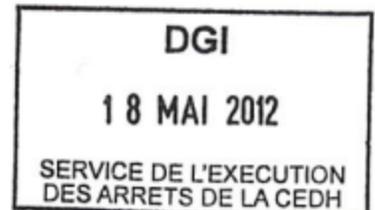


# D.H. and others v. Czech Republic

JUNE 2012



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## I. Executive Summary

On November 13, 2007, the European Court of Human Rights (ECtHR) handed down its landmark judgment of *D.H. and others v Czech Republic*. In this case, the Grand Chamber 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 under the European Convention on Human Rights (“the Convention”). The Czech government was ordered to end the violation and redress so far as possible its effects.

Almost five years later, little has changed. Romani children are still being funneled 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.

The lack of implementation of the *D.H.* judgment deeply concerns the three submitting organizations: the Open Society Justice Initiative (Justice Initiative), the European Roma Rights Centre (ERRC) and Česká Odborná Společnost pro Inkluzivní Vzdělávání (COSIV). The Justice Initiative and ERRC are two international organizations which have been involved with the *D.H.* case since its inception. The ERRC originally litigated the ECtHR case. Justice Initiative staff was also involved in the litigation. COSIV is a Czech civil society group which is comprised of domestic education experts concerned with promoting an inclusive agenda. All three organizations have worked to implement the *D.H.* judgment in the Czech Republic, through advocacy in international and domestic fora, as well as by working with regional schools and groups to promote inclusion.

The fundamental hindrance to implementation is the Czech government’s lack of political will. We therefore recommend that the Committee:

1. Request the Czech government to demonstrate, with statistical evidence, “concrete results achieved particularly in the perspective of the next school year” as requested in the decision by the Committee at its 1115<sup>th</sup> meeting in June 2011;
2. Request a fully revised National Action Plan for Inclusive Education (NAPIE) which addresses the violations identified in the *D.H.* judgment, contains both concrete timelines and indicators for achieving inclusive education, and links its implementation to a clear, secure funding source. Such a plan should draw heavily on the *Czech Strategy for the Fight Against Social Exclusion 2011-2015*;
3. As part of an assistance package for revising the NAPIE, request the Committee’s Secretariat to travel to the Czech Republic to visit segregated schools, meet with Romani families whose children are placed in “practical schools” and discuss solutions, including funding sources and the development of a timeframe for implementation and indicators of progress, with Czech Ministry of Education officials and civil society, including through the organization of roundtables intended to offer technical advice and assistance;
4. Request the Czech government to submit a plan demonstrating the use of current and future European structural funds to help achieve the transformation in its school system required by the *D.H.* judgment;
5. Issue an interim resolution on the non-implementation of the *D.H.* judgment.

## II. Developments Since June 2011

In June 2011, the Committee of Ministers noted with concern that “considerable progress remains to be achieved on the ground” in executing the *D.H.* decision, and stressed the importance of “intensifying and if possible, speeding up the implementation of [the Czech authorities’] action plan.” The Committee asked for additional information on the “current state of implementation of the Action Plan, on the timetable of future steps and on concrete results achieved particularly in the perspective of the next school year.” In November 2011, the Committee again issued a decision on the *D.H.* case, asking to be kept up to date on developments including “the actual results achieved on the ground.”

Despite the Committee’s clear concern to see practical results, little change is evident on the ground since the June 2011 debate. As noted below, the fundamental indicia of continuing discrimination and segregation – the overwhelmingly disproportionate enrollment of Romani children in “practical” schools – continues to this day. This lack of movement is reflective of larger problems at the policy, legal and financial level in the Czech Republic which have created confusion and paralysis among those charged with implementing the judgment. Worse still, some new measures — such as a new testing regime for primary school students — run counter to inclusive education philosophy. Each of these challenges will be addressed in turn.

### ***Lack of Policy Cohesion, Funding and Implementation***

The Czech government now has two competing strategies to promote inclusive education. The status and funding of each remains unclear, as does their relationship to each other.

