



**Continuing Segregation of Romani Schoolchildren in  
Czech Republic**  
*D.H. and Others v. Czech Republic (13 November 2007)*

**Submission to the Committee of Ministers, Council of Europe**  
**1115<sup>th</sup> Human Rights Meeting, 7-9 June 2011**

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**Executive Summary and Recommendations**

The Open Society Justice Initiative (Justice Initiative) and the European Roma Rights Centre (ERRC) submit this briefing under Rule 9(2) of the *Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements*.<sup>1</sup> This submission aims to assist the Committee of Ministers in the Council of Europe in assessing the Czech Republic's efforts to implement the European Court of Human Rights' 2007 Grand Chamber judgment in *D.H. and others v. Czech Republic*.<sup>2</sup> This case found that the Czech Republic had violated the European Convention on Human Rights by disproportionately placing Romani children into "special schools" in which they, along with children with disabilities, were subjected to a limited curriculum and segregated from the broader student population. The Court held that this differential treatment of Romani children had no justification and amounted to discrimination. It ordered the Czech government to remedy the violation both through individual measures for the plaintiffs, and general measures promoting inclusive education.

More than three years later, little has changed in the Czech Republic. In some parts of the country, Romani students remain up to 27 times more likely to be placed in schools<sup>3</sup> providing *special education* than non-Romani children.<sup>4</sup> Distressingly, the Czech government continues to backslide on its legal

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<sup>1</sup> Rule 9(2) states "The Committee of Ministers shall be entitled to consider any communication from non-governmental organisations, as well as national institutions for the promotion and protection of human rights, with regard to the execution of judgments under Article 46, paragraph 2, of the Convention." See Committee of Ministers, *Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements*, available at <https://wcd.coe.int/wcd/ViewDoc.jsp?id=999329&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75>.

<sup>2</sup> European Court of Human Rights, *D.H. and others v Czech Republic*, Grand Chamber Judgment, November 13, 2007, available at <http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=825443&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649>

<sup>3</sup> Some of these "special schools" have been renamed "practical" schools and some renamed elementary schools.

<sup>4</sup> See e.g. People in Need, *Analýza individuálního přístupu pedagogů k žákům se speciálními vzdělávacími potřebami*, (Analysis of Individual Approach of Pedagogues to Pupils with Special Educational Needs), February 2009, commissioned by the Ministry of Education, Youth and Sports of the Czech Republic, available at:

[http://www.msmt.cz/uploads/soubory/tiskove\\_zpravy/Analýza\\_individualního\\_přístupu\\_pedagogu\\_k\\_žákům\\_se\\_speciálními\\_vzdělávacími\\_potrebyami\\_PLNE\\_ZNENI.pdf](http://www.msmt.cz/uploads/soubory/tiskove_zpravy/Analýza_individualního_přístupu_pedagogu_k_žákům_se_speciálními_vzdělávacími_potrebyami_PLNE_ZNENI.pdf).



obligations — increasingly so during the past 12 months under the new government. No substantive legislative changes been made since the D.H. judgment was handed down. Proposed amendments to regulatory decrees may reinforce discrimination against Romani children in education. Structures designed to promote inclusive education, both within the Czech Ministry of Education and outside of it, have been systematically dismantled. The government has not spent its allocated funding for inclusive education to ensure meaningful reform and concerns exist it may return or reallocate unspent European Union structural funds to unrelated projects. Moreover, the Czech government’s National Action Plan for Inclusive Education (NAPIE) does not directly address ethnic discrimination in the Czech education system, nor does it envision any practical changes which will benefit Romani children until 2014. This means that the government will only start instituting general measures designed to address and prevent discrimination against Romani children eight years after the D.H. judgment was delivered. Specifically, it means Romani children will continue to be channeled into “practical” or other substandard schools offering a limited curriculum at least for the next three years — dramatically harming their opportunities in life.

