

AMNESTY INTERNATIONAL'S SUBMISSION TO THE COMMITTEE OF MINISTERS OF THE COUNCIL OF EUROPE: D.H. AND OTHERS V. THE CZECH REPUBLIC (APPLICATION NO. 77325/00)

In December 2013, the Czech Republic will be reviewed by the Committee of Ministers of the Council of Europe with regard to its progress towards the execution of the European Court of Human Rights judgment in the case of *D.H. and Others*. In 2007, the European Court held the placement of Romani pupils into special schools for pupils with mild mental disabilities amounted to discrimination.

Amnesty International is concerned that six years after the judgment, very little progress has been achieved towards ensuring equal access to education for Roma in Czech Republic. In this submission, Amnesty International demonstrates that to date, the government has failed to adopt measures explicitly mandating the desegregation of Czech schools. It has also failed to put in place sufficient safeguards against discrimination in access to education. In 2013, instead of urgently adopting the necessary systemic changes, the government appears to have backtracked from its previous commitments to prioritize the inclusion of Roma pupils into mainstream education.

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Executive Summary

In its decision in December 2012 on the execution of the judgment of the European Court of Human Rights in the case of *D.H. and Others v. the Czech Republic*, the Committee of Ministers noted the Action Plan submitted by the Czech government outlining the measures to execute the judgment. The measures included the removal of the possibility for pupils without a disability to be educated in a class teaching a reduced curriculum (designed for pupils with mild mental disabilities); and the collection of statistical data – disaggregated by ethnicity – concerning pupils being educated in programmes for pupils with mild mental disabilities.

In October 2013, the government presented a progress report on the implementation of the Action Plan. Amnesty International is submitting these comments to assist the Committee of Ministers in assessing the government's report, as well as the overall progress in the execution of the *D.H.* judgment. In particular, **Amnesty International's evidence demonstrates that to date, the government has failed to adopt measures (a) explicitly mandating the desegregation of Czech schools and (b) that would put in place sufficient safeguards against discrimination in access to education.** In its 2007 judgment, the European Court outlined that such safeguards should, among other things, ensure that the goal of any separated education is ultimately inclusion in the mainstream education system.¹

Since 2010, the Committee of Ministers has consistently criticised the lack of progress in the implementation of the *D.H.* judgment. In June 2012, it called on the Czech government to accelerate the “implementation of the judgment... in order to achieve concrete progress on the ground.” Despite this, such progress has not yet been achieved.

In 2007, the Grand Chamber of the European Court noted that in the city of Ostrava the proportion of Roma pupils assigned to schools for pupils with mild mental disabilities was 50.3 per cent, whereas the proportion of non-Roma pupils placed in such schools was only 1.8 per cent.² On the basis of this statistical data, the European Court concluded that Romani pupils were disproportionately placed in special schools (now practical schools). According to the surveys published in 2012 by the Office of the Public Defender of Rights and the Czech School Inspectorate, the schooling arrangement of Romani children remained largely unchanged. The proportion of Romani pupils in former special schools in Ostrava region in the school year 2011/2012 was 39 and 41 per cent respectively.³

The persistence of overrepresentation of Romani pupils in practical schools was noticed also by various international human rights treaty bodies. As recently as in August 2013, the UN Human Rights Committee reiterated its concern that “Roma children continue to be overrepresented in schools for pupils with mild mental disabilities or “practical elementary schools”. The UN Committee also highlighted that Romani pupils continue to be placed in Roma-only classes or classes with a limited curriculum in mainstream schools. It requested the Czech government to take immediate steps to eradicate the segregation of Roma children in its education system, by ensuring that the placement in schools and classes is carried out according to clear and objective criteria.⁴

¹ *D.H. and Others v. the Czech Republic*, European Court of Human Rights Grand Chamber judgment, 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#{), para. 207.

² *D.H. and Others v. the Czech Republic*, European Court of Human Rights Grand Chamber judgment, November 13, 2007, paras. 18, 190. 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#{)

³ The Public Defender of Rights found that 41 per cent of the pupils in former special schools were Roma. See (in Czech): Description of methods and results of the ethnic composition survey in former special schools in 2011/2012, June 2012, p. 17. The figure 39 per cent was found by the survey of the Czech School Inspectorate. See (in Czech): Czech School Inspectorate Thematic Report “Progress in Transformation of Former Special Schools in the School Year 2011/2012,” July 2012, p. 5.

