

RULE 9 SUBMISSION TO
THE COMMITTEE OF MINISTERS

D.H. AND OTHERS V. THE CZECH REPUBLIC
(APPLICATION NO. 57325/00)

Amnesty International
Forum for Human Rights
Open Society Fund Prague
(Nadace OSF)

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Executive Summary and Recommendations

The European Court of Human Rights (ECtHR) issued its landmark judgment in the case of D.H. and Others v. Czech Republic (“D.H.”) on November 13, 2007. **More than a decade since the judgment and three years after the new legislation was put in place in September 2016, the Czech authorities still fail to abolish systemic discrimination of Roma children in education.**

In June 2018, the Committee of Ministers (CoM) expressed *“their strong expectation that with the upcoming school years the reform will become more and more embedded and that, with each passing year, fewer children will be assigned to reduced education programmes, so that the share of Roma children educated outside the mainstream will continue to decrease.”* The data published by the Ministry of Education, Youth and Sports for the school year 2018/2019 **does not demonstrate any significant drop in placing Roma pupils into reduced educational programmes.** What the data reveals is **an increase in the proportion of Roma pupils taught according to the educational programme for special primary schools for pupils with moderate and severe mental disability.**

Moreover, the Ministry of Education, Youth and Sports (hereinafter “MEYS” or the “Ministry”) introduced a draft of the amendment to the Ministerial Regulation no. 27/2016 Col., on education of pupils with special educational needs that represents real risk to implementation of the judgement as it contains measures supporting further discrimination of Roma pupils. The draft of the Ministerial Regulation reduces support for pupils with special educational needs that is guaranteed by the Education Act, by limiting the number of teaching assistants to one per class, and will result in segregation of more Roma pupils in former practical primary schools (for pupils with mild mental disability) as they will be newly allowed to set up classes for pupils with learning and behaviour disorders.

In its next debate of the D.H. judgment at the September 2019 CM-DH meeting, we urge the CoM to call upon the Czech authorities to:

- **amend the Ministerial Regulation no. 27/2016 Col. on education of pupils with special educational needs so it enhances enrolment of Roma pupils into mainstream education** and in order to fulfil the ECtHR judgment, to specifically **reverse proposed changes** such as:
 - The abolishment of the principle that pupils with special educational needs are primarily educated in mainstream schools
 - The nationwide reduction of the number of teaching assistants to one per class regardless of the special educational needs of children. This contradicts the principle of recognition of special educational needs of individual pupils set in the Education Act.
 - Introducing the possibility of setting up classrooms for pupils with various special educational needs in one special school, including schools for pupils with mental disability.
- to provide **disaggregated data on Roma pupils that will differentiate between pupils with mild mental disability (MMD) and pupils with other disabilities educated under the reduced education programmes**, so that the Committee of Ministers is presented with more accurate numbers on the implementation of the case.

- **amend the Anti-Discrimination Act so that it allows for action in the public interest (actio popularis) and class action procedures to challenge institutionalized forms of discrimination.**
- **provide anti-discrimination training to teachers, teaching assistants, special education teachers, and staff in school counselling centres, with a particular focus on diversity and inclusivity in the classroom, and support of individual educational needs of all children including Roma.**

Given no significant drop in the proportion of Roma pupils enrolled in reduced education programmes and the recent steps made by the Ministry regarding the Amendment to the Ministerial Regulation no. 27/2016 Col., *on education of pupils with special educational needs*, **the execution of the D.H. and Others v. the Czech Republic has yet to be successfully implemented.**

Thus, the coalition of herein listed stakeholders **urge the Committee of Ministers to further examine the execution of the judgment. Further supervision of the process should be kept in place in order to reach the legislative-binding implementation of the judgment.**

Choice Between Safety and Quality Education - the Current Situation of Roma Pupils

The Grand Chamber of the ECtHR decided in November 2007 that there exists a systemic discrimination of Roma kids in the Czech Republic. The Grand Chamber agreed with 18 Roma children that were sent to special schools and taught to a reduced educational programme.

As was pointed out by the Public Defender of Rights in her communication to the Committee of Ministers from May 2019¹, Roma pupils face discrimination:

- in segregated primary schools: there are 70 primary schools with Roma majority,
- in reduced educational programmes: proportion of Roma pupils educated under these reduced educational programmes is disproportionate to their proportion in primary schools.

