

**PARALLEL REPORT  
BY  
THE EUROPEAN ROMA RIGHTS CENTRE  
TO THE COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION  
ON THE CZECH REPUBLIC  
FOR ITS CONSIDERATION AT THE 79TH SESSION  
8 August to 2 September 2011**

## INTRODUCTION

1. The **European Roma Rights Centre (ERRC)**<sup>1</sup> submits this parallel report to the United Nations Committee on the Elimination of Racial Discrimination (the Committee or CERD) commenting on the Combined Eighth and Ninth Periodic Report of the Czech Republic.<sup>2</sup> The issues addressed in this report include:
  - a. continuing segregation of Romani children in education (Article 3);
  - b. insufficient state response to cases of anti-Roma violence (Article 4); and
  - c. failure to adequately address involuntary sterilisations of Romani women (Article 5).
2. In its 2007 Concluding Observations, the Committee touched upon all of these issues, particularly encouraging the Czech Republic to:

[...] develop effective programmes specifically aimed at putting an end to the segregation of Roma in this area, and ensure that Roma children are not deprived of their right to family life and to education of any type or any level;

[...] ensure that allegations of police ill-treatment and misconduct towards persons belonging to minority groups, in particular the Roma, are promptly and impartially investigated and prosecuted;

[...] take strong action without further delay, to acknowledge the harm done to the victims [of coercive sterilisation], whether committed before or after 1991, and recognize the particular situation of Roma women in this regard. [The State party] should take all necessary steps to facilitate victims' access to justice and reparation, including through the establishment of criminal responsibilities and the creation of a fund to assist victims in bringing their claims. The Committee urges the State party to establish clear and compulsory criteria for the informed consent of women prior to sterilization and ensure that criteria and procedures to be followed are well known to practitioners and the public.<sup>3</sup>

3. The ERRC is concerned that the Czech Republic has done little to implement these recommendations and that progress in complying with the International Convention on the Elimination of All Forms of Racial Discrimination is slow.

## CONTINUING SEGREGATION OF ROMANI CHILDREN IN EDUCATION

4. In 2007, the European Court of Human Rights (ECtHR) pronounced the system of segregated education of Romani children in the Czech Republic an unacceptable practice and a violation of human rights. In *D.H. and Others v the Czech Republic*, a case brought by the ERRC on behalf of 18 Romani applicants, the Grand Chamber of the ECtHR found that the Czech Republic had discriminated against Romani children by segregating them into "special educational schools" intended to cater for children with intellectual disabilities.<sup>4</sup>
5. More than three years after the Court decision, the Council of Europe's Human Rights Commissioner, Thomas Hammarberg, noted that "there appear to have been hardly any changes

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<sup>1</sup> The European Roma Rights Centre (ERRC) is an international public interest law organisation engaging in a range of activities aimed at combating anti-Romani racism and human rights abuse of Roma, in particular strategic litigation, international advocacy, research and policy development, and training of Romani activists. Information about the European Roma Rights Centre is available at: <http://www.errc.org>

<sup>2</sup> Czech Republic, *Eighth and ninth periodic reports*, 9 August 2010, available at: <http://www2.ohchr.org/english/bodies/cerd/cerds79.htm>.

<sup>3</sup> Committee on the Elimination of Racial Discrimination, Concluding Observations of the Committee on the Elimination of Racial Discrimination: Czech Republic, 11 April 2007 available at: <http://www2.ohchr.org/english/bodies/cerd/cerds70.htm>, 4-6.

<sup>4</sup> European Court of Human Rights (ECtHR), *D.H. and Others v the Czech Republic*, Application no. 57325/00, 13 November 2007, available at: <http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=825443&portal=hbkm&source=externalbydocnumber&table=?F69A27FD8FB86142BF01C1166DEA398649>

on the ground” since the *D.H. and Others* judgment was handed down in 2007.<sup>5</sup> The Czech system of education for children with disabilities is not an inclusive one and violates the rights of children with disabilities as well as those, like the children in DH and thousands of others, who are placed in the system on account of their ethnicity and socio-economic status.

