation legalises the status quo, perpetuating the placement of children without disabilities into classes established for children with disabilities. Decree 147/2011 Coll. stipulates that a pupil without a disability can be placed into a class for children with a medical disability if he/she “is a pupil with social disadvantage and was continuously failing at mainstream school in the long term even with respect to special educational needs and use of equalising measures.”⁸

A new testing regime, proposed by the Ministry of Education for implementation in 2013, could also encourage segregation.⁹ Tests will only assess aggregated school results from each school, and will not take into account the learning difficulties of individual children. This broad testing methodology may have an impact on schools’ efforts towards inclusion. Schools may be even more reluctant to accept children from socially disadvantaged backgrounds, for fear of losing funding if they don’t score well on the tests.

Lack of data on the placement of Romani children into practical schools is an ongoing issue, which hinders effective decision making and policy development.

In 2009, the Czech Government finally complied with European Union law by implementing an Anti-Discrimination Act, but to date, no known case testing its provisions as a safeguard against discrimination in education has been brought in the Czech courts. In addition, this legislation was recently criticised by CERD in its review of the Czech Republic in September 2011. The Committee noted that the legal provisions against discrimination are scattered across a range of other Czech laws, resulting in differing grounds and remedies depending on the area of discrimination. As a result, the Committee was concerned that victims of discrimination may find access to justice “cumbersome, slow and ineffective” and recommended that the Czech Government consolidate the prohibited grounds of discrimination and standardise remedies for racial discrimination. The Committee also noted that under the current legal provisions, “establishing discrimination remains reportedly difficult and the only additional means of protection stipulated by the Anti-Discrimination Act is recourse to the Ombudsman who has however limited direct power.” It recommended that the Czech Government consider unifying its legislation, simplifying judicial procedures in cases of racial discrimination, and strengthening the mandate of the Ombudsman.¹⁰

INSUFFICIENT STATE RESPONSE TO CASES OF ANTI-ROMA VIOLENCE

In its 2008 concluding observations, the UPR Working Group recommended that Czech authorities develop appropriate training and awareness-raising measures towards Roma and other marginalised groups and create a justice system complying with international standards and ensuring that perpetrators can be brought to justice. It also highlighted the need for adequate protection for human rights defenders and marginalised groups against racially motivated violence.¹¹ The submitting organisations note there have been increasing numbers of violent attacks and regular anti-Roma marches organised by a reinvigorated Neo-Nazi movement. The ERRC

⁸ Section 3 of the Decree 147/2011 Coll., available at: http://www.msmt.cz/file/16097_1_1/.

⁹ Ministry of Education, Youth and Sport, *A Concept of the Regional Education Financial System reform*, 28 November 2011, available at: <http://www.msmt.cz/file/18871>.

¹⁰ See United Nations Committee on the Elimination of Racial Discrimination, *Concluding Observations: Czech Republic*, September 2, 2011, paras 7-8, available at: http://www2.ohchr.org/english/bodies/cerd/docs/CZECH_REP_COBs_CERD79.pdf.

¹¹ Report of the Working Group on the Universal Periodic Review Czech Republic 18 April 2008, available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G08/137/05/PDF/G0813705.pdf?OpenElement>.

is aware of at least nine marches since January 2011, one of which led to a violent attack on a Romani man, leaving him with head injuries.¹²

The ERRC monitors media reports of attacks against Roma and/or their property in the Czech Republic. Between January 2008 and January 2012, the media reported 42 incidents. Three attacks resulted in the death of the Romani victim, including one minor. The attacks left at least 19 people, including three minors, with injuries; two of which were life-threatening.¹³

In 2011, the ERRC produced a report on the State response to violence in the Czech Republic (also Hungary and Slovakia.) It monitored the State response in 14 of the most violent anti-Roma attacks reported to police in the Czech Republic. The cases involved a number of physical assaults, attempts of murder, riots against Roma, pogroms and arson attacks. The results of the State response to these attacks varied widely, from “perpetrator(s) not identified” to “22 years in prison.”

Of the 14 cases the ERRC examined:

- In four cases police investigation was suspended because no suspect was identified;
- In two cases prosecution was cancelled in favour of misdemeanour procedures before municipal authorities (involving 17 perpetrators);
- In one case prosecution was pending;
- In seven cases judgments were issued: five which resulted in imprisonment (all are or may be under appeal) and two which resulted in suspended sentences or fines (one may be under appeal).

As concerns the racial motivation of the 14 examined cases:

- In four cases authorities did not comment on motivation because no suspect was identified;
- In seven cases racial motivation was ruled out;
- In two cases racial motivation was confirmed by the court (one decision final and one under appeal);
- In one case no information was available.

