

Universal Periodic Review: Czech Republic

HUMAN RIGHTS COUNCIL — OCTOBER 2012

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I. Executive Summary

The Open Society Justice Initiative (“Justice Initiative”) tenders this submission in preparation for the Czech Republic’s Universal Periodic Review by the Human Rights Council in October 2012. It highlights the ongoing and longstanding practice of the disproportionate placement of Romani children into “practical schools” in which they, along with children with disabilities, are subjected to a limited curriculum and segregated from the mainstream student population. The laws, policies and practices which support this segregation have had devastating and long-lasting consequences, leaving thousands of Romani children without qualifications for any job besides the most menial and stuck in a cycle of poverty and despair. Such discrimination is systemic in the Czech education system and violates the Czech Republic’s international human rights obligations. The State has also done little to implement the recommendations to end discrimination against Roma made during the first UPR in 2008, all of which the Czech Republic accepted.

The 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. The Justice Initiative has worked to promote equal educational opportunity for Romani children in the Czech Republic since the organization’s inception in 2002 through both domestic and international advocacy efforts. It has been involved in efforts to challenge racial discrimination and segregation at the European Court of Human Rights, which resulted in a legal victory in 2007 with the *D.H. and others v Czech Republic* case. This Grand Chamber judgment held that the Czech government’s disproportionate assignment of Romani children to separate and inferior schools and classes violated their right to education and the European Convention’s prohibition against discrimination.

Despite this legal victory, discrimination and segregation of Romani children continues. The Justice Initiative encourages members of the Working Group to make the following recommendations to the Czech Government:

- Develop and adopt a concrete plan and timeline with clear annual targets aimed at eliminating school discrimination and segregation and ensuring full integration of, and support for, all children in an inclusive education setting within five years;
- Consistent with data protection norms, regularly collect disaggregated data according to ethnicity, gender and disability which can help assess the implementation and impact on the ground of progress to end discrimination and segregation, and to promote inclusive education;
- Strengthen the *Anti-Discrimination Act* in accordance with CERD’s September 2011 recommendations, as well as amending it to define segregation as a form of discrimination;
- Ensure European Structural funds are used to support reforms to end discrimination and segregation as required by the *D.H. and others v Czech Republic* judgment;
- Ensure teachers are educated in human rights and non-discrimination principles, especially in relation to ethnicity with a particular focus on Roma, and that school curricula focused on human rights and non-discrimination principles is developed and implemented; and
- Request technical assistance and/or country visits by the Special Rapporteur on the Right to Education and the Independent Expert on Minority Issues to help address persistent discrimination against Roma in education.

II. Overview

Discrimination against Romani children in education has been a long-standing feature of the Czech Republic's political and legal landscape. For generations, Romani children have been funneled into "special schools" in which they, and children with disabilities, are segregated from other Czech students in mainstream schools and subjected to an inferior curriculum. Their education leaves them unqualified and unprepared for anything but the most basic jobs. This policy of discrimination and exclusion results in a desperate cycle of poverty and hopelessness for many Romani families.

In 1999, 18 Romani children challenged this discriminatory practice. At that time, Romani children were 27 times more likely to be sent to a "special school" than their non-Romani peers. Denied remedy in Czech courts, these children took the Czech government to the European Court of Human Rights (ECtHR) and argued, in a case called *D.H. and others v Czech Republic*, that the disproportionate placement of Romani children into "special schools" amounted to discrimination and a breach of their right to education. In November 2007, the ECtHR agreed. The Grand Chamber found systemic discrimination in the Czech schooling system and ordered the Czech government to halt the violation of Romani children's rights and redress, so far as possible, its effects.