6. State monitoring bodies have confirmed the continuing problem of discrimination of Romani children and identified a lack of improvement in this field. In March 2010, the Czech School Inspection Authority issued a report which indicated that 83% of the former special schools had not changed substantively, describing them as “hidden special schools.” Romani children still constituted 35% of children diagnosed with light mental disability, while this number in some regions was as high as 50%. Furthermore, the report indicated that at least 5000 children without any diagnosis of disability were placed in the former “special schools” for children categorised as having a disability.<sup>6</sup>
7. The ERRC is also seriously concerned about the recently adopted legislation which legalises the status quo; perpetuating the placement of children without disabilities into segregated classes established for children with disabilities. Decree 147/2011 Coll., which amends Decree 73/2005 Coll. on education of children, pupils and students with special educational needs and children, pupils and students of extraordinary talent, stipulates that a pupil without disability can be placed into a class for children with medical disability if he/she “is a pupil with social disadvantage and was continuously failing at mainstream school in the long term even with respect to special educational needs and using of equalising measures.”<sup>7</sup> This legislation perpetuates numerous violations of rights: segregating children with disabilities from the mainstream and segregating Romani children from the mainstream because of their socio-economic status. Now under Czech law, both disability and socio-economic status can be used as a proxy for race, keeping Romani children isolated from their non-Romani peers.
8. The Czech Government has taken other steps backward in its approach to inclusive education. Since 2007, several key staff members from the Ministry of Education have resigned in protest against its policies. After the former Deputy Minister for Social Programmes was demoted, her staff was merged with the Department of Special Education (later cut in half) and she subsequently resigned from her most recent advisory position to the Minister.<sup>8</sup> The Director of the Department for Special Education and Equal Opportunities resigned and publicly protested against the Ministry’s policies.<sup>9</sup> Abandoning most progress made by the previous Ministry of Education, which had worked in cooperation with NGOs and independent experts in 2009, the new administration failed to consult relevant stakeholders and experts on their new proposals.<sup>10</sup> Furthermore, authorities have ignored the urgency of addressing the education of Romani children. This is exemplified by the National Action Plan of Inclusive Education, adopted in 2010, which has no concrete actions planned before 2014.<sup>11</sup> Three more classes of children will be

<sup>5</sup> Council of Europe, 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; CommDH (2011)3, 3 March 2011, available at <https://wcd.coe.int/wcd/ViewDoc.jsp?id=1754217>, para 60.

<sup>6</sup> Czech School Inspection, Thematic Report – Compendium of results from the thematic control activity in practical elementary schools, (March 2010), translation by OSF Prague, available at: [http://www.osf.cz/download/files/CZ\\_CSI\\_Thematic%20Report\\_2010.pdf](http://www.osf.cz/download/files/CZ_CSI_Thematic%20Report_2010.pdf)

<sup>7</sup> Section 3 of the Decree 147/2011 Coll., available at: [http://www.msmt.cz/file/16097\\_1\\_1/](http://www.msmt.cz/file/16097_1_1/)

<sup>8</sup> iDNES.cz, “Kopicova dismissed three deputies of the ministry of education, she wants to save money” (Kopicová odvolala tři náměstky ministerstva školství, chce spořit), *iDNES.cz*, 11 March 2010, available at: [http://zpravy.idnes.cz/kopicova-odvolala-tri-namestky-ministerstva-skolstvi-chce-sporit-1dr-studium.aspx?c=A100311\\_172437\\_studium\\_bar](http://zpravy.idnes.cz/kopicova-odvolala-tri-namestky-ministerstva-skolstvi-chce-sporit-1dr-studium.aspx?c=A100311_172437_studium_bar)

<sup>9</sup> Lidovky.cz, “Roma will sue the Czech Republic. Reportedly, they wrongly end up in special schools” (Romové zažalují Česko. Neprávem prý končí ve zvláštních školách), *News server of Lidové noviny*, 10 November 2010, available at: [http://www.lidovky.cz/romove-zazaluji-cesko-nepravem-pry-konci-ve-zvlastnich-skolach-pwi-/ln\\_domov.asp?c=A101110\\_165330\\_ln\\_domov\\_pks](http://www.lidovky.cz/romove-zazaluji-cesko-nepravem-pry-konci-ve-zvlastnich-skolach-pwi-/ln_domov.asp?c=A101110_165330_ln_domov_pks); ERRC, Greek Helsinki Monitor (GHM), Open Society Justice Initiative (OSJI), *Submission to the Committee of Ministers: The Continued Segregation of Romani Schoolchildren*, 30 November 2011, available at: <http://www.errc.org/cms/upload/file/fourth-communication-to-the-committee-of-ministers-on-judgment-implementation-30112010.pdf>

<sup>10</sup> Email communication from a representative of the Ministry of Education to the ERRC, 7 February 2011.