Some positive measures have been implemented by Czech police, such as the establishment of anti-conflict departments across the country to fight and prevent violence and aggressive behavior; the Organised Crime Detection Unit (ÚOOZ) launching raids against right-wing extremism, and the recent police operations protecting Roma in the Šluknovsko region.¹⁴ However, a much greater police response is needed to adequately respond to the deteriorating situation in the country.

FAILURE TO ADEQUATELY ADDRESS FORCED AND COERCIVE STERILISATION OF ROMANI WOMEN¹⁵

In 2005, the Czech Public Defender of Rights (Ombudsman) acknowledged that the practice of sterilisation without free and informed consent occurred in the former Czechoslovakia, mostly affecting Romani women.¹⁶ This practice was encouraged by State policy. The Ombudsman’s report motivated recommendations of urgent

¹² ‘Police brutalize non-violent demonstrators, neo-Nazi gang attacks Roma’, Romea, 13 March 2011, available at: http://www.romea.cz/english/index.php?id=detail&detail=2007_2246.

¹³ ERRC media monitoring, *Attacks against Roma in the Czech Republic: January 2008-January 2012* available at: <http://www.errc.org/cms/upload/file/attacks-list-in-czech-republic.pdf>.

¹⁴ Czech Radio, Special police force reinforced in the Sluknovsko region. 1 February 2012, available at: http://www.rozhlas.cz/zpravy/regiony/_zprava/sluknovsko-se-dockalo-policejnich-posil-ze-specialni-jednotky--1012078.

¹⁵ This section was prepared in consultation with activist Gwendolyn Albert.

¹⁶ Final Statement of the Public Defender of Rights in the Matter of Sterilisations Performed in Contravention of the Law and Proposed Remedial Measures. JUDr. Otakar Motejl, Public Defender of Rights, Brno, 23 December 2005, available at: <http://www2.ohchr.org/english/bodies/cerdl/docs/ngos/Public-defender-rights.pdf>.

action by Committee on the Elimination of Discrimination Against Women (CEDAW) (in 2006 and 2010), the CERD (2007), the Human Rights Committee (2007), the Human Rights Council under the Universal Periodic Review (2008) and the European Commission against Racism and Intolerance (2009).¹⁷

In November 2009, Czech authorities acknowledged individual failures and expressed regret for forced or coercive sterilisations.¹⁸ However, the governmental response did not go any further to introduce any form of redress mechanism or safeguards.

Significant barriers to access to justice persist for the victims of coercive sterilisation, mostly Romani women. The primary challenge is that the three-year statute of limitation, dating from the moment of sterilisation, prevents the majority of victims from bringing civil claims for damages.

On 17 February 2012, the Czech Government's Human Rights Council passed a recommendation urging the Czech Government to introduce a mechanism for adequate financial redress for victims of involuntary sterilisation. The Council advised establishing a systematic and transparent compensation mechanism for women subjected to involuntary sterilisations. In this regard, the motion suggests creating a compensation committee that would review the cases of sterilisation and propose remedies.¹⁹

The current recommendation, which was drafted by the Council's Committee against Torture, is already the third recommendation concerning the practice of sterilisation in the Czech Republic which the Council has discussed since 2003. According to the Committee's estimates, as few as 59 (the cases previously documented by the Czech Ombudsman), and as many as 1000 (an estimate based on the Swedish experience) women could be entitled to compensation. The Committee's recommendation proposes compensation of between 300,000 to 400,000 Czech crowns depending on the degree of harm caused and the degree to which existing regulations were violated. It is estimated that the State could pay out as much as 400 million Czech crowns.

Under the compensation proposal, women subjected to forced or coercive sterilisations between 1 January 1972 and 27 May 1991 would be directly eligible for compensation. The proposal refers to the Czech Ombudsman findings which declared a direct involvement of the State social sector in the sterilisation practice during that period, as the State provided financial and material incentives to women undergoing sterilisation.

Women sterilised after 1991 would also be entitled to compensation if they were unable to sue in civil court before the three-year statute of limitations expired. The Ombudsman distinguishes this group as being victimised by individual doctors and hospitals, and not by State intervention (even though the health care system remains largely in the hands of the State). Women from this second group could theoretically seek remedy in civil court trials, but the compensation mechanism for this group remains unclear. Although the current motion precisely specifies the first group as women sterilised before 27 May 1991, the second group is defined as all women sterilised after 1991. This negligent separation thus generates a third possible group, women sterilised between 27 May and 31 December 1991, which is left entirely uncovered by the recommendation.