Five months later, the dual problems of discrimination and education did not escape the notice of the Human Rights Council. During the Czech Republic's first Universal Periodic Review in April 2008, the Working Group made five recommendations -- accepted by the Czech authorities -- related to these two areas. China requested that the Czech government finalize the country's *Anti-Discrimination Act* to "ensure that Roma will not be discriminated in the field of....education" (Recommendation 20). The Netherlands asked the Government to submit a follow up report about efforts taken to ensure the rights of minorities "specifically Roma" were being strengthened (Recommendation 21). The United Kingdom wanted consideration of "additional steps to improve conditions for children from vulnerable backgrounds" (Recommendation 22). Mexico recommended that in the implementation of public policy for Roma, the Czech government should "consider the possibility of establishing bilingual compensatory school programmes for Roma children" (Recommendation 24). Finally, Algeria and Romania both recommended that the Czech authorities "take appropriate and effective measures to fight discrimination and violence against Roma and ensure their equal access to education" (Recommendation 30).

Yet almost five years after the *D.H.* judgment and almost four years since the Czech government's first UPR, all objective observers agree that there has been little change on the ground. The children who fought and won the battle before the ECtHR now fear that their own children will be channeled into "special schools" (now renamed "practical schools"). As Julius Mika -- one of the *D.H.* applicants who now has two young children of his own -- put it in February 2012: "*I was happy that the case ended in our favor—to hear that the court, someone with greater power, recognized that the school system was wrong and that Roma children deserve equal standards of education. But nothing has really changed. In the system now, they say we have a choice. But if parents refuse to send their children to the special school and the child returns to the regular school, the teachers make the experience horrible for them. Most often children will end up at the special school anyway.*"

This submission highlights the Czech government's persistent and systemic failure to ensure non-discriminatory access to education as part of its broader international human rights obligations and in line with the previous UPR recommendations.

III. Violations of Human Rights Obligations

A. Non Discrimination and Education

The Czech government has ratified a range of international human rights instruments that require it to treat Romani children equally, including in the area of education. Two major ones are the *Convention on the Elimination of All Forms of Racial Discrimination (CERD)* and the *Convention on the Rights of the Child (CRC)*, both ratified by the Czech government on February 22, 1993.

CERD Articles 2 and 5 should be read together as prohibiting ethnic discrimination in schooling. Article 2 requires states to pursue a “policy of eliminating racial discrimination in all its forms” including by ensuring that “all public authorities and public institutions, national and local” do not engage in any racially discriminatory acts. Under Article 2(1)(c) States must review, amend and rescind any policies and laws which “have the effect of creating or perpetuating racial discrimination.” Article 5(e)(v) makes this obligation both more specific and justiciable, guaranteeing equality before the law “without distinction as to race, colour, or national or ethnic origin” in the enjoyment of the right to education. The Committee on the Elimination of all Forms of Racial Discrimination (CERD Committee) addressed this right specifically also in its *General Recommendation No. 27*. It encouraged States to “support the inclusion in the school system of all children of Roma origin” and to “prevent and avoid as much as possible the segregation of Roma students.”

The CRC’s Article 2 also guarantees Romani children in the Czech Republic freedom from discrimination. Again, this should be read in conjunction with Articles 28 and 29 which both deal with education. Article 28 requires equal opportunity in the enjoyment of the right to education, while Article 29 covers the guiding principles which should govern education in order to realize the rights of the child. Specifically, Article 29(1)(a) requires that education should be directed towards the “development of the child’s personality, talents and mental and physical abilities to their fullest potential.”

Since its last review by the UPR in 2008, the Czech government has failed to abide by these obligations and Romani children are still disproportionately languishing in inferior quality “practical schools” and segregated classes in mainstream schools. Though some changes have been made, they are largely cosmetic. The government has yet to propose, let alone institute, the fundamental structural changes to the Czech schooling system needed to stop and redress the violation of Romani children’s rights to education and freedom from discrimination in policy, law and practice.

i. Policy

In 2010, the Czech Ministry of Education adopted a National Action Plan for Inclusive Education (NAPIE) in the wake of the *D.H.* judgment in the European Court. However, the NAPIE is not a comprehensive program of action. Instead it is really a plan to create a plan, with no concrete targets, no defined or identified funding and an unacceptably long timeframe for implementation (even those practical results on the ground which the plan foresees – which are not those required to end discrimination and segregation of Roma children - would not be anticipated until 2014). The NAPIE, in its current form, does little to end the systematic ethnic discrimination against Roma that the ECtHR condemned in 2007 and which are necessary to comply with CERD Article 2(1)(a).

