



THE CZECH REPUBLIC'S DISCRIMINATORY TREATMENT OF ROMA BREACHES EU RACE DIRECTIVE

April 2013



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EXECUTIVE SUMMARY

Amnesty International, the European Roma Rights Centre (ERRC) and the Open Society Justice Initiative (the Justice Initiative) submit this briefing for consideration by the European Commission as part of its review of the Czech Republic's discriminatory treatment of Roma in relation to their right to education, and the Commission's determination of whether to institute infringement proceedings under the Race Equality Directive, 2000/43/EC ("the Directive") for this violation of the Czech Republic's obligations under the Directive.

The briefing focuses on the continuing discrimination against Romani children in the Czech Republic's education system which violates the country's obligations under the Directive. It provides evidence of disproportionate placement of Romani pupils in a system of inferior education and their segregation in Roma-only schools. In so doing it highlights the teaching of a separate, limited curriculum, which is a departure from the standard curriculum studied in the general education system in "practical schools" (formerly "special schools"). It also outlines evidence of how Romani students are being marginalised within the "reformed" education system, including in mainstream elementary schools.

In particular the briefing (a) explains the mechanisms by which Romani children are assigned to inferior schools and sub-standard education tracks within "normal" schools; (b) describes how, despite recent reforms, empirical data collected by Amnesty International, ERRC, and other organisations demonstrate continuing discrimination in the assignment of Romani children to inferior schools at levels comparable to that examined by the European Court of Human Rights (ECHR) in *DH & Others v Czech Republic* and which have been found to amount to racial discrimination; (c) highlights new, emerging forms of discrimination against Roma within so-called "reformed" schools whereby Romani students are segregated into inferior educational tracks within those schools; and (d) sets out the basis under which these practices fall within the protections of the Racial Equality Directive, and the authority of the European Commission to initiate infringement proceedings against the Czech Republic.

The briefing concludes that, contrary to the Czech Republic's obligations under the Racial Equality Directive:

- Romani children are still being systematically segregated and discriminated against by the Czech authorities in relation to education.
- Romani children are disproportionately placed in "practical schools" (formerly "special schools") where they, along with children with disabilities, are segregated from their mainstream peers.¹
- Discriminatory practices are now also occurring inside schools which identify themselves as *mainstream* elementary schools. They result in segregation of Roma in separate classes and schools.
- The fundamental hindrance to ending systemic discrimination against Romani pupils is the Czech Government's lack of political will, compounded by the failure to properly develop and implement adequate policy initiatives aimed at promoting inclusive education.

In the light of findings based on our own research and that of other national and international monitoring bodies and the lack of an effective response by the Czech authorities, we urge the Commission to start

¹ In 2005, the special schools were renamed "practical elementary schools", but the curriculum being taught has not changed. Former special schools continue to teach a reduced curriculum, but the majority (63.9 per cent) officially operate under the name of mainstream elementary schools

infringement proceedings according to Art. 258 Treaty of the Functioning of the European Union (TFEU) by submitting formal notice to the Czech Republic for its violation of protections against direct and indirect discrimination in the field of education as guaranteed in the Racial Equality Directive.

BACKGROUND ON SITUATION OF ROMA IN CZECH REPUBLIC

“The Czech educational system lacks the ability to keep in its mainstream a number of specific social groups of children, who are then exposed to segregation in separate groups or schools, and often don’t receive adequate regular education.” [Agency for Social Inclusion²]

According to estimates, there are between 150,000 and 300,000 Roma living in the Czech Republic (1.4 to 2.8 per cent of the population).³ They have been historically, and continue to be, subject to widespread discrimination, racism and prejudice across all aspects of society from housing to health care and employment. In the last few years there has been an upsurge in violent attacks against the Roma.⁴

In 2010 the then Council of Europe Commissioner of Human Rights, Thomas Hammarberg, based on country monitoring by his office, concluded that *“in the Czech Republic Roma continue to be particularly vulnerable to discrimination and racism and ... many members of this community... -- remain caught in a spiral of exclusion and marginalisation affecting practically all areas of life, from employment to housing, education and personal safety to name just a few.”*⁵

Despite repeated exposure and condemnation, as documented in this submission, some of the most glaring examples of discrimination have occurred in the education system. This is a result of several factors, including the existence of a two-tier education system comprising mainstream and “practical schools” (formerly special schools) in which children with disabilities have been historically placed. Such a tiered system is a clear reminder that classes which segregate and teach a reduced curriculum to Romani students and children with disabilities (both Roma and non-Roma) perpetuates discrimination and segregation against both groups.

