

September 23, 2014

Minister MARCEL CHLÁDEK

Ministry of Education, Youth and Sport
Ministerstvo školství, mládeže a tělovýchovy
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Czech Republic

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College of Commissioners

European Commission
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Dear Mr. Minister:

The European Roma Rights Centre (ERRC) would like to express its concern about the lack of progress in fulfilling the Czech Government's commitment to end discrimination against Romani children in education, and to implement measures of inclusive education that benefit both Romani children and children with disabilities. Simply put, the system of education in the Czech Republic continues to violate Czech obligations under the EU Race Equality Directive, the European Convention on the Protection of Human Rights and Fundamental Freedoms, and the Convention on the Rights of Persons with Disabilities. New proposed legal changes, if enacted, would further cement in place an illegal system that excludes and segregates children on the basis of disability, perceived disability and ethnicity.

The ERRC is particularly concerned about the recently proposed amendment of School Act no. 561/2004, which in practice reintroduces the possibility of transferring children to practical schools without diagnosis of mental disability. If adopted, this recently proposed amendment could further aggravate the existing discrimination against Romani children in education.

We are additionally concerned about your public statement earlier this year asserting that the Ministry of Education would not abolish practical schools and that "the Czech Republic can proudly promote its system of special and practical schools to other European countries".¹ We believe that such statements undermine the commitments made by the government in the

¹ [Idnes.cz](http://idnes.cz), Inclusive conditions absenting in Schools, January 19, 2014, available at: http://zpravy.idnes.cz/skolam-chybi-podminky-na-inkluzi-d4n-domaci.aspx?c=A131017_164157_domaci_jj

Strategy for Combating Social Exclusion for 2011-2015² (the Strategy) to progressively transform the practical school system and include pupils in mainstream education. The Czech Republic repeated its commitment to desegregate schools during the adoption of the UN Universal Periodic Review outcome document on the Czech Republic in March 2013.³

The ERRC welcomes the fact that the planned School Act amendment contains positive measures, such as the introduction of a new five-grade support system for children with learning difficulties that classifies all support measures in a comprehensive catalogue, and a mechanism of re-diagnosis; the legal recognition of the teacher assistants' position⁴; and the prioritisation of individual mainstream school integration among the support measures.

On the other hand, the ERRC is seriously concerned about another provision of the amendment that makes children defined as "socially- and culturally-disadvantaged" eligible for placements in practical schools. The placement of children in modified educational programmes based on diagnosis of intellectual disability has already been ruled arbitrary and discriminatory by the European Court of Human Rights; placing children in programmes meant for those with intellectual disabilities based solely on perceived social and cultural differences will elevate this arbitrariness to a level of absurdity. Social and cultural "disadvantage" appear to be nothing more than euphemisms for „Roma." What was previously indirect discrimination will now stand more plainly as direct discrimination, based on categories that overlap almost exclusively with race and ethnicity. New diagnostic categories of social and cultural disadvantage would ultimately rely on a subjective decision of the personnel of Psychological-Pedagogical Centres (PPP), who have no expertise on the social and cultural background of children.

We believe that this amendment, if passed, could lead to rights violations which go beyond those found in the DH judgment, and which have not been remedied to date. The amendment would amount to direct discrimination against Romani children. Additionally, the ERRC is concerned that the proposed amendments count practical and special schools among supportive measures for children with learning difficulties.

The Strategy includes proposals for short-term measures (4.5.3.3), and also for mid-term measures (4.5.3.4) "to transform the parallel system of schools established for pupils with mild mental disability so that the resulting state would enable to educate all children in the schools of educational mainstream"⁵ as international law requires. However, in January 2014, the ministry officially announced that the transformation of the practical school system would not be pursued and the Human Rights Commissioner announced a re-drafting of the Strategy in this regard.

