

OPEN SOCIETY JUSTICE INITIATIVE AND THE EUROPEAN ROMA RIGHTS CENTRE

D.H. and Others v Czech Republic: Consideration by the Committee of Ministers – November 2011

Summary

- On November 13, 2007, the European Court of Human Rights' Grand Chamber handed down its judgment in *D.H. and others v. Czech Republic*.ⁱ 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 to “redress so far as possible” the violation’s effects. In June 2011, the Committee of Ministers debated this case and registered its “concern” that “considerable progress remains to be achieved on the ground” in addressing persistent discrimination against Roma children. It also called upon Czech authorities to achieve “concrete results” in the “perspective of the next school year.”ⁱⁱ
- To date, there is no evidence of any decrease in the disproportionately high numbers of Romani children being channeled illegally into segregated “practical schools.” Despite some modest movement at the policy level and to a lesser extent at the legal level, the situation for Romani children remains unchanged.
- Some positive developments have emerged since June: in September, the Czech government adopted a Strategy for the Fight Against Social Exclusion 2011-2015 which details an holistic approach to inclusive education and sets ambitious goals including the transformation of the segregated practical school system. However, this Strategy is not binding and no implementation budget has been allocated. There is no indication what the relationship is between this strategy and the Ministry of Education’s National Action Plan for Inclusive Education. The government also proposed approximately one million Euro worth of inclusive education projects to be funded by European Union structural funds, but few details are available about the proposed structural funds projects, making them difficult to assess. Two decrees governing inclusive education efforts entered into force on September 1, 2011 -- in time for the new school year. However, problematic provisions remain that could still allow for discrimination against Romani children and disruption of their education. As a result, the Czech Republic is still a long way from the ECtHR’s requirement in the *D.H.* decision to “put an end to the violation found by the Court” and “redress so far as possible the effects” of that violation.

Recommendations for the Committee of Ministers:

- Prioritize a country visit to the Czech Republic to see what further measures for implementation are needed before the June 2012 Committee of Ministers meeting;
- Debate the *D.H.* case at the June 2012 meeting to set concrete goals for implementation;
- Request detailed information on use of structural funds, the status of the NAPIE, its relationship to the new inclusion strategy and budget allocated for inclusive education in 2012;

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- Request the government to monitor and collect disaggregated data according to ethnicity, gender and disability which can assess the implementation and impact on the ground of the decrees, NAPIE, testing pilots and other steps to promote inclusive education;
- Request the government to institute systemic support measures for Romani students to succeed in mainstream schools.
- Call for effective steps to be taken towards inclusive education in mainstream schools for all children and where needed, provide adequate educational support for pupils within such schools;
- Adopt legislation in 2012 explicitly mandating the desegregation of Czech schools.

Developments since June 2011

A. Factual Background – Rise in Anti-Roma demonstrations and attacks

Since July 2011, several racially motivated actions against Roma living in Northern Bohemia have taken place. In July and early August, ethnic Czechs committed two arson attacks against Roma and in another case four ethnic Czechs brutally beat up a Romani man with baseball bats in front of his pregnant girlfriend. In the midst of this tense situation, some local authorities in the region have made public statements which may worsen public sentiment about Roma. For example, on August 26, the Mayor of Rumburk called for the need to regulate the influx of “inadaptable” persons (a well-known term used in the Czech Republic for Roma) and ban their residence.ⁱⁱⁱ Anti-Romani demonstrations have been repeatedly held in towns throughout the region, the latest of which took place on October 28 and 29.^{iv} Although the Czech Ministry of Interior deployed riot police to troubled areas in Northern Bohemia in an effort to curb violence against Roma, these efforts are often ineffective as anti-Romani demonstrators successfully reach Romani neighborhoods and cause damage to homes and traumatize residents despite police presence.^v

B. Policy

Effective implementation of the D.H. judgment requires the design and implementation of a comprehensive program to move Romani children from segregated education into mainstream education with appropriate supports to ensure good educational outcomes. The Czech Government’s National Action Plan for Inclusive Education (“NAPIE”) falls far short of this requirement: as noted in prior submissions from the Justice Initiative/ERRC, 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 (practical results on the ground would not be anticipated until 2014). Moreover, the NAPIE fails to embrace the fundamental principle of inclusive education: that all children, Roma and non-Roma, those with disabilities and those without, should be educated together in a mainstream school setting with appropriate supports, and not separated out into schools or classes that carry the stigma of inferiority.