Since 2009, the Czech authorities have carried out five enquiries into the ethnic composition of practical schools and classes.⁶ Although each survey was conducted with different (more or less reliable)

² Agency for Social Inclusion, *Strategy for Combating Social Exclusion for the period 2011-2015*, p. 19 Available at: <http://www.socialni-zaclenovani.cz/dokumenty/strategie-boje-proti-socialnimu-vylouceniu/>

³ Minister for Human Rights, *The Roma Integration Concept 2010-2013*, available at: http://ec.europa.eu/justice/discrimination/files/roma_czech_republic_strategy_en.pdf . See also European Commission, Framework for National Roma Integration Strategies’ Annex: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0173:FIN:EN:PDF>

⁴ See: *Attacks against Roma in the Czech Republic: January 2008-July 2012* (<http://www.errc.org/cms/upload/file/attacks-list-in-czech-republic.pdf>) listing 47 attacks during a four and a half year period.

⁵ 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. Strasbourg, 3 March 2011, para 26. Available at: <https://wcd.coe.int/ViewDoc.jsp?id=1754217&Site=CommDH&BackColorInternet=FEC65B&BackColorIntranet=FEC65B&BackColorLogged=FFC679>

⁶ **Ministry of Education 2009a:** Education Paths and Education Chances of Roma Pupils in Elementary Schools in the Neighbourhood of Socially Excluded Localities. Half of the monitored schools had more than 50 per cent Roma pupils; **Ministry of Education 2009b:** Analysis of An individual teacher’s approach to the Pupils with Special Educational Needs. The monitored schools had more than 44 per cent Roma pupils; **Institute for Information in Education 2009:** Monitoring of the General Education Program (RVP), Prague, Institute for Information in Education. The monitored schools had more than 35 per cent Roma pupils; **Czech School Inspectorate 2010:** General Information from the Thematic Inspection in the Former Special Schools, Prague, Czech School Inspectorate. The monitored schools had more than 35 per cent Roma pupils; **Public Defender of Rights 2012:** Research of the Public

methodology, they all provided evidence that Romani children are over-represented in the education stream designed for children with disabilities.

According to the Public Defender of Rights, Romani children make up approximately 35 per cent of pupils in non-mainstream education. Yet as he recognises in his 2012 report this is wholly disproportionate given the fact that Roma are only estimate to comprise less than three per cent of the total population.⁷ In the Moravia-Silesia region, whose capital is Ostrava, Romani pupils account for 41 per cent of those attending segregated practical schools.⁸ In his report, the Public Defender of Rights concludes that Roma continue to be substantially over-represented in classes with curricula for pupils with mild mental disabilities and that such over-representation amounts to segregation which predestines future generations of Roma to a life in poverty. The report contained recommendations that the government take measures to ensure the inclusion of Romani pupils in the mainstream education system.

Although 'equal' on paper to other elementary schools and officially part of the mainstream system, practical schools provide education that follows a reduced curriculum. As a result, graduates of practical schools have significantly limited options for future education and thus employment opportunities. On the face of it, legal barriers to continuing education at secondary and university level for practical school graduates have been eliminated. However, in practice, pupils following the reduced curriculum stand little chance of succeeding (or even accessing) any higher educational institution apart from vocational schools.⁹ The disadvantage faced by Roma in accessing higher education is exacerbated by the fact that, despite all elementary schools formally being equal before the law, the leaving certificates from practical schools and remedial educational tracks within "reformed" schools state that the pupil has followed a reduced curriculum.¹⁰

