

Submission to the Human Rights Committee for the list of issues on the Czech Republic

DECEMBER 2012

SUMMARY AND RECOMMENDATIONS

The Open Society Justice Initiative presents this submission in preparation for the Human Rights Committee's adoption of the list of issues for the Czech Republic in advance of its review of the country's implementation of the International Covenant on Civil and Political Rights in July 2013.

In its July 2007 Concluding Observations on the Czech Republic, the Human Rights Committee was concerned about discrimination against Roma in education and the disproportionate number of Romani children attending classes with "distinct curricula", and recommended that the Czech government adopt programs to end segregation of Roma in schools.¹ Only a few months later, in November 2007, the European Court of Human Rights in the case *D.H. and Others v. the Czech Republic* found that the disproportionate placement of Romani children in what was then known as "special schools", where they were segregated from their mainstream peers and taught to a limited curriculum, constituted unlawful discrimination against Romani children in their enjoyment of the right to education.

Since 2007, little has changed. Romani children, along with children with disabilities, continue to be segregated into "practical elementary schools" (the renamed former "special schools"). Romani children also continue to be diagnosed with mental disabilities at disproportionate rates compared to children of non-Roma Czech ethnicity. Instead of being supported for any learning needs they may have, Romani children and children with disabilities continue to be excluded and provided with a substandard education that is not in their best interests and fails to ensure these children reach their full potential. Recent research indicates that discriminatory practices against Romani children are now also taking place in mainstream schools where they are relegated to separate classes and taught to a limited curriculum.

The laws, policies, and practices which support segregation for both sets of children -- and result in overrepresentation of Romani children diagnosed with a disability when they have none -- have

had devastating and long-lasting consequences. Both sets of children are left with limited or no qualifications for the future as a consequence of their limited and segregated education.²

This submission demonstrates that practices propelling segregation continue to give rise to serious concerns under ICCPR Article 2 on non-discrimination, Article 24 on protection measures for children, and Article 26 on equality before the law. The Committee's General Comments on Article 24 (No. 17 on the rights of the child) and Article 26 (No. 18 on non-discrimination) both confirm that the Covenant's protection of equality before the law and non-discrimination in law and in fact extends to the exercise of all rights, whether directly protected under the Covenant or not, which the State party confers by law on individuals within its territory or under its jurisdiction, and must therefore be understood to also apply to the right to education.

The Open Society Justice Initiative promotes human rights and builds legal capacity through litigation, advocacy, research, and technical assistance. The Justice Initiative has worked extensively in the Czech Republic since 2007 to ensure the effective implementation of the *D.H.* judgment and also promotes inclusive education for all children, including children with disabilities. While this submission focuses predominantly on discrimination against Romani children in education, the system discriminates against both sets of children and needs redress.

The Justice Initiative is encouraged by a new openness to inclusive education with a change of Education Minister and his team at the Czech Ministry of Education during 2012. However, the practical implementation of policies to ensure Romani children and children with disabilities can enjoy their right to education, free from discrimination, is still lacking. To allow the Committee to fully assess the Czech Republic's compliance with its obligations under the Covenant in practice, the Justice Initiative encourages the Committee to include in its list of issues the following questions to the Czech government:

- Will the Czech government commit to closing all practical schools and educating all children in mainstream schools, and if so, by when?
- What measures have been taken to end segregation of Romani children (and children with disabilities) into "practical schools," and to end separate classes for Romani children in mainstream schools?
- Can the government outline how – and by when -- it plans to transfer Romani children and children with disabilities from practical schools into mainstream schools and classes and ensure they receive appropriate support for their learning needs in a mainstream setting?
- Please provide detailed and up to date information on the implementation of the recently adopted "Plan of measures for the execution of the judgment of the European Court of Human Rights in the case of *D.H. and Others v. the Czech Republic*."
- Will the government be developing a more comprehensive plan, with benchmarks, a timetable and budget, that will fully implement the *D.H.* judgment beyond the current plan's 2014 timeline, and ensure inclusive education for all children?

