



22 April, 2013

Minister PETR FIALA
Ministry of Education, Youth and Sport

Ms MONIKA ŠIMŮNKOVÁ
Government Commissioner for Human Rights

Dear Minister,

The European Roma Rights Centre (ERRC), Open Society Justice Initiative and Amnesty International would like to express concerns about the lack of progress to implement the Czech Government's commitment to end discrimination against Roma children in education, and to achieve measures of inclusive education that benefit both Roma children and children with disabilities. Our organizations are particularly concerned about your most recent statements¹ that the Government has no intention of abolishing practical schools and that preparatory classes and kindergartens will continue existing under the system of practical schools.² We consider that these statements undermine the commitment made by the Government in the Strategy for Combating Social Exclusion for 2011-2015 to progressively transform the practical school system and include pupils in mainstream education.³

The ERRC, Open Society Justice Initiative and Amnesty International have been addressing discrimination against Romani children in access to education in the Czech Republic for more than a decade, and are working collectively and with local partners, communities, and victims to ensure full implementation of the European Court of Human Rights (ECHR) judgment in the case of *D.H. and others v the Czech Republic*.⁴ 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.

It has been recognized by the Czech Government on a number of occasions that its educational system "excludes [...] Romani pupils out of the educational mainstream".⁵ As recently as March 2013, during the adoption of the UN Universal Periodic Review outcome document on the Czech Republic, the Government repeated its commitment to

¹ Idnes.cz, *Practical schools will not be closed, regular elementary schools are not ready for the change*, March 6, 2013, available at: http://zpravy.idnes.cz/zvladni-skoly-se-rusit-nebudou-doe-domaci.aspx?c=A130305_214029_domaci_brm;

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

² Aktualne.cz, *Stigmatized entry to life, special kindergartens remain in the Czech Republic*, April 2, 2013, available at: <http://www.news.sk/rss/link/2013/04/1152512/s-nalepkou-do-zivota-specialni-skolky-v-cesku-zustanou/>

³ 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-vyloucenii/>.

⁴ *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#{).

⁵ DH-DD(2012)803: Communication from the Czech Republic concerning the case of *D.H. and others against Czech Republic* (Application No. 57325/00), p. 4. Available at: <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2153914&SecMode=1&DocId=1924992&Usage=2>.

desegregate schools and ensure equal access of Romani pupils to the right to education.⁶

In September 2011, the Strategy for Combating Social Exclusion (the Strategy) was approved by the Government. Among measures in the areas of housing, employment, security, social services and regional development, the Strategy also included a set of measures promoting inclusive education. 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.”⁷ Initially, it was expected that the transformation towards an integrated mainstream education system would be accomplished by 2015. However, in June 2012, given the delays in the initial phase of implementation, the measures were revised and a new deadline of 2017 was publically announced. Finally, in March 2013, your office stated that the transformation of the practical school system will not be pursued and the Human Rights Commissioner declared re-drafting the Strategy in this line.

We believe the decision to backtrack from the commitment on progressive transformation of the practical school system amounts to a significant hindrance to 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*.⁸

Five years after the ECHR judgment, and despite several legislative amendments, an Ombudsperson survey in 2012 demonstrated no significant progress in life prospects for far too many Romani children.⁹ Translating survey numbers into real stories, an ERRC and Amnesty International report also found that the situation remains largely unchanged and Romani pupils in Ostrava continue to attend lower quality segregated schools.¹⁰ The report concludes that there are persistent shortcomings in the Czech educational system which obstruct the inclusion of Romani children in integrated mainstream education.

The ERRC, Amnesty International and the Justice Initiative also believe that 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 as you know 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.

⁶ 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>.

⁷ *Strategy for Combating Social Exclusion for the period 2011-2015*. Supra n. 2, p. 25

⁸ 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>.

⁹ Public Defender of Rights, *Research of the Public Defender of Rights into the Question of Ethnic Composition of Pupils of Former Special Schools*, Brno, 2012, available at: http://www.ochrance.cz/fileadmin/user_upload/DISKRIMINACE/Vyzkum/Vyzkum_skoly-zprava.pdf

¹⁰ *Czech Republic: Five More Years of Injustice: Segregated Education for Roma in Czech Republic* (Amnesty International/ERRC): EUR 71/006/2012 8 Nov 2012.

In addition, the continued placement of children with disabilities in segregated practical schools also runs counter to the Czech Government's commitment under Article 24 of the Convention on the Rights of Persons with Disabilities (CRPD) which requires that "persons with disabilities are not excluded from the general education system on the basis of disability, and that children with disabilities are not excluded from free and compulsory primary education, or from secondary education, on the basis of disability."