Apart from segregation by placement in "practical schools", Romani pupils are also subjected to segregation within mainstream schools. The development of Roma-only classes is a result, *inter alia*, of the inability of Czech schools to deal with "difference". The study commissioned by the Czech Ministry of Education has admitted that elementary schools are unable to accommodate the range of different children's needs, especially those who are socially excluded, have mental or physical disabilities and/or come from ethnic or migrant backgrounds.¹¹ In adopting its Strategy for Combating Social Exclusion in September 2011 the government itself acknowledged that the education system "lacks the ability to keep in its mainstream a number of specific groups of children, who are then exposed to segregation ... and often don't receive adequate regular education."¹²

Defender of Rights into the Question of Ethnic Composition of Pupils of Former Special Schools, Brno, Public Defender of Rights. The monitored schools had more than 32 per cent Roma pupils; **Czech School Inspectorate**

2012: According to a thematic Report on the Progress in Transformation of Former Special School in the School

Year 2011/2012, 26.4 per cent of the pupils were Roma. The methodological validity of this survey has been challenged by the Public Defender of Rights and the submitting organisations.

⁷ Survey of the Public Defender of Rights into the Ethnic Composition of Pupils of Former Special Schools: Final Report", June 2012, pp. 10 and 17 (in Czech). The survey used two methods of third party identification: by head-teachers (35 per cent) and by staff members of the Public Defender's office (35 per cent).

⁸ Ibid. p17

⁹ See ECRI report on the Czech Republic (fourth monitoring cycle) 2009. CRI (2009) 30, para 81.

¹⁰ *Czech Republic: Five More Years of Injustice: Segregated Education for Roma in Czech Republic* (Amnesty International/ERRC): EUR 71/006/2012 8 Nov 2012 p.5 (attached at Annex A)

¹¹ Analysis of an individual teacher's approach to the Pupils with Special Educational Needs: The Final Report of the Czech Ministry of Education project, Prague, 2009. Available at <http://www.msmt.cz>. pp. 115-120

¹² *Strategy for Combating Social Exclusion for the period 2011-2015*, p. 19

In the absence of any objective and reasonable justification, this segregation, often involuntary, of Roma in separate education amounts to a form of racial discrimination. It should be emphasised that the Czech Government has never provided any such justification. It is also submitted that no justification can ever be made in support of segregation along racial or ethnic lines.

In 2000, a group of 18 Romani applicants lodged a complaint with the European Court of Human Rights alleging discrimination in the enjoyment of their right to education. In 2007, the Grand Chamber of the Court held in *DH & Others v The Czech Republic*¹³ that there was a tendency in the Czech Republic to place children of Romani origin mostly in special schools and that this amounted to discrimination.

In so doing the ECHR identified that the following safeguards have to be in place to ensure that the schooling arrangements of Romani pupils take account of their possible social disadvantage:

- The goal of any separated education is ultimately inclusion in the mainstream education system¹⁴
- If tests are applied to assess the academic suitability of Roma students for mainstream education, they must identify clear criteria unrelated to ethnic origin and meet a legitimate, educational need¹⁵
- Where parental consent to placement in separate classes is sought, such consent should be fully informed. However, there can be no waiver of the right not to be subject to racial discrimination¹⁶

Some five years later, despite the *DH* case marking a watershed in international criticism and the decision being binding on the government, the Czech authorities have continued to fail to implement the judgment of the Court as part of their continued inability to address systemic discrimination and segregation against Romani pupils and children with disabilities. Indeed, it should be noted that whereas the proportion of Romani pupils in special schools in Ostrava was 50 per cent in 1999 (as cited in the *DH* judgment¹⁷) this had only fallen to 41 per cent by 2011 according to the Ombudsman.¹⁸

Wider societal prejudice and stigmatisation against Roma feeds into the education system where there is evidence of discriminatory attitudes among some teaching staff.¹⁹

RECENT CONDEMNATION BY A RANGE OF HUMAN RIGHTS AND EXPERT BODIES

The continuing discrimination against Roma in the education system has been subject to repeated condemnation by international, regional and national human rights bodies and expert institutions.