The first is the National Action Plan on Inclusive Education (NAPIE), developed by the Czech Ministry of Education and submitted to this Committee in 2010 in response to *D.H.* implementation requirements. As noted in prior submissions from the Justice Initiative and ERRC, it is really a plan to create a plan, with no concrete targets, no defined or identified funding and an unacceptably long timeframe for implementation (practical effects on the ground were not anticipated until 2014 on original estimates). Its execution has effectively stalled since the Education Expert Platform — the group of experts who originally worked with the Education Ministry in the hope of fleshing out the NAPIE — resigned in late May 2011, citing lack of political will on the part of the Ministry to pursue an inclusive agenda.

Now, the Czech Republic has 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* (the “Strategy”). 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.

Meanwhile, the one measure that is being piloted is a new standardized testing regime for fifth and ninth graders which would rank schools according to academic achievements. This regime will only assess

aggregated results from each school and will not take into account learning difficulties of individual children, nor whether they have received the educational support needed to prepare for these tests. This testing system could in practice undermine an inclusive education agenda as schools may seek to exclude children who might bring down their overall results. The tests are scheduled for full implementation in 2013. Education experts are concerned that this type of standardized testing may further dissuade mainstream schools from accepting children with learning disabilities, those from socially disadvantaged backgrounds, those who have had to repeat grades or who have transitioned from practical to mainstream schools for fear of losing funding if the school does not score well on the testing. Without adequate safeguards in place for schools which try to promote inclusion or focusing test results on progressive educational achievements of the school population and individual students (not just overall outcomes in any given year), these tests are likely to negatively impact children with disabilities and Romani children the most. This new testing regime would take the Czech education system further away from the requirement in the *D.H.* judgment to redress the violation of indirect discrimination against Romani children in education, as well as its effects.

### ***No Clear Impact of Legal Provisions***

In 2011, the Czech government amended two education decrees: *72/2005 on the provision of counseling services in schools and school counseling facilities* (“Decree on Counseling (No. 72/2005)”) and *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. 73/2005)”). Both entered into force on September 1, 2011. In a welcome move, some of the most problematic provisions of these two decrees (highlighted in our previous submissions to this Committee), were amended before the decrees’ passage. For example, Section 10 of *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. *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, counseling 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.

Civil society has not been consulted by the Czech authorities to assess the changes the amended Decrees have made on the ground since they came into force, if any. Nor is civil society aware of any effort by the government to undertake any such assessment.

### ***European Union Halts Structural Funds For Education***

In January 2012, the European Commission halted the disbursement of its latest tranche of structural funds to the Czech Republic — worth approximately 1.9 million EUR — after it found serious

irregularities in the way the Czech government was spending monies intended for education projects. In a letter to the Czech government on January 24, 2012, the European Commission reported “serious shortcomings” in the management and control of funds, and expenses linked to “serious inconsistencies” which were “not justified,” which were identified in the course of a December 2011 audit.<sup>i</sup> In a further communication dated January 25, 2012 to the Czech government, the Commission expressed concern about the “systemic problem in the low quality of the national projects” which has led it to doubt whether “there is a clear idea about systemic changes that are really necessary for the modernization of the Czech educational system and how it will focus on key priorities.” In discussing the latest interruption of disbursements of EU structural funds, the Commission noted that unless the irregularities in the December 2011 audit were rectified (not only to fix the problems themselves, but also to “avoid any suspicion of irregularities and potential fraud in the future”), it may result in the “suspension of all payments for an indefinite period.” The Commission concludes by noting the “seriousness of current situation and limited time available to act.”<sup>ii</sup>

In its letters, the European Commission highlighted three key issues: (1) significant structural funds have been available for education projects; (2) structural funds have not been used effectively by the Czech government to promote transformation within the education in any systematic way; and (3) the low quality of national projects indicates a lack of vision for modernizing the Czech education system. Taken together, these issues suggest that the Committee of Ministers should question whether structural funds — which should greatly alleviate the funding burden of *D.H.* implementation — are being used in a way that would promote inclusion consistent with the *D.H.* judgment.

### ***Increasing Regional and International Concern Over implementation Failure***

Since the June 2011 debate, at least four major reports or reviews have emerged from United Nations treaty bodies or regional organizations and mandates that indicate deep concern about the failure to ensure inclusive education in the Czech Republic in the wake of the *D.H.* decision.