The need for systemic change is both urgent and immediate. The submitting organizations encourage the Committee of Ministers to intensify its oversight of this case now that D.H. has been placed on the “enhanced” supervision track. Specifically we ask that:

**(1) the Secretariat requests a debate on the D.H. case, preferably open to interested members of the public, in the June 2011 human rights meeting to solicit the Committee of Ministers’ assistance in identifying:**

- a. what impediments exist to implementing the judgment;**
- b. ways the Secretariat can assist the Czech government to speed up its implementation efforts, including by:**

**setting clear benchmarks and a specific timetable for implementation;**

**organizing multilateral cooperation programs to address the specific forms of impediments and challenges to progress on implementation**

**providing expert assistance on developing and implementing the types of measures needed to comply with the D.H. judgment; and**

**(2) the Committee issues a Resolution identifying the obstacles to progress, a short-term plan for developing timelines and benchmarks for progress on implementation, outline assistance available from the Secretariat, and set a date when the Committee of Ministers will next debate progress, preferably its November 2011 meeting.**

## **CZECH GOVERNMENT EFFORTS TO REDRESS THE VIOLATION**

The Grand Chamber’s findings in the D.H. case provide a roadmap for the Czech government to address ongoing violations of the right of Romani children to equal education, and offer the basis on which the Committee of Ministers can assess its implementation. Of most relevance to the Committee are the Grand Chambers’ main conclusions, previously highlighted by the Department on the Execution of Judgments of the European Court of Human Rights,<sup>5</sup> which this submission will address. These include:

### **A) Indirect discrimination against Romani children in primary education**

In the D.H. judgment, the Court held that any system which continues to produce “statistically disproportionate numbers of placements”<sup>6</sup> of Romani children in one category of schools will raise a presumption of discrimination which the Government is obliged to rebut.<sup>7</sup> Statistics provided by independent monitoring bodies and civil society groups underpinned the Court’s finding of a strong presumption of indirect discrimination against Romani children in the D.H. case. Today, the Czech government’s own statistics, and those of independent groups, continue to indicate the disproportionate placement of Romani children in former “special schools.” In March 2010, the Czech Republic’s own School Inspection Authority report indicated that 83 percent of the former special schools had not changed substantively, describing them as “hidden special schools.” Romani children still constituted 35 percent of children diagnosed with light mental disability, while this number in some regions was as high as 50 percent. At least 5000 children without any diagnosis of disability were placed in the former “special schools” for children categorized as having a disability.<sup>8</sup>

This year, in his March 2011 report on the Czech Republic, the Council of Europe’s Human Rights Commissioner, Thomas Hammarberg, noted that “Romani children continue to be assigned to schools for children with mild mental disabilities without justification, as a result of either mis-diagnosis or direct enrolment in these schools.”<sup>9</sup> He referred to an April 2010 opinion rendered by the Czech Ombudsman, which found that the disproportionate number of Romani children not diagnosed with a mental disability and still placed in practical schools, and those actually diagnosed with a mental disability, constituted discrimination. Furthermore, data gathered by the ERRC during a March 2011 research mission to Ostrava, Czech Republic – the

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<sup>5</sup> The following assessment is based on the categories identified by the Department for the Execution of Judgments of the European Court of Human Rights in November 2010 (see *Supervision of the Execution of Judgments in the Case of D.H. and others against Czech Republic, judgment 13/11/2007 – Grand Chamber*, Doc No. CM/Inf/DH(2010)47, November 24, 2010, available at <https://wcd.coe.int/wcd/ViewDoc.jsp?id=1707993&Site=CM>).

<sup>6</sup> Above n. 2 para. 193.

<sup>7</sup> *Ibid.*, para. 195.

<sup>8</sup> Czech School Inspection Authority report available at: <http://spolecnedoskoly.cz/wp-content/uploads/tematicka-zprava-csi.pdf>

<sup>9</sup> Council of Europe, *Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visit to the Czech Republic from 17 to 19 November 2010*; CommDH(2011)3, 3 March 2011, available at <https://wcd.coe.int/wcd/ViewDoc.jsp?id=1754217>, para 61.

city in which the D.H. case originated – indicate worrying trends. The ERRC found that in at least five schools providing “special education” Romani children comprised between 90 and 100 percent of the student population.<sup>10</sup>

Under the Court’s analysis, no solution is acceptable if in practice it routinely sends disproportionate numbers of Romani children to schools – however they are labelled - “where a more basic curriculum [is] followed than in ordinary schools” or “where they [are] isolated from pupils from the wider population.”<sup>11</sup> Thus, neither inferior treatment nor continued segregation is permissible. Czech authorities, however, have still not demonstrated that this continuing difference in treatment – that is, the disproportionate channeling of Romani students to segregated and substandard schools – is “the result of objective factors unrelated to ethnic origin.” Continuing discrimination is instead the combined result of a lack of action on the government’s part to implement the changes needed for inclusive education to flourish, and the existence of laws, policies and practices which maintain the status quo.