Table 1: Difference between the proportion of Roma pupils in primary schools and proportion of Roma pupils educated under reduced educational programmes in the school year 2018/2019²

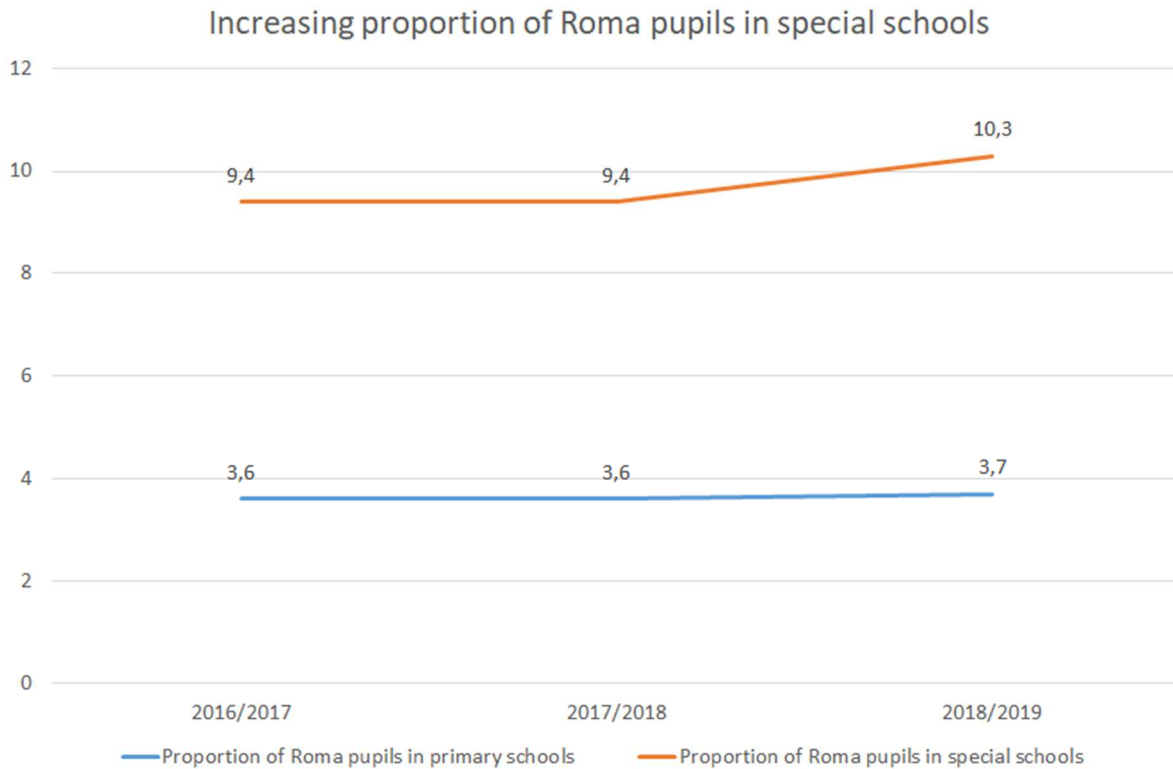
Proportion of Roma pupils out of the number of all pupils in primary schools in 2018/2019 year	Proportion of Roma pupils out of the number of all pupils educated under reduced educational programmes in 2018/2019 school year
3,7 %	29,1 %

¹ Rule 9.3 Communication from a NHRI (23/05/2019) in the case of D.H. AND OTHERS v. Czech Republic (Application No. 57325/00), available at: <https://bit.ly/2SQG00G>

² Communication from the authorities ("Comprehensive Evaluation of the Reform of Inclusive Education in Relation to Roma Pupils") (05/04/2019) in the case of D.H. AND OTHERS v. Czech Republic (Application No. 57325/00), 2019, available at: <https://bit.ly/2KdBfxn>

Apart from overrepresentation of Roma pupils in reduced educational programmes in primary schools, we point to the increase in proportion of Roma pupils educated according to the educational programme for special schools from 9, 4 percent to 10, 3 percent. This educational programme is designed for pupils with moderate and severe mental disability.