Regionally, the then 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*.<sup>iii</sup> 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.”<sup>iv</sup> Meanwhile, 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.”<sup>v</sup>

Internationally, two United Nations Treaty Bodies reviewed the Czech Republic in 2011 and issued Concluding Observations highlighting the ongoing segregation of Romani children into separate and inferior schools, and the obligation to do more to include Romani children in mainstream education. On September 2, 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.”<sup>vi</sup> The month before, on August 4, 2011, the Committee on the Rights of the Child (CRC) also noted that despite the *D.H.* judgment, “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.”<sup>vii</sup> 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.”<sup>viii</sup>

### ***Ongoing Disillusionment of Romani Families in Czech Republic***

November 13, 2012 will mark the fifth anniversary of the *D.H.* judgment. Despite this major legal victory, real change remains elusive for Romani children. Justice Initiative and ERRC interviews in February 2012 with families involved in the *D.H.* case in Ostrava, eastern Czech Republic, indicate a deep level of disillusionment and disappointment with the practical outcomes of the case. Indeed, siblings of the *D.H.* applicants have also been placed in the same practical schools. One family highlighted the hostile environment that still exists for Romani children attending mainstream schools. Teachers are sometimes at the forefront of such hostility. One teacher in an Ostrava school allegedly refers regularly to the siblings of two *D.H.* applicants, who are still in high school, as “animals” and “stupid,” and tells them that he will make sure they will “never succeed.” Another family questioned the value of ongoing efforts to implement the *D.H.* judgment as so little change has been seen on the ground in their community. The overall feeling among families interviewed could be summed up by Julius Mika, one of the *D.H.* applicants who now has two young children of his own: “*I was happy that the case ended in our favor—to hear that the court, someone with greater power, recognized that the school system was wrong and that Romani children deserve equal standards of education. But nothing has really changed. In the system now, they say we have a choice. But if parents refuse to send their children to the practical school and the child returns to the regular school, the teachers make the experience horrible for them. Most often children will end up at the practical school anyway.*”

With this background, it seems clear that implementation of the *D.H.* judgment is severely lagging, with insufficient structural, legal and financial efforts undertaken to make the changes needed to comply with the judgment. Still, for the benefit of the Committee in assessing the Czech government’s compliance with the specific requirements outlined in the *D.H.* judgment, it is worth assessing developments by the criteria set out by the Grand Chamber.

## **III. Assessment Against Implementation Criteria**

The Committee of Ministers’ assessment of the implementation of cases is assisted by analysis of the Council of Europe’s Department of Execution of Judgments. In November 2010, this Department set out the specific elements required to satisfy the *D.H.* judgment provisions.<sup>ix</sup> While the Department’s original assessment measured these indicators against the NAPIE, a more relevant assessment for the Committee would look at what is happening in practice on the ground, given that the NAPIE’s implementation has effectively stalled. Following is a short assessment according to the Committee’s own guidelines for implementation.

### ***Violations Found in the D.H. Judgment***

The ECtHR found that indirect discrimination against Romani children was systemic across the Czech primary education system. The Grand Chamber found a violation of Article 14 (non-discrimination) read in conjunction with Article 2 of Protocol No. 1 (the right to education). It ordered the Czech government to end the violation and to redress, so far as possible, its effects. The following analysis attempts to determine whether this violation has in fact been ended and its effects redressed.

a. *Indirect Discrimination Against Romani Children in Education*

In the *D.H.* judgment, the Grand Chamber considered “reliable and significant” statistics would be sufficient to constitute prima facie evidence of discrimination.<sup>x</sup> Fresh statistics due to be released by the Czech Ombudsman’s Office this month are expected to highlight that, over the past four and a half years, little has changed: Romani children continue to suffer continuing disproportionate placement in “practical schools” at a rate that far outstrips their non-Romani counterparts. According to the most recent available data - collected by the Czech School Inspection Authority in March 2010 - Romani children nationwide still constituted 35 percent of children diagnosed with light mental disability, while this number in some regions was as high as 53.1 percent, although Roma constitute, by most estimates, between five and ten percent of the Czech population. At least 5000 children without any diagnosis of disability continue to be placed in the former “special schools” for children categorized as having a disability.<sup>xi</sup> No major structural changes to the laws, policy or practice in schools have taken place to fundamentally change the situation since the *D.H.* judgment or since these statistics were gathered. In short, the pattern of systematic indirect discrimination against Romani children condemned in the *D.H.* judgment continues unabated. The State has yet to demonstrate that the “difference in treatment is not discriminatory”<sup>xii</sup> and is the result of “objective factors unrelated to ethnic origin.”<sup>xiii</sup>