International

¹³ *D.H. and Others v. the Czech Republic*, European Court of Human Rights, Grand Chamber, Judgment of November 13, 2007. Available at: [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-83256#{\"itemid\":\[\"001-83256\"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-83256#{\)

¹⁴ *Ibid.* para. 207

¹⁵ *Ibid.* para. 201

¹⁶ *Ibid.* paras. 202-204

¹⁷ *Ibid.* para 18

¹⁸ Survey of the Public Defender of Rights into the Ethnic Composition of Pupils of Former Special Schools: Final Report, Annex: Description of the Method of the Survey. June 2012, p. 17

¹⁹ *Supra* n. 10 p. 18

In October 2012, in the most recent assessment of the Czech Republic as part of the UN Universal Periodic Review (UPR), 16 countries urged it to implement the National Plan of Action for Inclusive Education and to eliminate continued segregation of Romani children at school. Recommendations to the Czech Republic included the requirement to make available the necessary human and other resources for implementing the plan, and to set clear, measurable and ambitious targets for the transfer of children to ordinary education and for overall de-segregation of the school system (Finland).²⁰ In March 2013, the Czech Republic accepted these recommendations and gave assurances that equal opportunity will be central to the new education development strategies. However, it should be noted that the government only explicitly undertook to monitor the number of Roma students who receive education outside mainstream educational facilities while neglecting to address children in practical classes in mainstream schools.²¹

In 2011, the UN Committee on the Rights of the Child, while appreciating the government's own acknowledgement of the severity of the discrimination faced by the Roma population in its territory, remained deeply concerned that, despite its previous recommendations²² and the decision in *DH and Others v the Czech Republic*, there continue to be serious and widespread issues of discrimination, particularly against Romani children, including their systemic and unlawful segregation from mainstream education. The Committee urged the government expeditiously to take all measures necessary to ensure the effective elimination of any and all forms of segregation of children of Roma origin, especially the discriminatory practices against them in the education system.²³

The Committee went on to voice several specific criticisms relating to the education system²⁴ and recommended that the government ensure the full and effective integration of children of Roma origin in the school system, and in doing so apply practical measures that facilitate diversity and inclusion in all schools for all children, regardless of their ethnic or socio-cultural background.²⁵ The Committee also

²⁰ Report of the Working Group on the UPR: Czech Republic. A/HRC/22/3, rec. 94. 104.

²¹ Ibid. Addendum (A/HRC/22/3/Add.1) para 15

²² CRC/C/15/Add.201 paras. 29, 30, 55 and 68. The Committee also regretted that the Czech Government has yet to effectively implement a comprehensive national plan on the prevention of racism, racial discrimination, xenophobia and intolerance in accordance with the Durban Declaration and Plan of Action.

²³ Ibid para 31. The Committee further urged the state party to effectively adopt a comprehensive national action plan on the prevention of racism, racial discrimination, xenophobia and intolerance, taking into full account all the relevant provisions of the Durban Declaration and Plan of Action, with particular emphasis on Article 2 of the Convention.

²⁴ These included (a) the slow operationalisation of effective reform measures to facilitate inclusion and integration, which has led to schools formerly designated as "special" and those in socially excluded areas continuing to be attended by a majority of children of Roma origin; (b) the low rates of actual implementation of culturally sensitive or adapted tests at pedagogical-psychological clinics for determining the academic/intellectual abilities of children from ethnic minorities; (c) the continued placement of children of Roma origin in separate classes as well as the teaching of Roma children with a reduced syllabus formerly used for special schools; (d) the absence of financial support for children from socially or financially disadvantaged situations resulting in the tendency for such children to be categorised as having "disabilities" in order to receive additional financial resources designated for children with disabilities; (e) the lack of early childhood development and care programmes for all children, especially those in need of preparation for school and additional support during the first six years of life; (f) the lack of genuine informed consent in the process leading to a child's placement in the Framework Education Programme for Children with Light Mental Disabilities, due to the fact that the informed consent materials have, up to now, been written in technical language that is not readily comprehensible; (g) the lack of any clear means for contesting a decision on placing the child in "special education" or reviewing it on a regular basis (para 61).