<sup>11</sup> ERRC, OSJI, *Submission to the Committee of Ministers: The Continued Segregation of Romani Schoolchildren in the Czech Republic*, 8 March 2011, available at: <http://www.errc.org/cms/upload/file/fifth-communication-to-the-committee-of-ministers-on-judgment-implementation-08032011.pdf>

wrongly placed into special education and sentenced to life in social exclusion before the Ministry takes the first real steps to prevent this from happening.

## INSUFFICIENT STATE RESPONSE TO ANTI-ROMA VIOLENCE

9. While the State reported some progress in addressing racially motivated violence in its submission to the Committee,<sup>12</sup> the ERRC notes that the statistics provided only relate to identified and prosecuted perpetrators. According to monitoring of the state response to anti-Roma violence in 14 cases reported by the media, in four cases no suspects were identified, and in only two cases was racial motive confirmed by the court. Perpetrators received only suspended sentences or fines in two cases of the seven cases in which judgments were issued. "In one case, a well-known neo-Nazi supporter who selected and attacked Romani individuals on the street was sentenced to 400 hours of community labour, which many consider insufficient due to the severity of his crime and his affiliation with the project White Justice."<sup>13</sup>
10. The research also revealed that State authorities do not use the available guidance of the General Prosecutor on investigating and prosecuting extremism.<sup>14</sup> The ERRC conducted desk research to identify cases of anti-Roma violence and sent a series of requests for information to police departments, prosecutors and courts seeking anonymised data about the cases, including the treatment of racial motivation in the investigation and prosecution. Only one prosecutor indicated that they were aware of the methodological guidance on hate crimes available to prosecutors, in their response to the ERRC letters. Instead, the vast majority claimed that their only available guidance is the Criminal Code.<sup>15</sup>

## FAILURE TO ADDRESS ADEQUATELY COERCIVE STERILISATIONS OF ROMANI WOMEN

11. In 2005, the Czech Public Defender of Rights (Ombudsman) acknowledged that the practice of sterilisation without free and informed consent occurred during communism in the former Czechoslovakia, mostly affecting Romani women.<sup>16</sup> Subsequently, in November 2009, Czech authorities expressed regret for the illegal sterilisations of women in the Czech Republic through Resolution 1424.<sup>17</sup> However, significant barriers persist to access to justice for the victims of coercive sterilisation, mostly Romani women. The primary challenge is that the three-year statute of limitation, dating from the moment of sterilisation, prevents the majority of victims from bringing civil claims for damages due to involuntary sterilisations. In the absence of any other redress mechanism, there is no other tool that can be used to obtain any form of compensation.
12. The ERRC recently sent letters to the Ministry of Health, the Association of Hospital Gynaecologists and Obstetricians and the Czech Gynaecological and Obstetrical Society highlighting the guidelines of the International Federation of Gynaecology and Obstetrics (FIGO)<sup>18</sup> designed to protect against coercive sterilisation, and asking the Ministry of Health to distribute them to all relevant medical practitioners in the Czech Republic and amend legislation to comply with these guidelines.<sup>19</sup> No responses have been received to date.

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<sup>12</sup> Committee on the Elimination of Racial Discrimination, *Eighth and ninth periodic reports due in 2010, Czech Republic*, CERD/C/CZE/8-9, available at: <http://www2.ohchr.org/english/bodies/cerd/docs/CERD.C.CZE.8-9.doc>, page 10

<sup>13</sup> European Roma Rights Centre, *Imperfect Justice: Anti-Roma Violence and Impunity*, March 2011, available at: <http://www.errc.org/cms/upload/file/czech-hungary-slovakia-imperfect-justice-06-march-2011.pdf>, page 11

<sup>14</sup> The manual (in Czech only) is available at: <http://portal.justice.cz/nsz/soubor.aspx?id=82741>.