The ERRC has been addressing discrimination against Romani children in access to education in the Czech Republic for almost two decades, and is working collectively and with local partners, communities, and victims to ensure the full implementation of the European Court of

² Agency for Social Inclusion, *Strategy for Combating Social Exclusion for the period 2011-2015*, p. 25 Available at: <http://www.socialni-zaclenovani.cz/dokumenty/strategie-boje-proti-socialnimu-vylouceniu/>

³ Human Rights Council, Report of the Working Group on the Universal Periodic Review: Addendum (A/HRC/22/3/Add.1), 1 March 2013, paras 11 and 15. Available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G13/115/78/PDF/G1311578.pdf?OpenElement>

⁴ Although it is not defined as a pedagogical but only a social care profession and the assistants cannot work for more than 22 hours per week.

⁵ *Strategy for Combating Social Exclusion for the period 2011-2015*. Supra n. 2, p. 25

Human Rights (ECHR) judgment in the case of *D.H. and Others v the Czech Republic*.⁶ We have undertaken research, advocacy, campaigning and consultation aimed at reforming the Czech education system to make it inclusive for all children, regardless of their ethnicity, social situation, disability or other status.

The decision to backtrack from the government's prior commitment to progressively transform the practical school system and the proposed amendments of the School Act amount to a significant step back in the reforms the Czech Republic is bound to implement with respect to the *D.H. and Others* case as well as its commitments under the *Convention on the Rights of Persons with Disabilities*.⁷

The continued segregation of Romani pupils in practical schools and classes – on the basis of real or alleged special learning needs – infringes the European Union Race Equality Directive (2000/43/EC of 29 June 2000). The Directive, which is binding on your Government and has been transposed into domestic law through the 2009 *Anti-Discrimination Act*, is a key means of promoting inclusion and human rights principles while combating discrimination. The fact that a great number of Romani pupils in both practical and Roma-only elementary schools continue to be segregated and consequently follow an inferior quality reduced curriculum with little chance of succeeding (or even accessing) academic secondary and higher education, serves to secure their exclusion from broader society and consigns them to a cycle of poverty and deprivation.

Almost seven years after the *D. H.* judgment, and notwithstanding several legislative amendments, surveys continue to show the lack of significant progress in life prospects for far too many Romani children.⁸ Translating survey numbers into real stories, the ERRC and Amnesty International have found that the situation remains largely unchanged and Romani pupils in Ostrava continue to attend lower quality segregated schools.⁹ The report concludes that there are persistent shortcomings in the Czech educational system that obstruct the inclusion of Romani children in integrated mainstream education.

Recommendations

The ERRC calls on the Czech Government, and specifically the Ministry of Education, to take immediate measures to end the segregation of Romani children in the Czech educational system. Such measures should include:

⁶ *D.H. and Others v. the Czech Republic*, European Court of Human Rights, Grand Chamber, Judgment of November 13, 2007. Available at: [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-83256#{"itemid":\["001-83256"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-83256#{)

⁷ UN General Assembly, *Convention on the Rights of People with Disabilities*, January 24, 2007, A/RES/61/106, available at: <http://www.un.org/disabilities/convention/conventionfull.shtml>.

⁸ Since 2009, the Czech authorities carried out six inquiries into the ethnic composition of practical schools.⁸ Although each survey was conducted with different methodology, they all provided evidence that Romani children are significantly over-represented in the education system designed for children with disabilities. See ERRC, *Country Profiles 2011-2012: Czech Republic*, available at: <http://www.errc.org/article/czech-republic-country-profile-2011-2012/4161>

⁹ *Czech Republic: Five More Years of Injustice: Segregated Education for Roma in Czech Republic* (Amnesty International/ERRC); EUR 71/006/2012 8 Nov 2012

- Immediate withdraw of the controversial School Act amendments which allow for transferring children without disabilities to practical school and which considers practical and special schools among the supportive measures for children with learning difficulties;
- Introduction of a moratorium on placements of children, including Romani children and children with disabilities, in practical schools and classes while a comprehensive review of the system is performed to ensure compliance with international and regional standards on education and non-discrimination and, at all times, ensuring the best interests of the child;
- Revision of the recent decision to put a halt to the reform of the practical school system, and re-start its progressive transformation including by phasing out practical schools within a realistic time period and instead introducing inclusive education within the mainstream system, in line with the Strategy.

The European Roma Rights Centre 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.

Sincerely,

Robert Kushen
Chair