The Czech Republic's obligations under the Covenant

Article 2 of the Covenant protects the right not to be discriminated against in the enjoyment of the other rights enshrined in the Covenant, while Article 26 protects the right to equality before the law, and Article 24 provides that states must adopt protective measures for children without discrimination.

The Committee has stated in its General Comment No. 18 on non-discrimination that Article 26 “does not merely duplicate the guarantee already provided for in article 2 but provides in itself an autonomous right. It prohibits discrimination in law or in fact in any field regulated and protected by public authorities. Article 26 is therefore concerned with the obligations imposed on States parties in regard to their legislation and the application thereof. Thus, when legislation is adopted by a State party, it must comply with the requirement of article 26 that its content should not be discriminatory. In other words, the application of the principle of non-discrimination contained in article 26 is not limited to those rights which are provided for in the Covenant.”³

The Committee, in its General Comment No. 18, has also explained that it understands “discrimination” as used in the Covenant to “imply any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms.”⁴

General Comment No. 17 on the rights of the child also states that Article 26 “governs the exercise of all rights, whether protected under the Covenant or not, which the State party confers by law on individuals within its territory or under its jurisdiction”. As such, the protection against discrimination in the Covenant should be understood to apply to the right to education. The Committee has further stated in its General Comment No. 17 on the rights of the child that under Article 24 states should take every possible measure to foster the development of children’s personality and “to provide them with a level of education that will enable them to enjoy the rights recognized in the Covenant, particularly the right to freedom of opinion and expression.”

The Committee has on several occasions been concerned with discrimination against Roma in education, including similar forms of segregated schools. The Committee, for example, recommended that Slovakia “take immediate steps to eradicate the segregation of Roma children in its education system by ensuring that the placement in schools is carried out on an individual basis and is not influenced by the child’s ethnic group”. It further recommended that the state party “take concrete steps to ensure that decisions for the placement of all children, including Roma children, in special needs classes may not be made without an independent medical evaluation nor based solely on the capacity of the child”.⁵

The Committee has also on previous occasions been concerned with discrimination against persons with disabilities that may hinder their integration into political, social and economic life demonstrating that the enumerated prohibited grounds of discrimination in Article 2 and Article 26 are not exhaustive.⁶ The Committee has called on states to implement the provisions of the Convention on the Rights of Persons with Disabilities, to which the Czech Republic is also a party.⁷

The Czech Republic has a clear obligation under the Covenant to ensure that its laws, policies and practices in the area of education do not discriminate against any particular ethnic group or on the basis of disability. The measures taken to date to comply with these obligations have been wholly inadequate and the Committee should during the review ensure that the government provides it with all necessary information about its plans to end segregation of and discrimination against Romani children in education.

Lack of progress to end segregation and discrimination

At the last review of the Czech Republic in 2007, the Committee acknowledged “the elimination of the category of ‘special schools’”. However, it remained “concerned that a disproportionately large number of Roma children attend classes with distinct curricula, which appears to lack sensitivity for the cultural identity of, and specific difficulties faced by, Roma children.” The Committee was “also concerned at reports that a disproportionately high number of Roma children are removed from their families and placed in social care institutions. (arts. 24, 26 and 27).” It recommended that “the State party should carry out an assessment of the specific educational needs of the Roma, taking account of their cultural identity, and develop programs aimed at ending the segregation of Roma in schools. The State party should further ensure that Roma children are not deprived of their right to family life.”⁸

Since the Committee’s last review, the Czech government has taken inadequate steps to implement the Concluding Observations to ensure that Romani children and children with disabilities have equal access to education as guaranteed by the Covenant in Article 2 on non-discrimination read together with Article 26 on equality before the law and Article 24 on protection measures for children.

