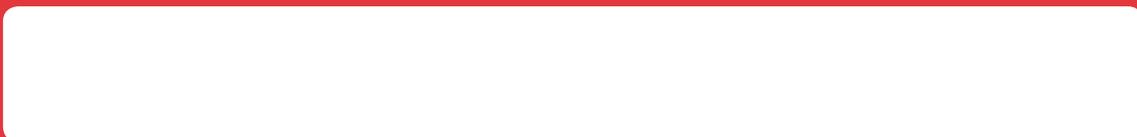


WRITTEN COMMENTS

BY THE EUROPEAN ROMA RIGHTS CENTRE CONCERNING THE CZECH REPUBLIC

for the Consideration of the United Nations Committee Against Torture,
at the Pressessional Working Group of the 70th Session
(26th April to 21st May 2021)



CHALLENGING DISCRIMINATION PROMOTING EQUALITY

TABLE OF CONTENTS

| | |
|--|----------|
| Introduction | 3 |
| General Legal Framework on Discrimination and Hate Crimes | 3 |
| Hate Speech | 4 |
| Romani Children in State Care Institutions | 4 |
| Housing Rights | 5 |
| School Segregation | 5 |

INTRODUCTION

1. The European Roma Rights Centre (hereinafter also referred to as the “ERRC”) hereby submits this report to the United Nations Committee against Torture (hereinafter also referred to as “Committee”) for the consideration for the List of Issues prior to reporting. The report focuses on the issues of general legal framework on discrimination and hate crimes; anti-Roma hate speech; the disproportionate placement of Romani children in state care institutions; discrimination in housing and the persistence of school segregation.
2. In its 2012 Concluding observations (CAT/C/CZE/CO/4-5), the Committee expressed concerns about the continued marginalization of and discrimination against the members of the Roma minority, including racially motivated violence. The Committee was also concerned about the lack of prompt, impartial and effective investigations and prosecutions regarding such incidents (arts. 2, 12, 13 and 16).¹
3. The Committee further expressed concern about the placement of Romani children in educational facilities for children with slight mental disabilities or with a reduced syllabus formerly used for special schools, which compromises their subsequent educational development (arts. 2, 10, 12, 13 and 16). It called on the State party to ensure that Romani children are admitted to mainstream education, and that standardized testing should be adapted to the social, cultural and linguistic specificities of minorities and educators and school personnel should receive training in principles of non-discrimination.
4. The Committee also recommended that appropriate funding be allocated to ensure a speedy process of deinstitutionalization to community-based services for adults and children in state care institutions; and called on the State party to establish close supervision and monitoring by judicial organs of any placement of persons in such institutions.
5. The ERRC believes that the Czech government has taken few significant steps to address the above-mentioned issues, and as a consequence the situation remains largely unchanged and problems of segregation, discrimination and inhumane treatment of the Roma minority persist in the Czech Republic. The situation of many Roma is still characterised by a vicious circle of under-education, leading to limited opportunities in the labour market, and frequent de-facto residential segregation, which also has a negative impact on access to health care and other social services.
6. Furthermore, the Czech authorities do not collect comprehensive ethnically disaggregated data on Roma inclusion in the areas of education, employment, housing and health. The absence of such data makes it difficult to design and allocate sufficient resources for inclusion policies, and well-nigh impossible to evaluate the effectiveness of such measures.