⁴ Human Rights Committee, Concluding observations on the third periodic report of the Czech Republic, CCPR/C/CZE/CO/3, 22 August 2013, para. 10.

1. Lack of progress in the implementation of the government Action Plan

1.1. Backtracking from the commitment to phase out practical schools

Despite extensive evidence⁵ that the existence of a two-tier system of mainstream and practical schools facilitates the channelling of Romani children towards separate education, the government's updated Action Plan⁶ does not envisage a reform that would phase out the schools and classes with reduced curricula. Whereas the previous version of the Action Plan⁷ foresaw the revision of the relevant legal provisions with respect to practical schools, the current version of the Action Plan is ambiguous about this, and suggests the possibility of maintaining a specific educational programme for pupils with mild mental disabilities.⁸

In April 2013, the Ministry of Education submitted a draft amendment to the Schools Act for public comments. One of the stated reasons for the legal reform was the necessity to change the schooling arrangements for pupils with special educational needs. The Ministry of Education submitted that the aim of the reform is, among other things, to introduce safeguards against "the abuse of the system of support measures" in the context of the obligations taken upon the government after the decision of the European Court for Human Rights in the case of *D.H. and Others*.⁹ However, the draft of the Schools Act envisages the continuation of the existence of a two-tier system in which pupils with disabilities are educated in separate schools and classes. The draft has been criticised by the Czech Public Defender of Rights (the Ombudsman) who expressed concerns that it fails to introduce the radical reform that is needed. In his comments to the draft, the Ombudsman called on the Ministry of Education to ensure the law explicitly states that pupils with special educational needs should be integrated in mainstream schools.¹⁰ Such a provision is currently missing in the draft of the amendment of the Schools Act.

Amnesty International is concerned that the failure to introduce an express provision on the inclusion of pupils with special educational needs into the mainstream schools, and the ambiguity about phasing out practical schools amounts to backtracking from the previous commitments made by Czech Republic with regard to the implementation of the D.H. judgment. The government committed to progressively transform the system of schools "for pupils with mild mental disabilities" in its 2010 Strategy for Combating Social Exclusion.¹¹ The Strategy foresaw a set of medium-term measures – including a legislative ban on the establishment of schools specifically for pupils with mild mental disabilities – that would progressively phase out the system of practical schools. Such measures, however, are no longer envisaged in the updated Action Plan.

⁵ Amnesty International and ERRC. *Five more years of injustice: Segregated education of Roma in Czech Republic*. 8 November 2012. Available at: <http://www.amnesty.org/en/library/info/EUR71/006/2012/en>

⁶ Report on the implementation of the Action Plan. October 2013. Available at: <https://wcd.coe.int/ViewDoc.jsp?Ref=DH-DD%282013%291133&Language=lanEnglish&Site=CM>

⁷ Consolidated Action Plan 2012. Measure G. The position of FEP BE – MMD annex and subsequent approach regarding this annex.

⁸ Report on the implementation of the Action Plan for the Execution of the Judgment of the ECtHR in the case of *D.H. and others v. The Czech Republic*, 17 October 2013. Measure G.

⁹ Note of the Ministry of Education on the draft of the amendment of the Schools Act (no. 561/2004 Coll.).

¹⁰ Comments of the Public Defender of Rights to the draft amendment of the Schools Act (no. 561/2004 Coll.). 15 May 2013. Available at (in Czech): http://www.ochrance.cz/fileadmin/user_upload/Zvlastni_opravneni/Pripominky/PDCJ1334-13_MSMT_Skolsky-zakon.pdf

¹¹ Agency for Social Inclusion, *Strategy for Combating Social Exclusion 2011-2015*, p. 26. The Strategy was adopted by the government in September 2010.

1.2. Ensuring that pupils without a disability are integrated into mainstream education

According to the Action Plan (Measure A),¹² the Ministry of Education was due to amend the existing regulation and to abolish the provision that allows pupils without a disability¹³ to be placed in classes for pupils with mild mental disability. It also aims to remove the provision allowing for the *temporary placement* of pupils with health or social disadvantage into classes for pupils with disabilities.¹⁴

The Action Plan (Measure B)¹⁵ aims to abolish the so called “diagnostic stay” – another provision allowing for temporary placements of pupils without disabilities¹⁶ – into “practical classes”.