While the NAPIE fails as a plan for addressing the persistent exclusion of Romani children from the mainstream education system, in September 2011 the Czech government adopted the Strategy for the

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Fight Against Social Exclusion 2011-2015 (the “Strategy”). The Strategy is regarded by education experts and civil society actors as an impressive 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. It envisions a 50 percent increase in per capita financing available for socially disadvantaged children (including Romani children) and an array of support measures that would help children transition from “practical” schools to mainstream education. The Strategy includes plans for subsidies for meals, school supplies and transportation to ensure that all children are learning under the same conditions. It also proposes extending the mandatory school attendance to ten years. The director of the Agency for Social Inclusion in Romani Localities, Martin Šimáček, who prepared this Strategy, still recognised in the wake of the strategy’s launch that the problem of persistent discrimination against Romani children remains in the Czech education system and must be fixed as a matter of priority:

The “practical schools’ are a relic of the previous regime and exclude tens of thousands of children from mainstream education, which subsequently deprives them of future opportunities.....It is a fact that the Czech elementary schools are not capable of suddenly taking hold of these thousands of children from one day to the next, and that is why the transfer of children is distributed over four years in the strategy.....Romani children are the most discriminated children in the Czech Republic and three out of 10 of them are, in most cases, unjustifiably enrolled in ‘practical schools.’ We must do something with this legacy and stem this ongoing practice.”^{vi}

While the Strategy, if executed, would be a big step forward, there remain serious doubts as to its implementation. Despite calling 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. The Strategy has not been publicly endorsed by the Ministry of Education yet. Meanwhile, Education Minister Dobes stated on 1 November that the Ministry of Education has no intention to abolish special or practical schools, while the Strategy calls for the elimination of such schools.^{vii} This public contradiction from the Minister raises concerns regarding the willingness of the Czech government to undertake any serious measures in proceeding with the transformation of Czech schools into inclusive places of learning for Roma and non-Roma, children with disabilities or learning needs and those without. This position of the Minister is identical to the past position of the government and raises concerns as to whether that the Strategy will improve the situation on the ground for Romani and other pupils currently in special education.

It is not clear how this Strategy relates to the Ministry of Education’s NAPIE, and whether either the Strategy or the NAPIE will ever become operational. In fact, so little has been done to push forward the NAPIE (besides the passage of the two decrees described in Section C below), and the Ministry of Education has been operating with so little transparency, that Mr. Šimáček further noted in his comment to the Czech press after releasing his inclusion Strategy that: “I have to say the ministry [of Education] has been the weak link ... the National Action Plan somehow remains unfulfilled, the group of 100 experts that was set up to launch it has met only once so far. We will very carefully follow whether that program is launched at all, because if it is launched, it would naturally mean that the steps in the right direction will

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continue.”^{viii}

We encourage the Committee of Ministers to request detailed, written information on the status of the inclusion Strategy and the NAPIE, and how the implementation of the Strategy will be supported politically and financially.