GENERAL LEGAL FRAMEWORK ON DISCRIMINATION AND HATE CRIMES

7. While discrimination is prohibited on the grounds of race, ethnicity, nationality, gender, sexual orientation, age, disability, and faith, the ERRC is concerned that there is no legislation specifically addressing cases of multiple and intersectional discrimination. There are concerns about the lack of case law specifically addressing multiple discrimination. The Czech courts have issued very few final decisions. Moreover, case-law in the field of equal treatment is often inconsistent; in 2012, the Czech Supreme Court held that discriminatory intent is essential both in cases of direct and indirect discrimination, however, subsequent case law has not been consistent on the matter.
8. Alleged victims of discrimination, as well as potential victims, face several obstacles when claiming violation of their right to equal treatment due to barriers in accessing redress. The Office of the Public Defender of Rights (Czech Ombudsperson) can provide independent methodological assistance to victims, conduct research and publish independent reports and make recommendations. However, her mandate is limited, and she is not entitled to represent victims of discrimination in court proceedings. The law allows for legal entities established or active in the field of protection against discrimination to provide legal assistance to victims, but this is far from sufficient. The Czech Anti-discrimination Act does not regulate *actio popularis* (public actions) that would make it possible to file a legal action in discrimination cases with

¹ UN Committee Against Torture, Concluding observations of the Committee against Torture (Extracts for follow-up of CAT/C/CZE/CO/4-5). Forty-eighth session, 7 May – 1 June 2012. Available at: <https://www2.ohchr.org/english/bodies/cat/docs/followup/ExtractsFUCzechRepublic48.pdf>.

higher numbers and unknown identities of victims (e.g. in cases of discrimination in advertising, systemic discrimination, etc.). Free legal aid is granted only to people with proven limited financial resources.

HATE SPEECH

9. The Fundamental Rights Agency found that the measure of harassment experienced due to being Roma over a 12-month period was 56% in the Czech Republic, the highest of nine EU Member States surveyed.² This climate of fear is fomented by hate speech which is widespread and mainly targets Roma, Muslims and LGBT communities. In its 2019 report on extremism and ‘prejudicial hatred’, the Czech Interior Ministry noted:

*“The spread of hatred has ceased to be the domain of traditional extremists alone. They were supplemented effectively by populist xenophobic groups, disinformation media, and a little less significantly by domestic militia entities. It was possible to observe further polarization of society as well as a further escalation of animosity. Increase in aggressiveness and vulgarity of hate speech was evident, particularly in the virtual environment. An increasingly wider range of social groups is the target of attacks and threats.”*³

10. The ERRC shares the concern that despite court action and prosecution in some notable cases, public expressions of anti-Roma hate speech still surface frequently in political discourse and social media, and as noted above that this racism is not confined to radical political groups, such as the SPD or the National Democracy Party (ND). One of the most notorious examples were the comments in 2018 by the President Milos Zeman, who remarked that it was clear exactly who the 5% unemployed were, and recalled the communist era when Romani people “had to work” and would be imprisoned if they did not, and work-shy Roma “got slapped around”, something he endorsed as “a very humane method that worked most of the time.” The ERRC also frequently condemned that fact that the term “inadaptable” had entered official use to refer to vulnerable groups, in particular Roma, and shared ECRI’s view that this form of expression is extremely dangerous; “by attempting to justify prejudice and intolerance against Roma, it perpetuates and increases them.”⁴

ROMANI CHILDREN IN STATE CARE INSTITUTIONS

11. The Czech Republic is considered to be amongst the least child-friendly OECD countries, with a history of discriminating against groups of children. Some sense of the policy context can be garnered from the collective complaint lodged with the European Committee of Social Rights (ECSR) by the European Roma Rights Centre, the Mental Disability Advocacy Centre (now Validity), and the Prague-based Forum for Human Rights in 2016, against the Czech Republic, specifically for its failure to comply with its obligations to refrain from the institutionalisation of young children, and in particular infants under the age of three.⁵ The data showed that institutionalisation has a disproportionate impact upon the most vulnerable children – children of Romani origin and children with disabilities; and the Czech Republic has failed to put in place non-institutional and family-like alternative forms of care.
12. On 23 November 2020, the ECSR found the Czech Republic responsible for large-scale and discriminatory institutionalisation of children with disabilities and Romani children in early childhood care institutions, criticising the failure of the country to adopt and implement an appropriate deinstitutionalisation strategy. The Committee found violations of the rights of particularly vulnerable Roma children and children with

2 FRA, A persisting concern: anti-Gypsyism as a barrier to Roma inclusion. 2018. https://fra.europa.eu/sites/default/files/fra_uploads/fra-2018-anti-gypsyism-barrier-roma-inclusion_en.pdf.