<sup>15</sup> European Roma Rights Centre, *Imperfect Justice: Anti-Roma Violence and Impunity*, March 2011, available at: <http://www.errc.org/cms/upload/file/czech-hungary-slovakia-imperfect-justice-06-march-2011.pdf>, page 11

<sup>16</sup> Final Statement of the Public Defender of Rights in the Matter of Sterilisations Performed in Contravention of the Law and Proposed Remedial Measures. JUDr. Otakar Motejl, Public Defender of Rights, Brno, 23 December 2005, available at: <http://www2.ohchr.org/english/bodies/cerd/docs/ngos/Public-defender-rights.pdf>.

<sup>17</sup> Resolution of the Government of the Czech Republic 1424 from 23 November 2009. Available in Czech at: [http://racek.vlada.cz/usneseni/usneseni\\_webtest.nsf/0/6430E40ED2EFF39AC1257674004347C2/\\$FILE/1424uv091123.1424.pdf](http://racek.vlada.cz/usneseni/usneseni_webtest.nsf/0/6430E40ED2EFF39AC1257674004347C2/$FILE/1424uv091123.1424.pdf).

<sup>18</sup> International Federation of Gynecology and Obstetrics (FIGO), *Ethics Guidelines on Female Contraceptive Sterilisation*, March 2011, available at: <http://www.figo.org/files/figo-corp/FIGO%20-%20Female%20contraceptive%20sterilization.pdf>.

<sup>19</sup> ERRC, "ERRC Urges Compliance with Ethics Guidelines on Sterilisation", press release, 4 July 2011, available at: <http://www.errc.org/cikk.php?cikk=3905>.

## OTHER ISSUES

### Data collection

13. In its Periodic Reports, the State has declared that “[u]nder applicable legislation of the Czech Republic, membership of a national minority or ethnicity is regarded as sensitive data which, outside a population census, cannot be legally collected and registered.”<sup>20</sup>
14. The ERRC notes that the collection of data disaggregated by ethnicity is not only legal and advisable according to international human rights standards, but it is also permitted by Czech legislation. Legislation referred to by the State stipulates that sensitive data may be collected with the consent of the subject.<sup>21</sup>

### Overrepresentation of Romani children in state care

15. The overrepresentation of Romani children in Czech child care institutions is of particular concern. A recent multi-country study conducted by the ERRC,<sup>22</sup> revealed that within the 22 institutions in the five regions of the Czech Republic included in the study, a total of 773 children were living in child protection institutions; a total from which an estimated 314 (40.6%) children were Roma.<sup>23</sup> The State’s failure to collect nation-wide data disaggregated by ethnicity poses an obstacle to fully understanding the scope of this problem. In most parts of the child protection system, the ethnic identity of the child is not officially recorded. However the data on ethnicity of the children are available for infant homes and children’s homes for children under three years of age. The latest official data indicates that there are 419 Romani children (30%), out of 1,391 children under three years of age living in infant homes and children’s homes, whereas Romani children under three represent only 2.99% of all children in the Czech Republic under three.<sup>24</sup>
16. The operation of the child protection system in the Czech Republic also contributes to the overrepresentation of Roma, through the conditions for both entering and leaving the system. Many children are placed in an institution as a “preliminary measure”, intended to assess the actual situation of the child. Although the law prescribes a limit of eight weeks for the diagnostic stay,<sup>25</sup> a 2008 report from the Ministry of Interior indicated that children with this status spent, on average, five and half months in diagnostic care, while the most extreme case was four years.<sup>26</sup> The child protection system also generally suffers from a severe shortage of social and legal protection (SLP) authorities to review cases of children at risk and to monitor children who have been placed in institutions. SLP authorities had 582,203 families to work with, while they had only 1,460 employees, which gives a very rough average of 399 families for each SLP worker per year. Thus it has become a common practice for SLP authorities to assess the whole family from which the “problematic” child (most often identified by the school) comes, which means it is more probable that if the child is removed his siblings will be removed too; in the research sample, this probability was recorded at 76%. There are also huge differences as to the quality of the individual SLP social workers and their attitude to the children and families (and vice-versa). Discriminatory sentiments have been observed among SLP workers in their decision to place a child into the child protection system. Social workers explain that Romani children are taken into state care not for poverty explicitly, but because Romani families are perceived to be spending