There are also some cases in which the victims were forcefully or coercively sterilised in Slovakia prior to 1991 but are now resident in the Czech Republic. The redress for these women is similarly unclear in the current recommendation.

To date there have been only three court cases where forced or coercively sterilised women have been financially compensated. Two cases were considered by the European Court of Human Rights and one by the domestic court. The women, sterilised in 1997, 2001 and 2003,²⁰ were already compensated either by the court decision or in an extrajudicial settlement.

17 Concluding Comments of the Committee on the Elimination of Discrimination against Women: Czech Republic, 25 August 2006, CEDAW/CZE CO/3, pp. 5 - 23. Concluding Comments of the Committee on the Elimination of Racial Discrimination: Czech Republic, 11 April 2007, CERD/C/CZE/CO/7, pg.4 at 14, available at: <http://www2.ohchr.org/english/bodies/cerd/cerds70.htm>. Concluding Observations of the Human Rights Committee: Czech Republic, 9 August 2007, CCPR/C/CZ/CO/2, pg. 3 at 10. Report of the Working Group on the Universal Periodic Review: Czech Republic, 23 May 2008, A/HRC/8/33, pg. 13 at 5, pg. 14 at 27. ECRI Report on the Czech Republic, fourth monitoring cycle, adopted 2 April 2009, pg. 39 at 140, pg. 40 at 141, 142, available at: http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Czech_Republic/CZE-CbC-IV-2009-030-ENG.pdf.

18 Resolution of the Government of the Czech Republic 1424 from 23 November 2009. Available in Czech at: http://racek.vlada.cz/usneseni/usneseni_webtest.nsf/0/6430E40ED2EFF39AC1257674004347C2?FILE/1424%20uv091123.1424.pdf.

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

20 *Ferenčíková v. the Czech Republic* (Application no. 21826/10), *Červeňáková v. the Czech Republic* (Application no. 26852/09); and *R.K. v. the Czech Republic* (Application no. 7883/08).

The Council recommendations also include: free of charge legal assistance for sterilised women as well as a recommendation to the Czech Government (Ministry of Health) to make sure that the medical documents on sterilisation remain archived. Until recently, the law allowed hospitals to dispose of documents after 40 years. This has significant consequences for women sterilised in the early 1970s.

RECOMMENDATIONS

In order to fully address the problem of segregation of Romani children in education, Czech authorities should:

- Provide detailed information on use of structural funds, the status of the NAPIE, its relationship to the new inclusion strategy and budget allocated for inclusive education in 2012;
- Monitor and collect disaggregated data according to ethnicity, gender and disability which can assess the implementation and impact on the ground of the decrees, NAPIE, testing pilots and other steps to promote inclusive education;
- Institute systemic support measures for Romani students to succeed in mainstream schools;
- Make effective steps towards inclusive education in mainstream schools for all children and where needed, provide adequate educational support for pupils within such schools;
- Adopt legislation in 2012 explicitly mandating the desegregation of Czech schools;
- Strengthen anti-discrimination legislation to enable positive action leading to the abolition of segregated settings and the achievement of better education outcomes for children from Romani communities and children with disabilities; and clearly define in the law segregation as one of the forms of discrimination; and
- Adopt a concrete plan and timeline commencing at the earliest opportunity, with clear annual targets to eliminate school segregation and secure full integration of all children with an actual or perceived disability into an inclusive education setting within five years.

In order to address the ongoing violent attacks against Roma and to ensure an adequate State response, Czech authorities should:²¹

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

21 These recommendations take account of existing recommendations by the Organization for Security and Cooperation in Europe (OSCE), Amnesty International and Human Rights First.

In order to address the violations of the rights of women who were forcibly or coercively sterilised, the Czech Government should:

- Grant compensation to all victims of coercive sterilisation in the Czech Republic irrespective of the date of sterilisation, ethnicity, nationality or age;
- Make sure that the any Commission for compensation will contain independent expert representatives along with representatives of ministries and health services;
- Ensure that all victims of involuntary sterilisation are provided with free legal aid and all litigation costs are covered;
- Secure access to non-financial compensation benefits such as artificial fertilisation, rehabilitation, etc.;
- Conduct research into the full extent of harms caused by the practice of coercive sterilisation, and support ongoing outreach to all potential applicants for compensation;
- Assign the Czech Foreign Ministry to undertake negotiations with the Slovak Government to provide redress for women sterilised in Slovakia prior to 1991;
- Make sure that new Sterilisation Guidelines incorporating the 2011 FIGO ethical guidelines on female contraceptive sterilisation are adopted; and
- Establish clear procedural guidelines for following up on complaints of rights violations and strengthen administrative accountability mechanisms at hospitals.