Graph 1: Increase in proportion of Roma pupils in educational programmes for special schools (moderate and severe mental disability)³



A new study published by scholar Dana Moree from Charles University and supported by Open Society Fund Prague confirmed persisting discrimination and practice that was addressed by the Grant Chamber in its decision. *“Parents sometimes choose schools in socially excluded areas (often former schools for children with a mild mental disability called “primary practical schools”, authors note), because they fear bullying from a majority or because they experienced education at such a school themselves.”*⁴

It is the same dilemma that was described by the ECtHR in the D.H. and Others v. the Czech Republic case in 2007: *“It also appears indisputable that the Roma parents were faced with a dilemma: a choice between ordinary schools that were ill-equipped to cater for their children's social and cultural differences and in which their children risked isolation and ostracism and special schools where the majority of the pupils were Roma.”*⁵

³ Communication from the authorities (“Comprehensive Evaluation of the Reform of Inclusive Education in Relation to Roma Pupils”) (05/04/2019) in the case of D.H. AND OTHERS v. Czech Republic (Application No. 57325/00), 2019, available at: <https://bit.ly/2KdBfxn>

⁴ Moree, Dana: Paths of Roma Pupils Towards Education - Impacts of Inclusive Education Reform, OSF Prague, 2019, See (only in Czech), available at <https://bit.ly/2YCmwVW>

⁵ Case D.H. and Others v. the Czech Republic, (Application no. [57325/00](https://bit.ly/2YCmwVW))

Key result of the study is the description of soft strategies that contribute to the discrimination of the Roma. These are “*primarily strategies describing how to discourage parents from entering a school, when they are identified as Roma and recommendations to enrol their kids to schools that are perceived by the majority to be for “them”*”⁶. The conclusion of the study is the existence of a glass ceiling resulting from attitudes of school staff and parents. This demonstrates the ongoing failure of the Czech authorities to effectively protect Roma pupils from systematic discrimination in education and hence, problems with implementation of the D.H. and Others v. the Czech Republic judgment.

Taking Steps Back - Amendment to the Regulation No. 27/ 2016 Col., on the Education of Pupils with Special Education Needs

In the Comprehensive Evaluation of the Reform of Inclusive Education in Relation to Roma pupils published on 5. 4. 2019⁷, the Ministry introduced the intention of implementing possible changes to the system of inclusive education. **Proposed measures can have significant negative effects on Roma pupils in primary education and other pupils with special educational needs including children with disabilities.**

These changes were officially introduced by MEYS in the amendment to the Regulation no. 27/2016 Col. in November 2018. However, based on expert comments from civil society, other ministries, the Office of the Government as well as the Public Defender of Rights Office, the amendment contains several problematic measures that are in conflict with United Nations conventions, Czech regulations of higher legal force, and also measures adopted by the Czech Government to implement the ECtHR judgment in the case of D. H. and Others v. the Czech Republic in the past decade.

We direct the attention of the Committee of Ministers to the following changes:

- Abolishment of the principle that pupils with disabilities should be primarily educated at mainstream schools.
- Reduction of the number of teaching assistants to one per class, which contradicts the Education Act⁸.
- Possibility of setting up classrooms for pupils with various special educational needs in one special school, including schools for pupils with mental disabilities.

The amendment removes the provision on the priority education of pupils with disabilities at regular mainstream schools in the community in which the pupil and his / her family live. Education in such an environment is in line with the best interests of the child under both the Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities (CRPD). Removal is justified by duplication with the Education Act. However, the Education Act does not include a provision on preferential education for children with disabilities in mainstream schools. The Education Act describes the procedure of recommending education programs at school

⁶ Moree, Dana: Paths of Roma Pupils Towards Education - Impacts of Inclusive Education Reform, OSF Prague, 2019, (only in Czech), available at <https://bit.ly/2YCmwVW>

⁷ Communication from the authorities ("Comprehensive Evaluation of the Reform of Inclusive Education in Relation to Roma Pupils") (05/04/2019) in the case of D.H. AND OTHERS v. Czech Republic (Application No. 57325/00), 2019, available at: <https://bit.ly/2KdBfxn>

⁸ Law no. 561/2004 Col.

established under Section 16 (9) of the Education Act (a title school for pupils with disabilities/special schools) at school counselling facilities only.

The provision to be removed serves as an important safeguard against the misplacement of pupils to schools for pupils with disabilities. Furthermore, the removal of this provision will negatively impact the attitudes of school leaders, teachers and counselors to adhere to the principle of international regulations in practice. Here, we would like to refer to the study Paths of Roma Pupils towards Education, which named the attitudes of school staff as the key to Roma inclusion in mainstream education.