b. *Objective and reasonable justification*

The Grand Chamber’s reasoning in *D.H.* reflects the requirement that any difference in treatment among ethnic groups will be considered discriminatory if “it has no objective and reasonable justification.”<sup>xiv</sup> To meet this test, the government must show that any differential treatment is pursuant to a “legitimate aim” and that there is a “reasonable relationship of proportionality” between the means employed and the [legitimate] aim sought to be realized.<sup>xv</sup> In cases of ethnic discrimination, “the notion of objective and reasonable justification must be interpreted as strictly as possible.”<sup>xvi</sup> In the case of differential treatment in education for Romani children, the Court regarded the provision of safeguards as important in determining whether “the State took into account their special needs as members of a disadvantaged class.”<sup>xvii</sup> This assessment will look at two types of safeguards highlighted by the Department of Execution of Judgments: safeguards in relation to schooling arrangements and procedural safeguards.

b) i) *Safeguards in relation to schooling arrangements*

The Department of Execution of Judgments noted three specific safeguards in schooling arrangements which would meet the criteria laid down in the *D.H.* judgment: (1) inclusion in mainstream education as a goal for any segregated education system; (2) non-discriminatory testing; and (3) informed parental consent.

*1. to ensure that the goal of any separated education is ultimately inclusion in the mainstream education system*

Since the *D.H.* judgment, the Czech system of separated schools remains intact and no significant structural changes have been put in place to ensure inclusion in mainstream education is the goal of separated education. Many of the former “special schools” – renamed practical primary schools - continue to operate entirely differently and separately from standard primary schools; others were formally renamed standard primary schools but in practice operate as special schools. The Czech Republic reported to the Committee of Ministers in November 2010 that a proposal to transform practical schools into standard mainstream schools would be submitted by late 2010. But now, 18 months later, no public indication exists that any Ministry of Education proposal has in fact been submitted nor that there is any

clear movement towards closing the gap between these “practical schools” and mainstream ones. Moreover, the former Education Minister Josef Dobeš told Czech press in November 2011 that the Ministry of Education had no intention to abolish special or practical schools.<sup>xviii</sup> Most importantly, simply renaming practical schools as standard primary schools will not eliminate the segregation of Romani children. Some of the schools which have been “transformed” offer a standard curriculum, but in practice the demands on the children are still often lower than in regular mainstream schools. In fact, children in these schools are provided with very limited support to ensure they can and in fact do achieve at the same rate as their mainstream peers.

Amendments to the *Decree on Counseling (No 72/2005)* and *Decree on Special Education (No. 73/2005)*, adopted in September 2011 and outlined above, still contain worrying provisions which appear inconsistent with inclusive education goals. Section 3 of the *Decree on Special Education (No. 73/2005)* still allows for children with a “social disadvantage” to be placed in separate classes for children with disabilities for up to five months if that child fails to cope in mainstream school over an extended period. Currently, no clear checks exist to assess the type and quality of support provided to children with “social disadvantage” temporarily placed in “practical schools” exist, nor is adequate support provided to such students in mainstream schools before or after such an assignment to “practical school”. As a result, fears exist that the experience may be even more disruptive to their education and undermine the ability of children with “social disadvantage” to be successfully included in a mainstream setting. To the extent that Romani children in the Czech Republic may fall into this category, the practical operation of this provision is of particular concern.

If the ultimate goal of amendments to the *Decree of Special Education (No. 73/2005)* is in fact to ensure successful inclusion in mainstream schools in practice, Czech experts advise that provisions such as Section 3, which establishes that children with a “social disadvantage” can be assigned to practical schools for up to five months, should be significantly revised and narrowed. To be consistent with inclusive education principles, Section 3 should instead allow children who have difficulty coping in mainstream settings to receive more intensive support from their own teachers and/or attend additional classes at the mainstream school — but only for the subject(s) in which additional support is needed.