<sup>20</sup> Committee on the Elimination of Racial Discrimination, *Eighth and ninth periodic reports due in 2010, Czech Republic*, CERD/C/CZE/8-9, available at: <http://www2.ohchr.org/english/bodies/cerd/docs/CERD.C.CZE.8-9.doc>, page 13

<sup>21</sup> Act 101/2000 Coll on protection of personal data, available at:

<http://portal.gov.cz/wps/portal/s.155/701?kam=zakon&c=101/2000>, Article 9.

<sup>22</sup> The study was carried out in partnership with the Bulgarian Helsinki Committee, the Milan Simecka Foundation and osservAzione, in Bulgaria, the Czech Republic, Hungary, Italy, Romania and Slovakia. The following section is based on the initial findings of this research, to be detailed in a forthcoming ERRC report, *Life Sentence: Romani Children Over-represented in the Child Protection System*, available at: [www.errc.org](http://www.errc.org).

<sup>23</sup> The field research was conducted in the following regions of the Czech Republic between August and November 2010: Moravskoslezský region, Středočeský region, Ústecký region, Karlovarský region and Zlínský region.

<sup>24</sup> ERRC, *Life Sentence: Romani Children Over-represented in the Child Protection System: Country report on Czech Republic*, available at: [www.errc.org](http://www.errc.org). [forthcoming].

<sup>25</sup> Act 109/2002 Coll. on Execution of Institutional or Protection Care at School Facilities and on Preventive-Educational Care at School Facilities, Article 5, section 6.

<sup>26</sup> Ministry of Interior, *Hodnocení Systému Péče O Ohrožené Děti [Evaluation of the care of Children at Risk]*, June 2008, available at: [http://aplikace.mvcr.cz/archiv2008/dokument/2007/prevence/mladez1016/hodnoceni\\_systemu3.pdf](http://aplikace.mvcr.cz/archiv2008/dokument/2007/prevence/mladez1016/hodnoceni_systemu3.pdf).

immorally, as the “undeserving poor” who are not able to raise their children properly. Romani families, however, cited housing and economic conditions most often as the reasons that their children were taken into state care.<sup>27</sup>

17. Romani children also remain overrepresented in the child protection system because of discriminatory treatment in the process of leaving the system: either through adoption, placement with a foster family or return to the biological family. Foster parents are able to decide whether they would like to have a Romani child or not. While the Act No. 359/1999 on Socio/Legal Protection does not detail any kind of inquiry into the ethnic background of the child or the preferences of the prospective foster care family about the child’s ethnic background, it has been a standard procedure to ask the foster care applicants whether they would “accept a child of a different ethnicity to theirs” in the official questionnaires issued by the intermediary institutions. Prospective foster care parents or adoptive parents tend to avoid Romani (and other different ethnicity) children.<sup>28</sup> Every child in the SLP system has its own personal documentation which contains detailed data about its family, and also information about the ethnicity of the parents; the social worker fills in this information in the household together with the parents. The practice in an infant home is that the child’s ethnicity is deduced from its name, appearance or information from the SLP representative that knows the family.<sup>29</sup>

## RECOMMENDATIONS

### **In order to fully implement the International Convention on the Elimination of All Forms of Racial Discrimination, the Czech government should, without further delay:**