By leaving out the recommendation regarding priority education of pupils with disabilities in mainstream school systems from the Regulation amendment, the Ministry does not provide any guidance of this to school leaders, teachers and counselors; moreover, a possible failure to successfully implement the D.H. and Others v. the Czech Republic judgement.

Contrary to the principle introduced by the Education Act, the amendment reduces the number of teacher assistants in a mainstream school class to only one, and disregards the pupil's special educational needs including the need to support education overall.

Reducing teacher assistance to one person per class only contradicts the principle of delivering supportive measures as set out in the Education Act, which is based on the assessment of individual needs of a child. According to the Education Act, the situation in the particular class must be assessed by a counselling specialist in order to decide whether a teacher assistant can be with other pupils, or if there is a need for partial or permanent individualised support in accordance with the pupil's special educational needs. This nationwide limitation will have a negative impact on the intended provision of targeted support to primary schools in structurally affected regions introduced by MEYS in the Comprehensive Evaluation of the Reform of Inclusive Education in Relation to Roma Pupils (2019). At schools near socially excluded localities, teacher assistants often serve an important role in interacting with parents of pupils and community members, including making visits to families. A decline in pedagogic staff per class, without recognizing the specific needs of pupils and schools can hinder efforts to provide targeted and effective support in structurally affected regions.

We are concerned that this provision is based on zero evidence on the number of teaching assistants in one class. It goes against all evidence, which claims that teachers are mostly satisfied with work of teaching assistants (84 percent of teachers were satisfied with the work of teaching assistants in the school year 2016/2017)⁹.

The amendment to the Regulation no. 27/2016 Col. introduces the possibility of setting up classrooms for pupils with various special educational needs (SEN) in one school, established for pupils with disabilities. Opening new classes for different types of SEN will be possible even at schools for pupils with mental disabilities (former practical schools designed primarily for pupils with mild mental disability) that provide education according to a reduced curriculum. Historically, and referencing Section 16 (9) of the Education Act, special schools specialize in one type of disability (visual, auditory, mental intellectual..) meanwhile, the special educators specialize in support according to a concrete type of disability.

⁹ OSF Prague, ČOSIV, Czech and Moravian Trade Union of Workers in Education: A Year After: Impacts of Inclusive Education Reform, 2018, available from <https://bit.ly/2YyGOzN>

The amended regulation does not contain any measures that would guarantee the quality of education and also support in these new classes. We are concerned that this change does not support the best interests of the children. According to the final RIA report of the proposal, its key motivation is to retain current capacities of schools for pupils with disabilities, especially the former primary practical schools for pupils with mild mental disability (MMD). The final RIA report claims that:

“A school established according to Section 16 (9) of the Education Act (a special school, authors note) for pupils with a specific type of disability should have a possibility to offer optimal education support also to pupils with other types of disability, for which there is no other special school in a region.”¹⁰ It is clear from the quotation that the main emphasis is placed at a special schools, which according to the proposed amendment should have a possibility to educate pupils, and is not placed on pupils with special educational needs that have a right according to the Education Act and CRPD to be educated in mainstream schools.

This provision will have a negative effect on further discrimination and segregation of pupils with special educational needs and Roma pupils. Specifically, it is concerning that former primary practical schools will be allowed to open new classes for pupils with behaviour disorders. The final RIA report explicitly mentions that special schools should be allowed to educate pupils with this type of disorder.

In our view, this change will have a disproportionate impact on Roma pupils and diagnosing behaviour disorders will most likely be as problematic in terms of assessment of Roma pupils as the diagnosis of MMD. Analyzing the numbers, it is estimated that about 2,300 Roma pupils will face risks to their education in the segregated environment of former primary practical schools. This number is based on the estimated number of all Roma in primary schools (34,767 for the school year 2018/2019) and proportion of pupils with developmental learning and behaviour disorders in primary schools, which is 6, 6 percent¹¹. Therefore, there are about 2,300 Roma pupils that are diagnosed with behaviour and learning disorder.