Although in 2013, the Ministry of Education prepared the amendment of the regulation abolishing the above-mentioned provisions allowing for inappropriate placements into “practical schools”, the regulation has so far not been adopted. According to the Report on the implementation of the Action Plan, the amendment is expected to enter into force on 1 December 2013. However, this date currently seems unrealistic given that the amendment has not yet been approved.

1.3. Monitoring: collection of ethnically disaggregated data

The Action Plan includes a commitment to carry out annual surveys to establish the actual number of Romani pupils in practical education.¹⁷ In September 2013, the Czech School Inspectorate announced that it had started a survey of all schools in which five or more pupils were following the curricula for “pupils with mild mental disabilities”. The directors of the schools are obliged to provide anonymised data disaggregated by ethnicity to the Inspectorate.

Amnesty International welcomes this measure, but remains concerned that in the absence of the other reforms required to introduce the necessary safeguards against discrimination in education (as required by the D.H. judgment), a measurable impact on the situation of schooling arrangements for Roma pupils remains unlikely.

¹² Report on the implementation of the Action Plan. October 2013. Measure A, p. 2.

¹³ The Decree of the Ministry of Education no. 73/2005, Art. 10, para. 2.

¹⁴ Id. Art. 3, para. 5.

¹⁵ Report on the implementation of the Action Plan. October 2013. Measure B, pp. 2-3.

¹⁶ I.e. those whose diagnostic tests results were inconclusive.

¹⁷ Report on the implementation of the Action Plan. Measure E, p. 8.

2. Failure to put in place safeguards against discrimination in access to education

In its previous submission,¹⁸ Amnesty International considered that although the government's Action Plan includes some positive measures aiming to address shortcomings of the current regulation with regard to placements of Roma into schools and classes for pupils with mild mental disabilities, the Action Plan does not present the basis for the systemic reform needed to adequately address the discrimination of Roma in education.

In 2013, instead of urgently adopting the necessary systemic changes, the government appears to have backtracked from its previous commitments to prioritise the inclusion of Roma pupils into mainstream education. In March, the government's Human Rights Plenipotentiary acknowledged that the transformation of practical schools into mainstream schools is unlikely in the next few years and that the government will update its Strategy for Combating Social Exclusion to reflect this change in its position.¹⁹ In response to a petition demanding the preservation of practical schools, the minister of education stated that "Under no circumstances do we intend to go from one extreme to another, to discard the time-tested practices of the Czech school system or to start intruding onto something that has long functioned in our system and has a foundation here, i.e., the practical primary schools."²⁰

Amnesty International regrets that the current proposals of the legislative reforms – the amendment of the Schools Act and the amendments of the decrees of the Ministry of Education – continue to preserve the two-tier system of education while failing to ensure that the goal of any separated education is ultimately inclusion in the mainstream education system.²¹

Amnesty International therefore reiterates its call on the Czech government to:

- Return to the initial commitment²² to implement measures for progressive transformation of the system of schools established for “pupils with mild mental disabilities” including the phasing out of practical schools within a realistic time period and their replacement with inclusive education
- Introduce sufficient support measures for mainstream schools to teach pupils coming from socially disadvantaged backgrounds and pupils with special education needs
- Include concrete measures, with transparent numerical targets for Roma and non-Roma children, to ensure the desegregation of Czech schools (both practical and mainstream) within a reasonable timeframe, and which address all causes and forms of segregation
- Immediately transfer all pupils placed into practical schools without conclusive diagnosis to mainstream schools, and provide the relevant support to facilitate their successful integration

¹⁸ Czech Republic: Comments to the consolidated action plan for the execution of the judgment of the European Court of Human Rights in the case of D.H. and Others v. the Czech Republic. Available at: <http://www.amnesty.org/en/library/info/EUR71/010/2012/en>

¹⁹ Idnes.cz, Practical schools will not be closed, regular elementary schools are not ready for the change, 6 March 2013. Available at: http://zpravky.idnes.cz/zvlastni-skoly-se-rusit-nebudou-doe-/domaci.aspx?c=A130305_214029_domaci_brm

²⁰ Romea.cz, Czech MinEd: “Practical primary schools” will not be closed, 22 March 2013. Available at: <http://www.romea.cz/en/news/czech/czech-admin-practical-primary-schools-will-not-be-closed>

²¹ D.H. and Others v. the Czech Republic, European Court of Human Rights Grand Chamber judgment, 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#{), para. 207.

²² Agency for Social Inclusion, *Strategy for Combating Social Exclusion 2011-2015*, p. 26.