²⁵ These measures include that the content and conduct of tests for determining a child's academic/intellectual abilities are culturally sensitive and applied consistently and universally; that all mainstream schools use an educational syllabus that is standardised, consistent and applied throughout the state party's territory and the provision of adequate financial support for children from socially or financially disadvantaged situations, so as to

urged the government to establish a detailed timeline with defined benchmarks to expeditiously implement the above recommendations and regularly monitor the government's progress in doing so.²⁶

Also in 2011, the Committee on the Elimination of Racial Discrimination expressed its concern "*regarding the persistent segregation of Romani children in education*".²⁷ The Committee was particularly concerned by reports that the practice of linking social disadvantage and ethnicity with disability for the purposes of school class allocation "*has continued rather than been removed by recent regulations*" (*emphasis added*). In line with its previous Concluding Observations and General Recommendation No. 27 (2000) on discrimination against Roma, the Committee urged the Czech Government to eliminate any discrimination or racial harassment of Romani students, prevent and avoid their segregation, while keeping open the possibility for bilingual or mother-tongue tuition.²⁸ The Committee recommended that government take specific steps to ensure effective de-segregation of Romani children and students and to ensure that they are not deprived of their rights to education of any type or at any level.²⁹

In January 2012 the Organisation for Economic Cooperation and Development (OECD) released a report on education in the Czech Republic which concluded that for Romani children, "attendance [at] special schools is still very high in spite of the decision to progressively integrate disadvantaged students into mainstream."³⁰

An October 2012 field report by the OSCE Office for Democratic Institutions & Human Rights Report on Czech Republic found that many Romani children are still placed in specialised primary schools for no obvious reason, adding that if Romani children are to be treated as capable of learning and developing, a change in mindset by school administrators, teachers as well as parents from Roma families must occur.

³¹

Regional

Committee of Ministers

The Council of Europe's Committee of Ministers (the Committee) that is reviewing the Czech Republic's progress in putting the decision of the ECHR in the case of *DH and Others* into practice has repeatedly underlined the importance of achieving solid progress on the ground.³² Although the government has adopted three different 'strategic plans' in less than three years, the Committee expressed concern

rectify systemic tendencies for schools to intentionally place children without disabilities in special education in order to obtain additional financial resources (para 62).

²⁶ Ibid. para 62

²⁷ Concluding observations of the Committee on the Elimination of Racial

Discrimination: Czech Republic. 8 August–2 September 2011, CERD /C/CZE/CO/8-9, para 12

²⁸ Ibid. para 12

²⁹ Ibid. para 12

³⁰ Santiago, P., et al. (2012), *OECD Reviews of Evaluation and Assessment in Education: Czech Republic 2012*, OECD Publishing. (<http://dx.doi.org/10.1787/9789264116788-en>) p.19

³¹ *Equal Access to Quality Education for Roma Children: Field Assessment Visit to the Czech Republic* May 2012 (OSCE 26 October 2012) at <http://www.osce.org/odihr/96662>

³² See the website on the execution of judgments of the ECHR:

http://www.coe.int/t/dghl/monitoring/execution/Reports/pendingCases_en.asp?CaseTitleOrNumber=D.H.+and+Others&StateCode=&SectionCode=

throughout this timeframe about the absence of information [to date] on the impact of the measures adopted.³³

In June 2012, the Committee underlined the importance of accelerating the implementation of the judgment, which has been final for nearly five years, in order to achieve concrete progress on the ground.³⁴

The Committee also expressed reservations over the consistency of individual measures taken by the government with the strategic plans it made. In its June 2012 decision, the Committee “*regretted that a full assessment of the information provided proves difficult insofar as the information does not clearly link with the action plan initially provided by the authorities (the NAPIV), the status of which needs to be clarified in relation to the strategy for the fight against social exclusion 2011-2015.*”³⁵

In an attempt to show the impact of the individual measures taken so far, the Czech Government presented a Thematic Report of the Czech School Inspectorate (CSI) in June 2012. The CSI assessed the impact of the two amended legislative decrees which took effect on 1 September 2011.³⁶ The report states that a “significant shift” was brought about by the Decree on Special Education which “substantially limited” the placement of students without disabilities into special classes.”³⁷ However, the CSI report fails to describe how the Decree operated to produce this result or whether this purported result was, on the basis of fact and evidence, actually a consequence of the amended Decree.