Continuing Education of Roma pupils Under the Reduced Educational Programmes - Estimated Numbers of Roma Pupils at Primary Schools

The data provided by the Ministry does not demonstrate any significant drop in the proportion of Roma pupils that are educated under the reduced educational programmes. Approximately one third of all children educated under the reduced educational programmes are Roma pupils. This is a clear contrast compared to the 3, 7 percent of Roma pupils in primary schools according to MEYS data. **Roma pupils are also overrepresented in the education programme for special schools (for pupils with moderate and severe mental disability). The increase in the proportion of Roma pupils in comparison with the last school year is evident, precisely rising from 9, 4 percent to 10, 3 percent.**

¹⁰ Final RIA report to the amendment to the to the Regulation no. 27/ 2016 Col., on education of pupils with special education needs, 2019, available at <https://bit.ly/2K8Deo9>

¹¹ MEYS: The annual database on education / Statistická ročenka školství, available at: <https://bit.ly/1LMZcd2>

Table 2¹²: Proportion of Roma pupils educated at primary schools under standard, reduced educational programmes and education programmes for special schools

School year	2016/2017	2017/2018	2018/2019
Estimated proportion of Roma children in primary schools - standard education programme	3,7 %	3,6 %	3,7 %
Proportion of Roma pupils educated under the reduced education programs out of all pupils in these programmes	30,9 %	29,5 %	29,1 %
Estimated proportion of Roma children in education programmes for special schools	9,4 %	9,4 %	10,3 %

Observing the data, it is troubling that the estimated proportion of Roma pupils educated under the reduced education programs is most likely higher than the 29, 1 percent for the 2018/2019 school year shows. We base our concern on the data comparison of the number of pupils educated under reduced education programmes, and the number of pupils diagnosed with mild mental disability. In the school year 2018/2019, the number of pupils educated in the reduced education programmes was 15,132 pupils, in comparison to 11, 618 pupils diagnosed with mild mental disability. What is visibly clear is the trend of data in the last three years, in which the number of pupils in reduced educational programmes is increasing and the number of pupils diagnosed with mild mental disability is decreasing. Please refer to table 3 and graph 2, below.

¹² Communication from the authorities ("Comprehensive Evaluation of the Reform of Inclusive Education in Relation to Roma Pupils") (05/04/2019) in the case of D.H. AND OTHERS v. Czech Republic (Application No. 57325/00), 2019, available at: <https://bit.ly/2KdBfxn>
MEYS: The annual database on education / Statistická ročenka školství, available at: <https://bit.ly/1LMZcd2>

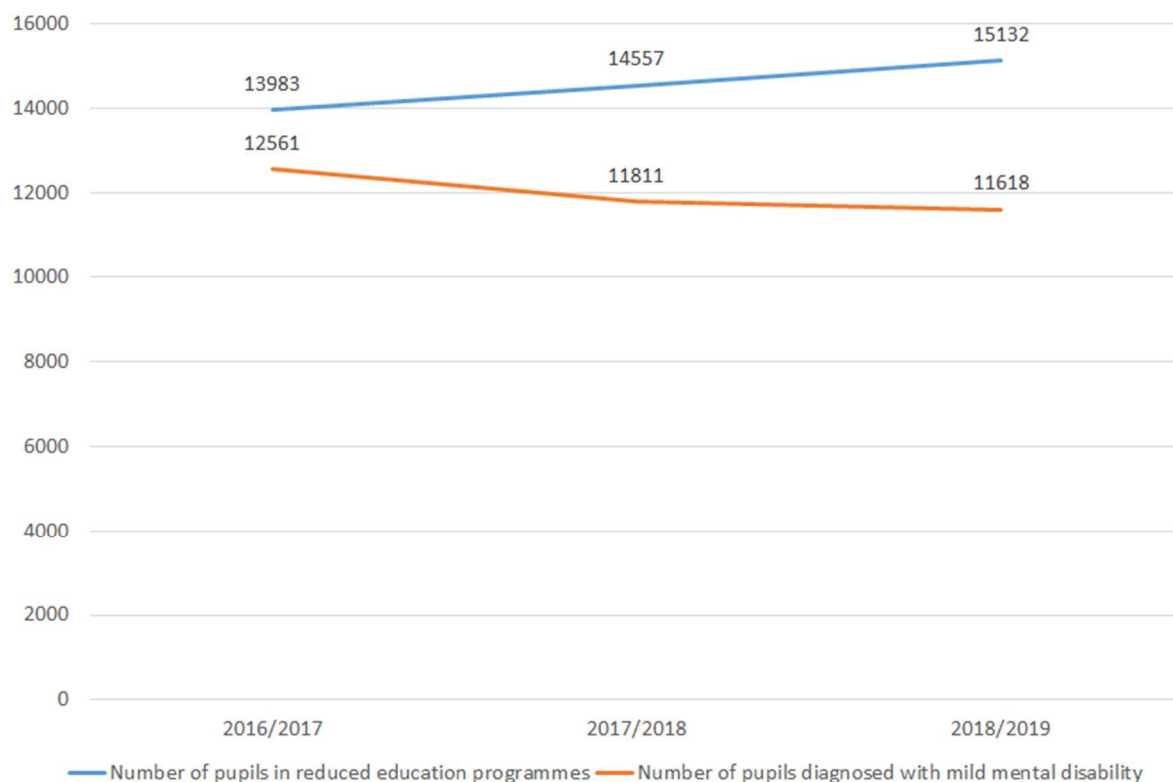
Table 3: Number of pupils under reduced education programmes and number of pupils diagnosed with mild mental disability.