*2. If tests are applied to assess the academic suitability of Roma students for mainstream education, to ensure that these identify clear criteria unrelated to ethnic origin and meet a legitimate, educational need*

International legal advances since the *D.H.* judgment indicate the development of an emerging norm which presumes that all children have a right to inclusive education in a mainstream school setting, regardless of disability, ethnicity or gender. Article 24 of the *Convention on the Rights of Persons with Disabilities*, for example, obliges States Parties to provide an “inclusive education system” which ensures “the development by persons with disabilities of their personality, talents and creativity, as well as their mental and physical abilities, to their fullest potential”.<sup>xix</sup> It further requires that States, in realizing this right, to ensure that “[p]ersons with disabilities can access an inclusive, quality and free primary education and secondary education on an equal basis with others in the communities in which they live.” The CPRD, then, further expands the right to education for all children in the *Convention on the Rights of the Child*, specifically Article 29(1)(a) which requires that education be directed towards the “development of the child's personality, talents and mental and physical abilities to their fullest potential.” Although the CRPD is specific to persons with disabilities, the principles outlined in this most contemporary expression of international law regarding inclusive education should be regarded as applying to all children.

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

To the extent that the *Decree on Special Education (No. 73/2005)* anticipates such support needs for children with a “social disadvantage”, no clear mechanism exists to determine how such needs should be assessed, and whether such needs should be determined through the application of a specific test. The law needs further amendment to define how support needs should be assessed. A clear funding source for support services must also be identified. Though we understand that the Czech Education Ministry has received European structural funds to assist with an effort to address this type of supportive testing to assess special needs, the details of any such project are not publicly known, including whether the project is ongoing in the wake of the halt in structural fund disbursements in January 2012.

*3. Where parental consent to placement in separate classes is sought, such consent should be fully informed. However, there can be no waiver of the right not to be subject to ethnic discrimination*

The Court clearly stated in the *D.H.* judgment that no consent can be given to treatment which, in effect, waives “the right not to be subjected to racial discrimination.”<sup>xx</sup> In other words, it is not possible to receive consent by legal guardians of Roma children to discriminatory placement in a segregated school offering a limited curriculum.

The amended *Decree on Special Education (No. 73/2005)* sets out schools’ obligations to children with a “social disadvantage.”<sup>xxi</sup> According to the Government, this decree “clearly stipulates that the school is obliged to inform the parents about all the consequences of their child’s enrolment in a school for the mentally disabled.” Yet, while the decree contains a suggested consent form, this only contains a list of topics about which parents should be advised before giving consent to placing their child in “practical schools” — including “the possibilities of further education and employment.” However, no standard language advising of these risks exists in the form, nor are any adequate supervision or monitoring mechanisms in place to ensure that, in practice, parents are fully informed prior to being asked for their consent.

#### *b) ii) Procedural safeguards*

Though the *D.H.* judgment considered procedural safeguards to be “especially material” the Grand Chamber did not specify exactly what would constitute such measures. The Committee of Ministers has interpreted this requirement as constituting legislative provisions. In its November 2011 decision on the *D.H.* case, the Committee of Ministers “welcomed the information provided by the Czech authorities on the Anti-Discrimination Act, which provides a procedural safeguard against discrimination in the area of education.”<sup>xxii</sup>

The text of the Czech Anti-Discrimination Act, 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

Counseling Services in Schools and School Counseling 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 the European Union's Race Equality Directive. 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. The Act also does not contain any express provisions which would directly prevent the segregation of Romani children into separate schools, classes or study groups. Similarly, we are not aware of any Czech case law which clearly condemns or forbids segregation. In practice, then, the Act's ability to serve as an effective safeguard against discrimination in education is still to be proven.