While the Czech government adopted the Anti-Discrimination Act in 2009, as recommended by the Committee, this legislation has not yet been tested through judgments in the Czech courts to see if it would, in practice, act as an effective safeguard against discrimination, including in education.

The state report (dated November 28, 2011) acknowledges that Romani children have unequal educational opportunities and refers to the 2010 report of the Czech School Inspectorate, which found that 83 per cent of “practical schools” had not changed substantively their education programs from the pre-2005 period when they were run as “special schools”. The survey found that Romani children were on average 12 times more likely than their non-Roma peers to attend such schools and Roma pupils constituted 35 per cent of children placed in the surveyed practical schools.

The state report notes that the government has taken a number of steps in order to address this situation, including the development in 2010 of a National Action Plan for Inclusive Education (NAPIE), amending the Education Act and adopting two legislative decrees.⁹ However, these measures have been insufficient to eliminate longstanding discriminatory practices against Roma.

The NAPIE is not a comprehensive plan; it lacks concrete indicators, targets, and funding; and has an unacceptably long timeframe for implementation. In fact its implementation has been effectively stalled since the expert platform advising the government on its design resigned in May 2011, citing a lack of government commitment to implementing an inclusive education program. The government has recently presented a new plan to implement an inclusive education program, further discussed below.

The legislative 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 – which came into force in September 2011, contain several problematic elements. 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”, who are often Roma, 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.

According to the state report, Decree 72/2005 also introduced new procedures for ensuring the consent of parents for the placement of children in practical schools.¹⁰ However, these provisions have not substantially strengthened the rights of parents and/or legal guardians. Concerns also remain about the close connection between counseling centers – at which children are tested for “mild mental disability” – and the practical schools. The headmasters of practical schools are often also in charge of the counseling center, throwing into doubt the independence of testing assessments. Furthermore, as acknowledged by the state report,¹¹ the diagnostic tools used for assessing whether a student may have a mild mental disability have been found to be lacking in reliability and cultural appropriateness.

A July 2012 Czech School Inspectorate report cited the legislative decrees as the reason for a reduced number of Romani children being taught to a limited curriculum, but failed to detail how the decrees produced such a reduction, nor whether the reduction was indeed the result of the decrees’ operation. Despite its finding that the percentage of Romani children in practical education decreased from its previous 2010 report, this new report still found that Romani children made up 26.4% of all children taught to a limited curriculum¹² – clear evidence of continued discrimination against Romani children.

Meanwhile, a June 2012 report issued by the Czech Public Defender of Rights (Ombudsman), using a more comprehensive methodology than the Czech School Inspectorate, found in a country-wide representative survey for the school year 2011/2012 that the ratio of Romani children in the former “special schools” hovered at 32% to 35%. This proportion was “wholly incommensurate” to the proportion of Romani people in Czech society (approximately two-three percent of the population), the Ombudsman concluded, and thus clear evidence of continued discrimination against them in terms of access to education.¹³ The Public Defender of Rights recommended that, among other things, further legislative changes be adopted.

Almost five years after the *D.H.* decision of the European Court, the Czech government in October 2012 during its Universal Periodic Review publicly committed to closing the practical schools and ensuring “individual integration into mainstream schools”.¹⁴ This commitment to closing practical schools does not appear, however, in the consolidated action plan for implementing the *D.H.* judgment which the Czech government delivered to the Council of Europe’s Committee of Ministers in November 2012.¹⁵ While the new plan is a welcome step and contains some positive elements – it recognizes the need to collect ethnically disaggregated data, acknowledges the flaws in the current diagnostic methods for detecting mild mental disability, for example – it has several shortcomings. It does not provide a clear commitment to or timeline for eliminating practical schools and classes or ending the disproportionate placement of Romani children in such schools as promised to the international community only a month earlier. The plan also lacks details on how the government intends to transfer children from practical schools to mainstream schools.