3 Ministry of the Interior Security Policy Department, Report on Manifestations of Extremism and Prejudicial Hatred in the Territory of the Czech Republic In 2019. Prague 2020. Available at: <https://www.mvcr.cz/mvcren/article/documents-on-the-fight-against-extremism.aspx>.

4 Bernard Rorke, ERRC News, 27 September 2018. Available at: <http://www.errc.org/news/europes-own-trump-goes-un-muzzled-again-czech-president-milos-zeman-reckons-roma-need-a-slapping-in-his-latest-racist-outburst>.

5 European Committee of Social Rights, Complaint: European Roma Rights Centre & Mental Disability Advocacy Centre v. the Czech Republic: For failure to ensure social and economic protection of young children who are segregated in child-care institutions. 26 October 2016. Available at: <https://rm.coe.int/complaint-157-2017-european-roma-rights-centre-mental-disability-advoc/1680761626>.

disabilities under the age of 3, specifically the obligation to ensure appropriate social and economic protection to children, under Article 17 of the 1961 Charter.⁶

HOUSING RIGHTS

13. The Czech Republic has a history of racial discrimination in terms of access to housing and exercise of housing rights, including patterns and practices of forced eviction concerning Roma and deepening segregation of housing on an ethnic and social status basis. For the last 20 years, legal tenancy protections have been broadly eroded for all renters. Excluded segments of the population, Romani people in particular, have found housing of last resort in so-called “residential hotels” where they do not have rental contracts, are not registered as local residents, and frequently pay exorbitant rents for small rooms or flats with common cold-water sanitation facilities.
14. It is very easy for the occupants of “residential hotels” to be evicted; as a result, those for whom this housing is the only option find it almost impossible to settle because they are more or less constantly searching for affordable accommodation and moving frequently to different parts of the country. The conditions for social inclusion and stability are effectively negated.

SCHOOL SEGREGATION

15. More than a decade after the European Court of Human Rights (ECtHR) announced its judgment in *D.H. and Others v the Czech Republic*, very little progress has been made in securing non-discriminatory access to education for all children and establishing an inclusive system of education, irrespective of social status, ethnicity or disability.
16. Deepening residential segregation aggravates educational segregation: “Around 22% of current pupils in socially excluded localities – a total of between 3000 and 3500 pupils -- are educated in strongly ethnically homogenous environments.” EU MIDIS II data comparing the situation of Roma between 2011 and 2016 indicated that Czech Republic had not made progress in tackling segregation in education during the period).
17. In September 2014, the European Commission initiated infringement proceedings against the Czech Republic, due to ongoing discrimination of Romani children in the Czech Republic in the field of education and non-compliance with relevant anti-discrimination EU law.
18. The existence of schools with high Roma populations, as confirmed by the state’s qualified estimates, is an indicator of ethnic, spatial and social status segregation within the school system. To date, the authorities do not adequately monitor the impact of its education policy on Roma.
19. It has been pointed out by several UN bodies (including the CERD Committee) that, in addition to segregation of children with disabilities and Romani children misdiagnosed with mental disability, Romani children are also educated separately from their peers in mainstream elementary schools. In many towns and villages there are schools known as ‘Roma schools’, which are made up almost exclusively of Roma pupils, while a few hundred metres away there are usually other schools which are attended by other pupils, the vast majority of whom are non-Roma.

⁶ ERRC, Press Release: Council of Europe body finds Czech Republic responsible for violating rights of children with disabilities and Romani children through institutionalisation, 23 November 2020. Available at: http://www.errc.org/press-releases/council-of-europe-body-finds-czech-republic-responsible-for-violating-rights-of-children-with-disabilities-and-romani-children-through-institutionalisation?fbclid=IwAR3PXI2tvKlzWxS1LRmHDAbc7Mlga5Pt-qluzZX4UscHXU8_IzoBqp6MEow.