

SUBMISSION TO THE COMMITTEE OF MINISTERS:

**THE CONTINUED SEGREGATION OF ROMANI SCHOOLCHILDREN
IN THE CZECH REPUBLIC**

D.H. and Others v The Czech Republic (13 November 2007)

**For Consideration by the Committee of Ministers of the Council of Europe
Strasbourg, 8 March 2011**

1. On 8 March 2011 the Committee of Ministers of the Council of Europe (Committee) will continue its review of the extent to which the government of the Czech Republic has implemented the judgment *D.H. and Others v The Czech Republic* (DH judgment) which required an end to the discriminatory practice of disproportionately assigning Romani schoolchildren to schools for children with a mild mental disability.
2. This document updates the submission made by the European Roma Rights Centre (ERRC) and the Open Society Justice Initiative (OSJI) on 8 November 2010 for consideration at the Committee meeting on 30 November 2010. That submission explained that more than three years after the judgment of the Grand Chamber and more than 12 years after the commencement of the original proceedings, in some parts of the country Romani children are still 27 times more likely to be sent to practical schools (former special schools) than non-Romani children (as when the case began in 1998) and nationwide they are more than 12 times as likely to be sent to practical schools.¹ The submission argued that the National Action Plan on Inclusive Education (NAPIE) adopted in March 2010 does not contain a concrete timeline or plan to desegregate Czech schools, and will not achieve immediate real change with a preparatory phase lasting until 2013, no implementation measures before 2014, and no funding.² Meanwhile, every year thousands of children may be wrongly placed into special education on the basis of their ethnicity and suffer irreversible negative impacts on their academic achievements and career opportunities.
3. Since November 2010 there has been no improvement in the situation. While the Czech Republic reported to the Committee of Ministers that a proposal for the transformation of practical schools would be submitted by late 2010, there has been no development on this proposal to date.

¹ Institute for Information in Education (Ústav pro informace ve vzdělávání), *Monitoring of Framework Educational Programmes*, 2009, p.8, available (in Czech original) at <http://spolecnedoskoly.cz/wp-content/uploads/monitoring-uiv.pdf>.

² National Action Plan on Inclusive Education, available (in Czech original) at: http://www.msmt.cz/uploads/Skupina_6/NAPIV.doc.pdf.

4. The Czech Government has not adopted any legislation explicitly mandating the desegregation of Czech schools; nor has it explicitly listed segregation as an illegal form of discrimination in Czech law.³
5. There have been negative developments in the process of amending two legislative decrees in response to the *DH* judgment, *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*.⁴
6. The new administration has abandoned most amendments prepared by the previous Ministry in cooperation with NGOs and independent experts in 2009, and has failed to consult on the new proposals.⁵ Several requests by the ERRC to the Ministry for the draft proposals were refused or ignored. During the final commenting procedure in February 2011 in which the Ministry sought input from regional authorities, the ERRC was provided with the draft amendments of the Decrees and invited informally to comment on the proposals by the Roma Affairs Coordinator at the Office of Central Bohemia Region. Analysis of the proposed decree amendments reveals that the Czech Government is still unwilling to make the legislative changes required to comply with the *D.H.* judgment.
7. The government has indicated that that the decrees, which have been under revision for more than two years, will be given final approval by 1 April 2011 at the latest.⁶ However, there are substantial problems with the decrees and their proposed amendments vis-à-vis the *DH* judgment and the Czech Schools Act.⁷

A. Failure to promote inclusive education

8. The draft decrees fail to promote inclusive education, and the placement of children without disabilities into schools for children with disabilities is still permitted. Specifically:
 - a. The amended decrees lack a clear mandate to educate children with disabilities and/or disadvantages in mainstream schools alongside children without these disabilities and disadvantages;⁸
 - b. Section 10(2) of Decree 73/2005 Coll. (unchanged in the amendment) will still allow for children to be transferred inappropriately, as it provides that, “in order to augment the number of pupils in a class, pupils without medical disability may be assigned to a special class”;
 - c. The decrees do not provide guidance to schools and teachers as to how best to ensure the effective integration into mainstream schools of children with disabilities, minorities and children of lower socio-economic status.