Plans to revise and expand the NAPIE’s skeletal framework took a blow in May 2011, when a group of 50 Czech educational experts from civil society who had agreed to help the Ministry quit in protest, citing the government’s lack of political will to pursue an inclusive agenda. These experts were not alone in their concerns. In its August 2011 review of the Czech Republic, the Committee on the Rights of the Child (CRC Committee) also highlighted its own concerns about the continuing segregationist practices in the country, despite the NAPIE’s adoption. Specifically the CRC Committee pointed out the “slow operationalization of effective reform measures to facilitate inclusion and integration”; the low implementation rates of culturally sensitive tests for determining the academic and intellectual abilities of ethnic minority children; the “continued placement of children of Roma origin in separate classes

as well as the teaching of Roma children with a reduced syllabus formerly used for special schools” and the absence of financial support for children from disadvantaged background and their categorization as having “disabilities” in order to “receive additional financial resources designated for children with disabilities”. The Committee recommended that each of these problems be addressed. To date, their recommendations remain unmet.

Meanwhile, in the past year, a different arm of the Czech government developed a competing inclusive education plan as part of a broader strategy for promoting Roma inclusion. In September 2011 the Czech parliament adopted the *Strategy for the Fight Against Social Exclusion 2011-2015* (the “Strategy”), presented by the Czech Agency for Social Inclusion in Romani Localities. The Strategy is regarded by education experts and civil society actors as an impressive hortatory document that is premised on the notion that a fair and efficient education system is central to the fight against the reproduction of generational social disadvantage. The Strategy, if executed, would be a big step forward. And yet, prospects for its implementation remain unclear. Despite calls for an increase in funding to address exclusion, no budget has been allocated to implement this Strategy, nor is it binding on any government department. It is also unclear how this strategy relates to the NAPIE. The Strategy has not been publicly endorsed by the Ministry of Education. The then Education Minister, Josef Dobes, stated on November 1, 2011 that the Ministry of Education has no intention to abolish special or practical schools, while the Strategy calls for the elimination of such schools.

Much more than incomplete, unimplemented, unbudgeted plans are needed if the Czech government is to end ethnic discrimination against Romani children as required by CERD Article 2. This must be coupled with demonstrable political will to pursue an inclusive agenda in order for meaningful positive changes to take place.

ii. Law

No major piece of legislation addressing ethnic discrimination in schooling has emerged since the 2007 ECtHR judgment (the main piece of legislation covering education is the *Schools Act*, which was adopted by Parliament in 2005). The Czech government did put an *Anti-Discrimination Act* in place in 2009 in the wake of the UPR recommendations. So far, this legislation has not been tested through judgments in the Czech courts to see if it would, in practice, act as an effective safeguard against discrimination in education. In addition, this legislation was recently criticized by the CERD Committee in its review of the Czech Republic in September 2011. The Committee noted that the legal provisions against discrimination are still scattered across a range of other Czech laws, resulting in differing grounds and remedies depending on the area of discrimination. As a result, the Committee was concerned that victims of discrimination may find access to justice “cumbersome, slow and ineffective” and recommended that the Czech government consolidate the prohibited grounds of discrimination and standardize remedies for racial discrimination. The Committee also noted that under the current legal provisions “establishing discrimination remains reportedly difficult and the only additional means of protection stipulated by the *Anti-Discrimination Act* is recourse to the Ombudsman who has however limited direct power.” It recommended that the Czech government consider unifying its legislation, simplifying judicial procedures in cases of racial discrimination, and strengthening the mandate of the Ombudsman.