## **B) Objective and reasonable justification for measures resulting in different treatment**

### **a. General Safeguards**

#### **i. Ensuring that the goal of any separated education is ultimately inclusion in the mainstream education system**

Laws, regulations and policies governing the Czech education system do not yet contain the necessary safeguards to ensure that the ultimate goal of separated education is inclusion in mainstream schools, nor is inclusive education the stated aim of the special education programs into which Romani children are streamed.

In 2005, amendments to the *Schools Act* brought some changes to the Czech education system but these have been essentially cosmetic when it comes to addressing segregation. The former “special schools” continue to operate entirely differently and separately from standard primary 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 no public indication exists that this proposal has in fact been submitted, nor that there is any clear movement towards closing the gap between these “practical schools” and mainstream ones. Those schools which have been “transformed” continue to exclusively offer a limited curriculum.

In March 2010, the Czech Government adopted a National Action Plan on Inclusive Education (NAPIE). The Czech government reported to the Committee of Ministers in November 2010 that two of the key objectives of the NAPIE are to “increase the level of educational inclusivity in the

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<sup>10</sup> ERRC interviews with field social workers and Romani teaching assistants. Ostrava, Czech Republic: 10-11 March 2011.

<sup>11</sup> Above n. 2 para. 207.

Czech education system” and “adopt measures to prevent against social exclusion of individuals and entire social groups.”<sup>12</sup> The Czech government further stated that the NAPIE “contains the measures that are necessary for bringing the persisting practice of segregation in the Czech school system (primarily segregation of Romani children) to an end and at the same time preventing any incidents of discrimination.” While these stated goals are in line with the D.H. judgment, the NAPIE does not specifically address the ethnic discrimination against Romani children which was found to be illegal in the DH judgment. Nor does the NAPIE contain a concrete timeline or plan to desegregate Czech schools. Moreover, the NAPIE will not achieve real change in the near future: its preparatory phase lasts until 2013, it has no planned implementation measures before 2014 and the funding needed to achieve its goals is not defined.<sup>13</sup>

The Czech government also highlighted proposed amendments related to NAPIE implementation in its last submission to this Committee: Decree 72/2005 Coll. on the provision of counseling services in schools and school counseling facilities, and Decree 73/2005 Coll. on the education of children, pupils and students with special educational needs and children, pupils and students who are exceptionally gifted.<sup>14</sup> The government submission claimed that the proposed amendment “prohibits the education of children without any mental disability under programmes and at schools specifically intended for children with a mental disability.”<sup>15</sup> However, the proposed amendment of Decree 73/2005 – scheduled for adoption on April 1, 2011, but which has not yet been adopted at the time of writing – still specifically allows for placement of children without disabilities into the class established for children with disabilities, stating that up to 25 percent of a class can comprise children without disabilities.<sup>16</sup> Financial incentives are provided to “practical schools” to accept more children, while mainstream schools are allowed, under the proposed amendments to the decrees, to refuse the admission of children diagnosed with disabilities – including Romani children -- on the basis of a lack of resources.<sup>17</sup>

During interviews with the ERRC in March 2011, teaching assistants working at primary schools confirmed that it is practically impossible for children to move from “special education” schools into standard mainstream schools because the gap in learning is too wide (a minimum of three years’ learning difference). Even if they were able to transfer, adequate support for children

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<sup>12</sup> See Government of Czech Republic, *Note of the Government of the Czech Republic on the General Measures Related to the Execution of the Judgement of the European Court of Human Rights in case no. 57325/00 – D.H. and others v the Czech Republic: Information About the National Plan of Inclusive Education*, November 19, 2010, available at <https://wcd.coe.int/wcd/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=1772818&SecMode=1&DocId=1659702&Usage=2>, page 1.

<sup>13</sup> Government of the Czech Republic, National Action Plan on Inclusive Education, available (in Czech original) at: [http://www.msmt.cz/uploads/Skupina\\_6/NAPIV.doc.pdf](http://www.msmt.cz/uploads/Skupina_6/NAPIV.doc.pdf).

<sup>14</sup> Decree 72/2005 Coll. on provision of counselling services in schools and school counselling facilities and Decree 73/2005 Coll. on the education of children, pupils and students with special educational needs and children, pupils and students who are exceptionally gifted, available at: [http://www.msmt.cz/uploads/soubory/sb020\\_05.pdf](http://www.msmt.cz/uploads/soubory/sb020_05.pdf)

<sup>15</sup> See govt submission at p 5.