## IV. Conclusion

Nearly five years after the *D.H.* judgment, the reality in the Czech Republic does not reflect the promise of the ECtHR jurisprudence in the *D.H.* judgment. Romani children continue to be disproportionately segregated into "practical schools." Legislative and policy changes to date focus overwhelmingly on problems with the "pupils" rather than addressing the flaws of the education system and its actors. Mainstream schools continue to lack the funding for resources to promote inclusive education. Teachers lack the training in how to facilitate an inclusive environment in their schools. Changes in law have simply tinkered at the edges of a fundamentally flawed system. Changes in policy have only been committed to paper rather than practice — and only partially to paper in the case of the NAPIE. No political commitment to the fundamental transformation required by the *D.H.* judgment is evident from the Czech government. The European Commission, in halting the disbursement of money to the Czech Republic, has questioned whether a strategy designed to make the most of European structural funds to promote a modernized education system even exists. In this situation, Romani children are the ones who continue to lose out, despite their legal victory in 2007. The Committee of Ministers has an ongoing obligation to ensure increasing political pressure on the Czech government to ensure the *D.H.* judgment is implemented as quickly as possible.

## ENDNOTES

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<sup>i</sup> For English language reporting of the decision, see Martin Rychlik, EU blocks at least Kč 1.2 billion due to Education Ministry mismanagement, January 27, 2012, available at <http://www.ceskapozice.cz/en/news/politics-policy/eu-blocks-least-kc-12-billion-due-education-ministry-mismanagement>.

<sup>ii</sup> Copy of the letter on file with author.

<sup>iii</sup> 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](http://www.coe.int/t/commissioner/source/prems/prems79611_GBR_CouvHumanRightsOfRoma_WEB.pdf) at p. 126.

<sup>iv</sup> Ibid.

<sup>v</sup> See *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](http://www.oecd.org/document/48/0,3746,en_2649_39263231_44567984_1_1_1_1,00.html) p.129.

<sup>vi</sup> See 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>.

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

<sup>viii</sup> Ibid, para 62(a).

<sup>ix</sup> Council of Europe Department of Execution of Judgments, Supervision of the Execution of the Judgments in the Case of D.H. and others Against Czech Republic, Judgment of 13/11/2007 – Grand Chamber, Doc. No. CM/Inf/DH(2010)47, November 24, 2010, available at <https://wcd.coe.int/ViewDoc.jsp?id=1707993&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383>.

<sup>x</sup> *D.H. and others v Czech Republic*, Grand Chamber, European Court of Human Rights, November 13, 2007, available at: <http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=825443&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649>, para 188 (hereafter “D.H. Judgment”).

<sup>xi</sup> Czech School Inspection Authority report available at: <http://spolecnedoskoly.cz/wp-content/uploads/tematicka-zprava-csi.pdf>

<sup>xii</sup> Ibid para. 189.

<sup>xiii</sup> Ibid para 195.

<sup>xiv</sup> Ibid, para.196.

<sup>xv</sup> Id.

<sup>xvi</sup> Id.

<sup>xvii</sup> Ibid, para. 207.

<sup>xviii</sup> Romea, *Czech Education Ministry Not Planning to Abolish “Practical” or “Special” Schools*, www.romea.cz, November 11, 2011, available at [http://www.romea.cz/english/index.php?id=detail&detail=2007\\_2945](http://www.romea.cz/english/index.php?id=detail&detail=2007_2945).

<sup>xix</sup> For the full text of the Convention on the Rights of Persons with Disabilities, see <http://www.un.org/disabilities/convention/conventionfull.shtml>. The text was opened for signature on March 30, 2007 and was ratified by the Czech Republic on September 28, 2009.

<sup>xx</sup> D.H. Judgment, above n. x at para. 204.

<sup>xxi</sup> The category of “socially disadvantaged children” (which includes Roma children) combined with the tendency to diagnose Roma children with a disability provide two big loopholes through which Roma children can still be channeled into special education. For more information on the definitions, please see the *School Act*, Section 16, in English available at: [http://www.msmt.cz/uploads/soubory/vysoke\\_skoly/IM\\_novelizovanyzakon561rijen2008.pdf](http://www.msmt.cz/uploads/soubory/vysoke_skoly/IM_novelizovanyzakon561rijen2008.pdf)

<sup>xxii</sup> See Committee of Ministers, Decision, *D.H. and others v Czech Republic*, December 2, 2011, available at [http://www.coe.int/t/dghl/monitoring/execution/WCD/DHMeetings\\_en.asp](http://www.coe.int/t/dghl/monitoring/execution/WCD/DHMeetings_en.asp).