The continuing segregation of Romani children and children with disabilities into inferior schools and classes is in breach of the Czech Republic’s obligation under the Covenant to ensure equal access to education, which is a right conferred by the state and therefore subject to the requirement in Article 26 that it be enjoyed without discrimination.

The Committee should therefore request further details from the government about its consolidated action plan for an inclusive education agenda to assess whether it is likely put an end to segregation of and discrimination against Romani children and children with disabilities in education.

¹ Concluding observations of the Human Rights Committee: Czech Republic, CCPR/C/CZE/CO/2, 9 August 2007, para. 17, “While acknowledging the elimination of the category of “special schools”, the Committee remains concerned that a disproportionately large number of Roma children attend classes with distinct curricula, which appears to lack sensitivity for the cultural identity of, and specific difficulties faced by, Roma children. The Committee is also concerned at reports that a disproportionately high number of Roma children are removed from their families and placed in social care institutions. (arts. 24, 26 and 27). The State party should carry out an assessment of the specific educational needs of the Roma, taking account of their cultural identity, and develop programs aimed at ending the segregation of Roma in schools. The State party should further ensure that Roma children are not deprived of their right to family life.”

² The state report acknowledges that Romani children that have attended practical schools are at a higher risk of unemployment, poverty and social exclusion, Third periodic report of the Czech Republic, UN Doc. CCPR/C/CZE/3, 28 November 2011, para. 244.

³ Human Rights Committee, General Comment No. 18: Non-discrimination, 11 October 1989, para. 12.

⁴ Human Rights Committee, General Comment No. 18: Non-discrimination, 11 October 1989, para. 7.

⁵ Concluding Observations of the Human Rights Committee: Slovakia, CCPR/C/SVK/CO/3, 20 April 2011, para. 17.

⁶ Draft Concluding Observations of the Human Rights Committee: Belgium, CCPR/C/BEL/CO/5, 16 November 2010, para. 11; Concluding observations of the Human Rights Committee: Dominican Republic, CCPR/C/DOM/CO/5, 19 April 2012, para. 9.

⁷ Concluding observations of the Human Rights Committee: Dominican Republic, CCPR/C/DOM/CO/5, 19 April 2012, para. 9.

⁸ Concluding Observations of the Human Rights Committee: Slovakia, CCPR/C/SVK/CO/3, 20 April 2011, para. 17.

⁹ Third periodic report of the Czech Republic, UN Doc. CCPR/C/CZE/3, 28 November 2011, paras. 247-249.

¹⁰ Third periodic report of the Czech Republic, UN Doc. CCPR/C/CZE/3, 28 November 2011, para. 248.

¹¹ Third periodic report of the Czech Republic, UN Doc. CCPR/C/CZE/3, 28 November 2011, para. 245.

¹² Communication from the Czech Republic concerning the case of D.H. and others against Czech Republic, Czech School Inspectorate Thematic Report “Progress in Transformation of Former Special Schools in the School Year 2011/2012,” Document no. DH-DD(2012)803E, July 2012, available at <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2153914&SecMode=1&DocId=1924992&Usage=2>.

¹³ Communication from the Czech Republic concerning the case of D.H. and others against Czech Republic, “Survey of the Public Defender of Rights into the Ethnic Composition of Pupils of Former Special Schools: Final Report”, Document no. DH-DD(2012)803E, June 2012, available at <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2153914&SecMode=1&DocId=1924992&Usage=2>. The report used two methods of third-party identification of the ethnicity of pupils: identification by the headteachers and identification by the staff of the Ombudsperson’s office. The results were 35 and 32 per cent respectively. See Part II: The description of the method.

¹⁴ Opening Statement of Mr. Vladimír Galuška, Head of the Delegation of the Czech Republic at the Universal Periodic Review, October 22, 2012, Geneva, Switzerland.

¹⁵ Plan of measures for the execution of the judgment of the European Court of Human Rights in the case of D.H. and Others v. the Czech Republic, “Equal Opportunities”.

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