Plans for New Testing Regime Which May Disproportionately Discriminate Against Romani Children

According to education experts, concerns exist about the proposed piloting of a new standardized testing regime planned by the Ministry of Education for fifth and ninth graders in 2012, which is scheduled for full implementation in 2013. These tests, according to experts, will only assess aggregated school results from each school, and will not take into account learning difficulties of individual children, nor whether they have received the educational support needed to prepare for these tests. Education experts are concerned that this type of standardized testing may dissuade mainstream schools even further from accepting children with learning disabilities or who are from socially disadvantaged backgrounds, for fear that they may lose funding if the school does not score well on the testing. Such a broader testing effort may have an impact on schools’ efforts towards inclusion, and may hit children with disabilities and Romani children hardest. **We encourage the Committee of Ministers to request more information from the Czech authorities about this new testing plan, and how they will ensure that it operates in a way which is consistent with inclusive education goals.**

C. Law

Passage of Two Amended Administrative Decrees – But Problematic Provisions Remain

In 2011 the Czech government amended two education decrees— 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. Both entered into force on September 1, 2011. In a welcome move, some of the most problematic provisions of these two decrees (highlighted in our previous submissions to this Committee), were amended before the decrees’ passage. For example, Section 10 of Decree 73/2005 was modified so it no longer allows for children without disabilities to constitute up to 25 percent of classes for children with disabilities, absent safeguards to help to counter discrimination against Roma children. Yet this section, and other provisions, will require strict monitoring in practice. In particular, Section 3 of Decree 73/2005 still potentially allows for children with “social disadvantages” (which disproportionately includes Romani children) to be placed in separate classes for children with disabilities for up to five months, if that child fails to cope in mainstream school over an extended period. The danger in this provision lies in the fact that the Czech school system has no systemic support to assist children with “social disadvantages” in mainstream schooling. To the extent that a disproportionate number of Romani children may be affected by this lack of support and thus have trouble in adjusting to mainstream schools, then a placement in a “practical school” for five months may be both more likely to affect Romani children and prove additionally disruptive to their schooling – making it even more difficult for them to catch up with their

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peers upon their return to mainstream school. **We encourage the Committee of Ministers to request ongoing monitoring and data collection of how these decrees are impacting Romani children on the ground, and to require that the Czech government ensure the effectiveness of the decrees by providing systemic support for Romani children in mainstream schools.**

Anti-Discrimination Law Still to be Tested as a Procedural Safeguard

The D.H. judgment also highlighted that procedural safeguards are “especially material” in efforts to redress the violation found in the case. In 2009, the Czech government finally complied with European Union law by implementing an Anti-Discrimination Act, but to date, no known case testing its provisions as a safeguard against discrimination in education has been brought in the Czech courts. In addition, this legislation was recently criticized by the United Nations Committee on the Elimination of Racial Discrimination (CERD) in its review of the Czech Republic in September 2011. The Committee noted that the legal provisions against discrimination are 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.^{ix} **We encourage the Committee of Ministers to reaffirm the Concluding Observations of the UN CERD.**

D. Financial Commitments

No Clear Commitment of Funds to Remedy Illegal Discrimination

The Czech government has committed to using approximately one million Euro of structural funds for inclusive education projects. While this is welcome news, Czech education experts have some concerns. About a fifth of the structural funds allocated to inclusive education projects will go towards studies that some fear have already been done. They argue that the money could be better spent by directly investing in the transformation of schools. Details of the remainder of the projects are not publicly available, making it difficult for civil society groups to evaluate the quality and effectiveness of the plans in meeting inclusive education needs in the Czech Republic. **We encourage the Committee of Ministers to request the Czech government to provide more information on these projects and ensure that the details are publicly available.**

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E. No Impact on the Ground

Four years after the DH judgment, there is no evidence whatsoever that anything has changed for Romani children subject to illegal discrimination in Czech schools. The only official data on the number of Romani children in special education, published by the government in 2010, showed no change in the extremely high proportion of Romani children channeled into segregated “practical schools.” The government has not published any data since then. NGOs working in the field, including ERRC, find no evidence of any decrease in the number or proportion of Romani children in special education. Moreover, there is no evidence that the government has engaged in any qualitative assessments to see if adequate supports exist for Romani children in mainstream schools in order for them to be successful. **We encourage the Committee of Ministers to request the Czech government to gather qualitative and quantitative data to assess the impact on the ground for inclusion of Romani children in mainstream schooling in this school year and on an annual basis thereafter.**