<sup>16</sup> Section 10 (2, 3) of the Decree 73/2005 Coll., not modified by the amendment; available at: [http://www.msmt.cz/uploads/soubory/sb020\\_05.pdf](http://www.msmt.cz/uploads/soubory/sb020_05.pdf)

<sup>17</sup> S.3 (4) Executive Ordinance to the Education Act no. 73/2005 Coll.

coming from special education to help bridge the gap and make the transition to mainstream schools does not yet exist, nor are sufficient safeguards in place to address bullying in mainstream schools which stems from ethnic discrimination. Bullying can play a factor in decision-making processes by Romani parents to place or keep their children in the “safer” environment of former special schools.

Czech laws, policies and planned regulations require much more extensive reform to meet the standards laid down by the European Court to ensure that the ultimate goal of separated education is inclusion in mainstream education.

## **ii. Informed Consent**

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.” 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.

In its submission to this Committee’s November 2010 meeting, the Czech government outlined efforts to address issues of informed consent to placement in special schools. This includes draft Decree 73/2005, which sets out schools’ obligations to “socially disadvantaged children (including Romani children).”<sup>18</sup> This decree, according to the Government, “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.”<sup>19</sup>

Yet, the draft decrees include an informed consent requirement only for specific actions. Consent forms in the Romani language are not included in the amended decrees, despite the Minister of Education’s claim that the forms would be disseminated in Romani.<sup>20</sup> The Appendix

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<sup>18</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>19</sup> See Government of Czech R<sup>19</sup> Decree 72/2005 Coll. on provision of counselling services in schools and school counselling facilities and Decree 73/2005 Coll. on the education of children, pupils and students with special educational needs and children, pupils and students who are exceptionally gifted, available at: [http://www.msmt.cz/uploads/soubory/sb020\\_05.pdf](http://www.msmt.cz/uploads/soubory/sb020_05.pdf)

<sup>19</sup> See above n.13, at p 5.

<sup>19</sup> Section 10 (2, 3) of the Decree 73/2005 Coll., not modified by the amendment; available at: [http://www.msmt.cz/uploads/soubory/sb020\\_05.pdf](http://www.msmt.cz/uploads/soubory/sb020_05.pdf)

<sup>19</sup> S.3 (4) Executive Ordinance public, *Note of the Government of the Czech Republic on the General Measures Related to the Execution of the Judgment of the European Court of Human Rights in case no. 57325/00 – D.H. and others v the Czech Republic: Information About the National Plan of Inclusive Education*, November 19, 2010, available at <https://wcd.coe.int/wcd/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=1772818&SecMode=1&DocId=1659702&Usage=2>.

<sup>20</sup> Ministry of Education, Youth and Sports, *Minister Dobeš: Graduation tests have not leaked*, available at: <http://www.msmt.cz/pro-novinare/ministr-dobes-maturitni-otazky-neunikly>.



to Decree 73/2005 Coll. “Background material for creating an informed consent form” also has serious limitations:

- The technical language used in the informed consent materials is not suitable for the families of children with social disadvantages.<sup>21</sup> The instructions do not clearly require an explanation of the differences between special education programs and standard schooling/curriculum, nor the limitations faced by children who follow this type of education;
- Only a verbal explanation of special education programs is required to be given to the legal guardian/adult students, and the written form only confirms that the verbal information was provided;
- The document only provides space for the legal guardian/adult pupils to agree with the special education recommendation: it does not allow them to disagree with the recommendation.

Further, school officials are not obliged to communicate the consequences of following a reduced curriculum or provide periodic review of the child’s situation. Specifically:

- A reduced curriculum is permitted for students with social and medical disadvantages (not only children with a disability);<sup>22</sup>
- School directors are only required to inform the student’s legal guardian or the adult student of the fact of the reduced curriculum, not the benefits and risks it entails (current and future);<sup>23</sup>
- Although a review of the use of a reduced curriculum for a student with a medical disability is required if there are significant changes to the student’s special educational needs, no such review is required for children with a medical or social disadvantage.<sup>24</sup>

## **b. Procedural safeguards**

Despite being regarded by the Court as “especially material,” no new procedural safeguards have been implemented to prevent ethnic discrimination against Romani children in the Czech education system and their tracking into special education. Safeguards which could assist - parental consent, recommendations by the educational psychology centre, right to appeal placements as well as the alleged opportunity to transfer back to standard school -- existed prior to the judgment but have proven ineffective in their current form. The situation has not changed since the D.H. decision.