18. Undertake the following measures with respect to segregated education:
- Adopt legislation in 2011 making segregation on the basis of ethnicity or disability illegal in the Czech Republic and explicitly mandating school desegregation of Romani children as part of a wider process of implementing a fully inclusive educational system for all, including children with disabilities;
  - Strengthen anti-discrimination legislation to enable positive action leading to the abolition of segregated settings and achievement of better education outcomes for children from Romani communities and children with disabilities; and
  - Adopt a concrete plan and timeline commencing in 2011 with clear annual targets to eliminate school segregation and secure the full integration of all Romani children and children with an actual or perceived disability into an inclusive education setting within five years.
19. Undertake the following measures with respect to anti-Roma violence:
- Scale up or implement programmes to increase the number of Roma employed in police forces;
  - Senior government officials should publicly denounce every instance of anti-Roma violence and other kinds of hate crimes;
  - Draft and distribute to all respective authorities clear guidance on the investigation and prosecution of violence against Roma and hate crimes, in line with guidance available from the OSCE and countries such as the United Kingdom;<sup>30</sup>
  - Prosecute to the fullest extent of the law all perpetrators of violence and hate crimes against Roma; and
  - Gather and disseminate data disaggregated by ethnicity to identify the extent of anti-Roma violence and the success of law enforcement in prosecuting incidents of anti-Roma violence.
20. Undertake the following measures with respect to coercive sterilisations:
- Widely distribute the guidelines of the International Federation of Gynaecology and Obstetrics (FIGO)<sup>31</sup> to all relevant medical practitioners in the Czech Republic and amend legislation to

<sup>27</sup> ERRC, *Life Sentence: Romani Children Over-represented in the Child Protection System: Country report on Czech Republic*, available at: [www.errc.org](http://www.errc.org). [forthcoming]

<sup>28</sup> Hrušáková, M. a kolektiv. *The Family Act. The Act on the Registered Partnership. Commentary*. 4. Edition. Praha: C.H. Beck, 2009, 305.

<sup>29</sup> ERRC, *Life Sentence: Romani Children Over-represented in the Child Protection System: Country report on Czech Republic*, available at: [www.errc.org](http://www.errc.org). [forthcoming]

<sup>30</sup> Detailed guidance was published by the Association of Chief Police Officers in March 2005, available at: <http://www.acpo.police.uk/asp/policies/Data/Hate%20Crime.pdf>.

- comply with these guidelines (legislative changes concerning the law on informed consent and the lapse of time between information provided and expressing consent);
- Adopt measures that include preventive components (such as an awareness campaign for patients and doctors) as well as a destigmatisation campaign for victims;
  - Amend relevant legislation concerning statutory limitations in personal injury cases to adjust the three year time limit to start from the date of discovery of the injury rather than date of injury in the case of sterilisation; and
  - Establish, in legislation and practice, an ex gratia compensation procedure modelled on the Swedish compensation mechanism introduced for victims of coercive sterilisation.
21. Undertake the following measures with respect to data:
- On an annual basis collect and analyse disaggregated data with special emphasis on the most vulnerable groups, including Romani women and children, in order to ensure that the Czech legal and policy framework on non-discrimination is adequately implemented and to ensure compliance with European and international non-discrimination provisions;
  - Develop and improve indicators, particularly in the areas of housing, health, education, employment and anti-Roma violence, which will effectively gauge the situation of vulnerable groups in society, including Roma; and
  - Use these indicators and data effectively in formulating, evaluating, revising and funding as necessary legislation, policies and programs for the implementation and monitoring of the Convention.
22. Undertake the following measures with respect to Romani children in the child protection system:
- . Amend domestic legal standards to provide full and adequate protection to Romani children and families at risk of separation, including:
    - a. Ensure that child removal on the basis of poverty or material concerns is prohibited, in law and in practice;
    - b. Create a legal obligation to regularly collect data disaggregated by ethnicity and other relevant factors in the area of child protection; and
    - c. Provide free legal support to families at risk of child removal, especially Romani families endangered by discrimination and social exclusion.
  - Revise national child protection policy to include Romani children and families as at particular risk of endangerment, including specific objectives, benchmarks and indicators, targeted programme plans, and monitoring and evaluation systems for assessing the impact of policies on Roma;
  - Develop measures and target funding to support families who are unable to provide their children with adequate conditions and prevent the removal of their children on material grounds. Review child protection policy with anti-poverty policies with a view to identifying any gaps and programming needs; and
  - Oblige and adequately finance social work and child protection authorities to implement programmes for prevention and for the return of children in State care to their families.

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<sup>31</sup> International Federation of Gynecology and Obstetrics (FIGO), Ethics Guidelines on Female Contraceptive Sterilisation, March 2011, available at: <http://www.figo.org/files/figo-corp/FIGO%20-%20Female%20contraceptive%20sterilization.pdf>.