Failure to put in place safeguards against discrimination

Following its decision in the case of *D.H. and Others*, the ECHR requested the Czech government to adopt safeguards against discrimination, namely:

- to ensure that the goal of any separated education is ultimately inclusion in the mainstream education system;¹¹
- 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;¹²
- 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 racial discrimination.¹³

Although the government adopted measures strengthening the safeguards against inadequate diagnostics, as well as strengthening parental consent, our organizations remain concerned that the assessment continues to be inadequate and fails to take into account relevant issues relating to the Roma (including social disadvantage and/or language). We take the position that testing, whether for Roma children or children with disabilities, should be directed towards assessing the learning needs of each child to enable them to succeed in a mainstream educational setting, not as a method of segregation into practical schools.

Moreover, with regard to the diagnostic tools, we would like to emphasize that the existing shortcomings in the Czech educational system are not exclusively limited to the failures in diagnostic and transfer processes. Romani parents often opt for practical schools and classes out of a desire to protect their children from bullying in mainstream schools, combined with the fact that a practical school may be the most viable option due to its proximity to their homes as a result of residential segregation.¹⁴ Neither of these reasons is tackled in governmental education plans (National Action Plan for Inclusive Education, Consolidated DH Implementation Action Plan, which was delivered to the Council of Europe's Committee of Ministers in November 2012).¹⁵ They will not be addressed by perfecting the diagnostic and transfer processes.

¹¹ *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.

¹² *D.H. and Others v. the Czech Republic*, para. 201.

¹³ *D.H. and Others v. the Czech Republic*, paras. 202-204.

¹⁴ *Czech Republic: Five More Years of Injustice: Segregated Education for Roma in Czech Republic* (Amnesty International/ERRC); EUR 71/006/2012 8 Nov 2012.

¹⁵ Ministry of Education, *National Action Plan for Inclusive Education*, 2010. Available at: <http://www.msmt.cz/socialni-programy/narodniacni-plan-inkluzivniho-vzdelavani>; Government of the Czech Republic, *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: <https://wcd.coe.int/ViewDoc.jsp?id=1846711&Site=CM&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864>

We are also concerned that in the ongoing process of amending the Schools Act, and subsequent secondary legislation, the draft amendments consulted with NGOs on 9 April 2013 do not address the segregation of Roma children in mainstream education.

Consigned to an inferior quality curriculum

Due to the fact that practical schools are allowed to teach mainstream curricula, such schools are permitted to enroll children without any diagnosis into mainstream classes. The research of Amnesty International and the ERRC in Ostrava suggested that despite starting school in mainstream classes, the pupils of a practical school are gradually channeled from the 4th grade on into practical classes and are taught a reduced curricula. Thus in practice, once a child gets enrolled in a practical school, there is a high risk that he or she will end up trapped in practical education for the whole of their school life.

Current tests are inadequate and fail to promote an inclusive agenda

A report prepared in June 2012 by Prof Tomáš Urbánek¹⁶ pointed out severe failures in the standardization of the WISC III Test¹⁷ as used in the Czech Republic. Above all, Prof Urbánek stated that the Czech test imperfectly considers the specific situation of Romani children and that “at the moment we have no relevant information on how the test measures the intelligence of Romani children”.¹⁸ The Ministry decided in the aftermath of the report to revise the tests, so that they would eventually become non-discriminatory and culturally neutral. Although these initiatives are welcome, the European Court judgment in the case of *D.H. and Others* will only be enforced if there are safeguards that mean that diagnosis will never be a tool for discrimination, and will lead to the integration of pupils into mainstream education.

On a more fundamental level, however, the use of tests such as the WISC III operate as a means to segregate children, whether on the basis of disability or ethnicity. This segregation runs counter to the Czech government’s obligations under international law. To the extent that the testing regime is revised, it should not be used to separate children into segregated settings, but as a means to determine the extra needs and assistance to ensure all children success in mainstream educational settings.

Recommendations

The ERRC, Amnesty International, and Open Society Justice Initiative call 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:

- A moratorium on placements of children, including Romani children and children with disabilities, in practical schools and classes; and to undertake a comprehensive review of the system to ensure compliance with international and regional standards on education and non-discrimination and at all times, ensuring the best interests of the child;
- Start implementing 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 within the mainstream system in line with the Strategy.

¹⁶ Member of the Psychological Institutes of the Masaryk University Brno and The Czech Academia of Science

¹⁷ Wechsler Intelligence Scale for Children, the most used instrument for assessing child’s mental capacity

¹⁸ Prof Urbánek, Roundtable meeting at the Ministry of Education, 24 July 2012

Yours sincerely,

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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.

The Open Society Justice Initiative uses law to protect and empower people around the world. Through litigation, advocacy, research, and technical assistance, the Justice Initiative promotes human rights and builds legal capacity for open societies. It is part of the Open Society Foundations.

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