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21 For example, the list only names of the educational programmes as key description of the transfer, specifically e.g. that the pupil will be transferred from “Framework Educational Program for Elementary Education – part D, chapter 8” into “Framework Educational Program for the Field of Education at a Special Elementary School – Part I”.

<sup>22</sup> Decree 72/2005 Coll.

<sup>23</sup> Decree 73/2005 Coll., Section 6(7)

<sup>24</sup> Decree 73/2005 Coll., Section 9(3)



## CONCLUSIONS

In its declassified November 2010 document prepared for the Committee of Ministers on the D.H. case, the Department of the Execution of Judgments stressed that the “vital importance of comprehensive measures to implement the judgment cannot be overstated.”<sup>25</sup> Children are affected by this violation, “for whom every school year is vital.” It went on to note that few possibilities exist for Romani children to transfer from practical schools to mainstream ones due to institutionalized segregation and an inferior curriculum. The following steps were considered to be of “crucial importance”:

- Effective safeguards in the current system in particular to ensure that pupils in practical schools are able to transfer to the mainstream education system;
- The measures to establish new safeguards envisaged under the NAPIE are implemented as quickly as possible;
- A clear action plan and timetable for implementation are identified; and
- Where the desired results are not achieved, there is a system for speedy and effective identification of any problems and adaptation of the relevant measures.

To date, the Czech government has not undertaken any of these steps. This submission has outlined the deficiencies in the first three: safeguards ensuring that students from special education can transfer to mainstream schools do not yet exist in practice. No concrete safeguards are contained within the NAPIE and no clear action plan and timetable for the NAPIE’s implementation has been identified, beyond a start date of 2014. Meanwhile, funds set aside for NAPIE implementation – the Czech government submission indicated a total of Euro 39,370,000 for 2008-2010 – have largely gone unspent. European Union structural funds available to the government for the support of inclusive education are in danger of being either returned or reallocated away from inclusive education.

At its last debate on D.H., the Committee of Ministers itself wanted to see the “desired results” of practical changes for the 2011-2012 year to help ensure that the same forces that disproportionately channeled children into separate schools with a substandard curriculum were dismantled. But instead of a speedy and effective identification of problems and adaptation, the government has instead reacted with a series of actions which indicates it has no intention of providing equal access to quality education to Romani children or achieving an inclusive education system. During the past 12 months, the Czech government has dismantled the inclusive education department down to a small unit inside the Ministry of Education, Youth and Sport; pushed out reformist staffers; and appointed an individual perceived as openly hostile to an inclusive education agenda as one of the main advisors to the minister for education

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<sup>25</sup> Above n.5

(originally he was proposed to be deputy education minister). In addition, after only two meetings, the expert platform of 80 individuals designed to help implement the NAPIE agenda was dismantled in March 2011.

Commissioner Hammarberg has made his own plea to the Czech government for urgent changes: “with thousands of Romani 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.” He urged the government to mark “a clear change of direction already with the next intake of children in the 2011-2012 school year.” All indications suggest that a clear change in direction has not taken place – another group of Romani children are about to be disproportionately and improperly channeled to segregated schools with a limited curriculum. The Committee of Ministers must act urgently to assist the Czech government move far more quickly to implement an inclusive education agenda.

The ERRC and the Justice Initiative reiterate recommendations previously made to the Czech Government and request that the Committee urge the Government to implement them:

- a. Make a commitment to ensure that no Romani children will be placed into practical schools or classes with curriculum for pupils with ‘mild mental disabilities’ for the school year 2011/2012;
- b. Adopt legislation in 2011 explicitly mandating the desegregation of Czech schools;
- c. Adopt concrete plan and timeline commencing in 2011 with clear annual targets to eliminate school segregation and secure full integration of Romani children into the mainstream education system within five years;
- d. Introduce pro-inclusion measures parallel to the *NAPIE – Preparatory Phase*, with expected impact before 2014;
- e. In order to ensure satisfactory progress toward the plan’s targets and timetable, systematically monitor on an ongoing basis and publicly disseminate data on school and class placements disaggregated by gender, ethnicity and disability status;
- f. Allocate sufficient budgetary resources to ensure fulfilment of the plan, accompanied by public dissemination of budgetary information, including about resources being spent on: i) practical schools, ii) other schools where Romani children make up a disproportionate high number of pupils, and iii) all other schools.