B. Failure to protect children without disabilities from a reduced curriculum

9. The draft decrees still permit Romani children without a disability to be taught using a reduced curriculum, as this remains an option for children categorised as being socially or medically disadvantaged, and there is no duty on school officials to warn of the consequences of following a reduced curriculum, or for a review of their situation. Specifically:
 - a. Decree 72/2005 Coll. allows for the use of an individual educational plan for pupils with social and medical disadvantages, i.e. a reduced curriculum.

³ Act 198/2009 Coll. on equal treatment and legislative measures of protection from discrimination (Antidiscrimination Law), Zákon o rovném zacházení a o právních prostředcích ochrany před diskriminací a o změně některých zákonů (antidiskriminační zákon), available (in Czech) at : www.mvcr.cz/soubor/sb058-09-pdf.aspx

⁴ Available (in Czech original) at: http://www.msmt.cz/uploads/soubory/sb020_05.pdf.

⁵ Email communication from a representative of the Ministry of Education to the ERRC, 7 February 2011.

⁶ Ministry of Education, Youth and Sports, *Minister Dobeš: Graduation tests have not leaked*, available (in Czech original) at: <http://www.msmt.cz/pro-novinare/ministr-dobes-maturitni-otazky-neunikly>.

⁷ Article 2(1b) of the Schools Act provides that schooling shall “reflect the educational needs of the individual.”

⁸ Decree 73/2005 Coll., Section 3, Article 4, intact by the amendment, “A pupil with medical disability is preferably to be educated through the form of individual integration into a mainstream school should such integration correspond to his needs and options and to the conditions and options of the school.”

- b. Under Section 6(7) of Decree 73/2005 Coll. the school director is only required to inform the pupil's legal guardian or the adult pupil of the fact of the individual educational plan, with no duty to explain the benefits and risks of it (current and future). There is no requirement that the legal guardian/adult pupil consent to the reduced curriculum.
- c. While Section 9(3) of Decree 73/2005 Coll. provides for a review of the use of a reduced curriculum for a pupil with a medical disability where there are significant changes to the pupil's special educational needs, no such provision for a review is included for children with a medical or social disadvantage.

C. Failure to ensure informed consent

10. The decrees do not clearly require informed consent as a condition of placement into special education, nor do they address what informed consent means. 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.
11. The Appendix to Decree 73/2005 Coll. "Background material for creating an informed consent form" has serious limitations and is in strong contradiction to the declared aims of the Ministry. Specifically:
 - The technical language used in the informed consent materials is not suitable for the families of children with social disadvantages.⁹ The instructions do not clearly require an explanation of the differences between special education programmes and mainstream schooling/curriculum, nor the limitations faced by children who follow this type of education;
 - Only a verbal explanation of special education programmes is required to be given to legal guardians/adult students, and the written form only confirms that the verbal information was provided;
 - The document only provides space for the legal guardians/adult pupils to agree with the recommendation to special education: it does not allow them to disagree with the recommendation. This option should be clearly available in the form.

D. Failure to ensure proper training of assessors

12. Decree 72/2005 Coll. states that social disadvantage, medical disadvantage and medical disability (as defined by the School Act)¹⁰ are to be addressed by the "educational-psychological counselling centres or special education centres" (school counselling facilities), which have no expertise in addressing social disadvantages.¹¹ The appendix to Decree 72/2005 Coll. "Standard activities of counselling centres" contains no specific provisions that would require such centres to address social disadvantage, or instruct them how to do so.¹²

Other activities to promote inclusive education by the Ministry of Education

13. Under the former Ministry, non-governmental organisations and individual experts were invited to join the *NAPIE platform*, which is a working group established to support the implementation of the action plan. However, since November 2010 the forum has not undertaken any meaningful review of the need to promote inclusive schooling, but has only discussed procedural matters.
14. On 28 January 2011 the first meeting of the platform under the new administration finally took place in Prague. As reported also by the media and according to information provided to the ERRC,¹³ approximately 60 experts left the meeting with the clear understanding that education

⁹ 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".

¹⁰ *Ibid*, Section 16

¹¹ Decree 72/2005 Coll., Section 3, Article 1, not addressed by the proposed amendments, (in Czech original) available at: http://www.msmt.cz/uploads/soubory/sb020_05.pdf.