School year	2016/2017	2017/2018	2018/2019
Number of pupils educated under the reduced education programmes for MMD pupils (FEP PE MMD* and FEP PE UV**)	13,983	14,557	15,132
Number of children diagnosed with MMD	12,561	11,811	11,618

*Framework Educational Programme for Primary Education - annex for education of pupils with mild mental disability

**Framework Educational Programme FEP PE with lower demands for learning outcomes

Graph 2: Number of pupils under reduced education programmes and number of pupils diagnosed with mild mental disability.



The difference for the school year 2018/2019 is about 3,500 pupils. In seeking the difference, reduced education programmes are used for wider groups of pupils with disabilities, not only for pupils with mild mental disability, but also for pupils diagnosed with autism or severe sensory as well. **Therefore, it is highly likely that the estimated proportion of Roma pupils that are educated using the reduced education programmes, due to the diagnosis of mild mental disability being higher than the official numbers reported by the Ministry.**

We stress that the data provided by the Ministry should be disaggregated and differentiated between pupils with mild mental disability and pupils with other disabilities educated under the reduced education programmes, so that the Committee of Ministers are presented with accurate data during the implementation of the case.

Diagnostic Tools and Review Body

Therefore, based on the arguments mentioned above in relation to the proportion of Roma in primary schools and proportion of Roma in the group of pupils taught according to reduced education programmes, we disagree with the statement in the Comprehensive Evaluation of the Reform of Inclusive Education in Relation to Roma Pupils (2019), which states that the new diagnostic tools “*guarantee the objectivity of the results of the examination of all pupils are currently being implemented in practice.*” Furthermore, this data challenges the current process of implementation of the legislative reform from 2016.

The Comprehensive Evaluation of the Reform of Inclusive Education presents data on the review body that is a part of safeguards regarding the school counselling facilities. The data presented in the evaluation (93 applications since 2016) are not disaggregated by types of disability, thus, it cannot be determined as relevant to the implementation of the D.H. and Others v. the Czech Republic judgment. Even if we assume that all 93 applications to the review body since 2016 were relevant to the implementation of the D.H. and Others v. the Czech Republic, the number is too low to have any significant impact on improvement of diagnostic practice, due to there currently being 11,618 pupils diagnosed with mild mental disability and 4,403 Roma pupils taught according to the reduced education programmes. According to our view the systems of safeguards lack a possibility of the action in the public interest (*actio popularis*) and class action procedures to enhance the rights of Roma pupils.

Conclusion

We do not share the premature optimism of the Czech authorities when stating that “*positive development will be faster than so far.*” Although the study by Dana Moree finds some positive impacts saying that there is a consensus by respondents from schools and parents that “*more children, who used to end up in primary practical schools are enrolled into first classes of mainstream schools now*”, we do agree with the position of the Public Defender of Rights that the drop in rate is not satisfactory. In addition, the increase in the proportion of Roma pupils educated by special schooling and its educational programme does not support the above mentioned statement of the MEYS.

Based on the arguments outlined above, we strongly urge the CoM not to close the examination of the execution of the judgment in the case of D.H. and Others v. the Czech Republic.

CONTACT INFO

Štěpán Drahekoupil, Open Society Fund Prague (Nadace OSF)
stepan.drahokoupil@osf.cz, +420 602 297 268
Hradecká 18, Prague 3 - 130 00, Czech Republic

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