On September 1, 2011, two amended administrative decrees entered into force – 72/2005 on the provision of counseling services in schools and school counseling facilities and 73/2005 on the education of children, pupils and students with special educational needs and exceptionally gifted children, pupils and students. In a welcome move, some of the most problematic provisions of these two decrees were amended before the decrees’ passage. Yet problematic elements remain. Of particular note, Section 3 of Decree 73/2005 still allows for children with “social disadvantages” to be placed in separate classes for children with disabilities for up to five months, if such children fail to cope in mainstream school over an extended period. The Czech school system, however, provides no systemic support to assist children with “social disadvantages” in mainstream schooling. To the extent that a disproportionate number of Romani children may fall into this “socially disadvantaged” category, and hence may have difficulty in mainstream schools absent any additional support, placement in segregated classes with a limited curriculum may prove even more disruptive to their schooling and further hinder their ability to catch up with their mainstream peers upon return to regular classes. These decrees will require careful

monitoring to ensure that they comply with CERD Article 2 (1)(c) which obliges the Czech government to review, amend and rescind any policies and laws which “have the effect of creating or perpetuating racial discrimination.”

iii. Practice

Even if the laws and policies that the Czech government had put in place to combat discrimination against Romani children were aimed at squarely addressing ethnic discrimination and segregation of Roma – which they are not -- realization of the country’s human rights obligations would require both political will and effective support for these policies to operate. So far, neither is evident. This can be seen, for example, in the country’s use of European Union structural funds which have been made available to the Czech Republic to address education problems. Serious problems have been discovered with the use of these funds. The European Commission decided in January 2012 to halt the disbursement of its latest tranche of structural funds to the Czech Republic – worth approximately 1.9 million Euro -- after it found serious irregularities in the way the country was spending monies intended for education projects. In its letter to the Czech government on January 24, 2012, the European Commission reported finding “serious shortcomings” in the management and control of funds, and expenses linked to “serious inconsistencies” which were “not justified”. The Czech government is also failing to spend all the structural funds available to it for inclusive education purposes. The lack of spending, as the end of the funding period draws near, has given rise to concerns that this money may either be diverted to other unrelated projects (such as building highways) or given back to the European Commission. In addition, since 2010 the Ministry of Education has systematically cut resources and expertise from its department set up to address inclusive education, leaving little technical expertise to ensure that anti-discrimination policies can be effectively implemented in practice. Ineffective expertise and lack of commitment to investment in inclusive education at the national level fundamentally undermine the Czech government’s capacity to comply with international human rights obligations.

Discriminatory practice also continues at the local level. Discussions in February 2012 with families involved in the *D.H.* case indicate an ongoing sense of disillusionment with the lack of implementation of the *D.H.* judgment. One family reported ongoing bullying by teachers of the applicant’s younger siblings who are still in high school. The mother said that teachers told her children regularly that they were “animals,” “stupid” and would “never succeed.” CERD Article 2 requires the Czech government to ensure that “all public authorities and public institutions, national and local” do not engage in any racially discriminatory acts. The CRC’s Article 29 requires that education should be directed towards the “development of the child’s personality, talents and mental and physical abilities to their fullest potential.” While segregation persists, and while Romani children feel unwanted and bullied in mainstream schools, neither of these obligations are being met.

IV. Conclusion

The Council of Europe’s former Commissioner for Human Rights, Thomas Hammarberg, best summed up the situation and the urgent need for change in his March 2011 report on the Czech Republic, in which he stated: “With thousands of Roma 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.”¹ Strong recommendations from the UPR Working Group in October during the Czech government’s review can help encourage and propel the changes that are desperately needed to make sure that Romani children are not placed, or remain, in discriminatory, segregated sub-standard schooling environments for yet another UPR cycle.

¹ Thomas Hammarberg, *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*, March 3, 2011, para 66, available at <https://wcd.coe.int/ViewDoc.jsp?id=1754217>.