¹² *Ibid*, Section 5, Article 2, intact by the amendment

¹³ Lidove noviny, *Roma are not a priority to the ministry, experts say*, 8 February 2011, available (in Czech original) at:

<http://www.lidovky.cz/romove-nejsou-pro-ministerstvo-skolstvi-prioritou-tvrdi-experti-1db->

[/in_domov.asp?c=A110208_184839_in_domov_pks](http://www.lidovky.cz/romove-nejsou-pro-ministerstvo-skolstvi-prioritou-tvrdi-experti-1db-/in_domov.asp?c=A110208_184839_in_domov_pks); Inkluze.cz (Inclusion), *Farce at the ministry*, available (in Czech original) at:

inclusion is not a priority for the Ministry: the meeting was reportedly very poorly organised; no required information was distributed ahead of the meeting; experts were not informed in advance that during the meeting they would choose groups in which to work according to their expertise; the division of groups was only introduced at the meeting.

15. The division of expertise was the only concrete output of the meeting. The role of the groups, their time frame and how the Ministry will treat their outputs are not clear. Some group leaders appointed by the Ministry reportedly have very limited knowledge of their mandate and some are reportedly against inclusion.
16. At the group's first meeting under the previous administration, the structure of 12 groups corresponded with the areas of tasks indicated in the NAPIE and were aimed to be crosscutting and include experts working with children with variety of disadvantages and disabilities.¹⁴ At the February 2011 meeting, the current administration redesigned the structure of the groups, forming 25 groups devoted to specific forms of education, disadvantage or disability.¹⁵ The revised structure follows existing structural forms of exclusion and segregation within the Czech education system and confirms the Ministry's commitment to preserving the status quo.

Conclusion and Recommendations

17. The Czech Government continues to step back from its obligations to implement an agenda for inclusive education that would secure a better future for Romani children. The slow process of change which would not see the implementation of any specific measures until 2014 means that three more classes of Romani pupils risk being wrongly placed into special education on the basis of their ethnicity.
18. The ERRC and the Justice Initiative reiterate recommendations previously made to the Czech Government and the Committee of Ministers to eliminate discrimination against Romani children in education as follows:
 - a. Make a commitment to ensure that no Romani children will be placed into practical schools or classes with a 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 a 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. 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;
 - e. 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;
 - f. Introduce pro-inclusion measures parallel to the *NAPIE – Preparatory Phase*, with expected impact before 2014.

<http://www.inkluzce.cz/clanek-381/fraska-na-ministerstvu>; ERRC interviews with individuals participating at the meeting, February 2011.

¹⁴ Including: 1) Coordination and planning of activities to develop inclusive education; 2) Strategic documents for education and educational programmes; 3) Legislation; 4) Support to inclusion in pre-school education; 5) Support to inclusion at primary and secondary education; 6) Support to inclusion in tertiary education; 7) Training of pedagogues and their further education; 8) Diagnostics and counselling; 9) Coordination of activities to develop inclusive education at local level; 10) Analytical and research activities; 11) Standardisation, methodical support and evaluation; 12) Informing and media coverage of activities, PR. See: National Action Plan on Inclusive Education, available (in Czech original) at: http://www.msmt.cz/uploads/Skupina_6/NAPIV.doc.pdf, as reported in the Communication from the Czech authorities in the case of D.H. and others against Czech Republic (Application No. 57325/00) - Information about the National Plan of Inclusive Education; available at: <https://wcd.coe.int/wcd/ViewDoc.jsp?Ref=DH-DD%282010%29584&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864>.

¹⁵ Counselling and diagnostics; Specific learning disorders and specific behavioural disorders; Speech disabilities; Physical disabilities; Visual disorders; Mental disabilities; Pervasive disorders; Long-term illnesses; Behavioural disorders; Social disadvantages and ethnics; Foreigners; Prevention; Non-governmental non-profit organisations; PR; Economics and budget; Law and legislation; Pre-school education; Primary education; High-school and higher education; Universities and colleges; Free-time activities; Training of pedagogues; Further education; Institutional care.