Conclusion:

The Czech Republic has been reviewed by two United Nations human rights treaty bodies since June 2011, both of which have raised similar concerns to the Committee of Ministers’ June 2011 decision on the D.H. case. The UN Committee on the Rights of the Child stated in its Concluding Observations in August 2011 that it remained “deeply concerned that in spite of its previous recommendations... and the 2007 decision of the European Court of Human Rights, *D.H. and Others v. the Czech Republic*, there continue to be serious and widespread issues of discrimination, particularly against the minority Roma children in the State party, including the systemic and unlawful segregation of children of Roma origin from mainstream education.”^x The following month, the UN Committee on the Elimination of Racial Discrimination also expressed its concern “regarding the persistent segregation of Romani children in education.” It recommended that the Czech government “eliminate any discrimination or racial harassment of Romani students, prevent and avoid the segregation of Romani students, while keeping open the possibility for bilingual or mother-tongue tuition.” It further recommended that the Czech government “take concrete steps to ensure effective de-segregation of Romani children and students and to ensure they are not deprived of their rights to education of any type or at any level.”^{xi} While making some strides in recent months, the Czech government is still a long way from ensuring inclusive education and redressing the effects of the violation found in the D.H. case. The Committee of Ministers need to remain actively seized of this case and use 2012 to actively work to ensure systemic changes are put in place as quickly as possible to support Romani children and their inclusion in the education system.

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ENDNOTES

ⁱ 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>

ⁱⁱ See Committee of Ministers, *Annotated Agenda and Decisions Adopted*, Doc CM/Del/Dec(2011)1115, June 10, 2011, available at:

[https://wcd.coe.int/wcd/ViewDoc.jsp?Ref=CM/Del/Dec\(2011\)1115&Language=lanEnglish&Ver=immediat&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383](https://wcd.coe.int/wcd/ViewDoc.jsp?Ref=CM/Del/Dec(2011)1115&Language=lanEnglish&Ver=immediat&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383).

ⁱⁱⁱ http://www.tyden.cz/rubriky/domaci/vypalme-synagogy-zatouzili-sporadani-obcane-rumburku_210668.html

^{iv} http://www.romea.cz/english/index.php?id=detail&detail=2007_2924

^v http://www.romea.cz/english/index.php?id=detail&detail=2007_2746

^{vi} Martin Šimáček, Director of the Czech Agency for Social Inclusion in Romani Localities, quoted in “Special Education” Teachers Criticize Czech Government Inclusion Strategy” Romea.cz, October 26, 2011, available at:

http://www.romea.cz/english/index.php?id=detail&detail=2007_2916.

^{vii} <http://www.msmt.cz/pro-novinare/msmt-nechce-rusit-specialni-a-prakticke-skoly-ani-zarizeni>

^{viii} *Czech Social Inclusion Agency director says EdMin is the weak link in Romani children's schooling*, Romea.cz, October 20, 2011, available at: http://www.romea.cz/english/index.php?id=detail&detail=2007_2901. INFO FROM LENKA HERE Phone discussion with Czech civil society representative, October 26, 2011. Transcript on file with Justice Initiative.

^{ix} See United Nations Committee on the Elimination of Racial Discrimination, *Concluding Observations: Czech Republic*, September 2, 2011, paras 7-8, available at:

http://www2.ohchr.org/english/bodies/cerd/docs/CZECH_REP_COBs_CERD79.pdf.

^x See United Nations Committee on the Rights of the Child, *Concluding Observations: Czech Republic*, August 4, 2011, paras 30-31, available at <http://www2.ohchr.org/english/bodies/crc/crcs57.htm>.

^{xi} See above n. iii, para 12.