According to the CSI report the Decree also represents a “substantial legislative change” governing the provision of informed consent for a student to study according to a reduced curriculum.³⁸ The real impact of the new regulation, however, is questionable. The practice around informed consent continues to rely on individual authorities’ willingness and ability to explain the consequences of the transfers to practical schools and the impact of studying a reduced curriculum.³⁹

The impact on the ground remains to be seen. This has also been acknowledged by the Committee of Ministers as recently as December 2012: “...according to the statistics presented [...by the government] the overall percentage of Roma pupils educated in programmes for pupils with a “slight mental disability” remains disproportionately high even if a slight decrease in this percentage is recorded.”⁴⁰

Commissioner for Human Rights

³³ Committee of Ministers Decision, *DH and Others v the Czech Republic*, June 6, 2012, para 2.

Available at:

[https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/Dec\(2011\)1144/9&Language=lanFrench&Ver=original&Site=&BackColorInternet=B9BDEF&BackColorIntranet=FFCD4F&BackColorLogged=FFC679](https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/Dec(2011)1144/9&Language=lanFrench&Ver=original&Site=&BackColorInternet=B9BDEF&BackColorIntranet=FFCD4F&BackColorLogged=FFC679)

³⁴ The Committee invited the authorities to submit in due time for their 1,150th meeting (September 2012) (DH) the results of monitoring the impact of measures adopted during the current school year and the report of the Czech Public Defender of Rights (“Ombudsman”) and decided to examine the case at its 1,157th meeting (December 2012) (DH) in the light of the consolidated action plan to be prepared in close co-operation with the Secretariat. Ibid. para. 3

³⁵ Decision of the Committee of Ministers on 1144th meeting – 6 June 2012, para. 2

³⁶ Decree on Special Education (No. 147/2011); Decree on Advisory Services (No. 116/2011)

³⁷ Czech School Inspectorate, Thematic report 2012, p. 7

³⁸ Ibid. p. 8

³⁹ People in Need, *Pojďte do školy! Rovné šance na vzdělávání znevýhodněných dětí*. Prague 2011, pp. 87- 88. Available at: http://www.ptac.cz/data/Pojdte_do_skoly.pdf

⁴⁰ Decision of the Committee of Ministers on 1157th meeting – 3 December 2012, para. 2

Concerns over the disproportionate number of Romani pupils in "practical" (formerly "special") education were also echoed by the Council of Europe Commissioner for Human Rights (the Commissioner).⁴¹ In March 2011, following his visit to the country from 17 to 19 November 2010, the then Commissioner Thomas Hammarberg concluded that *"[m]any Roma children in the Czech Republic continue to receive low quality education, because they are disproportionately represented in schools for children with mental disabilities or find themselves segregated in Roma-only schools or classes, where teaching standards are lower. Three years after a landmark judgment of the European Court of Human Rights which found that the Czech Republic had discriminated against Roma with respect to their right to education, the Commissioner finds that little has changed on the ground."*⁴²

The Commissioner cited statistics provided by the Czech Government itself which indicated that Romani children were 12 times more likely than their non-Roma peers to attend "practical schools" and in certain areas, 27 times more likely. He pointed out that this was the same ratio found in the DH case.⁴³

While noting positive measures that can make a difference in addressing effective integration of Romani pupils such as the appointment of teaching assistants, the Commissioner found that schools could afford only a limited number of teaching assistants owing to lack of available funds and inaction by schools which must request them.⁴⁴ There is no evidence of progress having been made on this point in the two years since the Commissioner's report. Moreover, according to the Czech (Government) Agency for Social Inclusion, the work of teaching assistants generally lacks guidance and is not systemic. Rather than working jointly with teachers, teaching assistants work in isolation and give the pupils after-class tutorials. Adequate training for teaching assistants is also lacking.⁴⁵

The Commissioner concluded: *"[w]ith thousands of Roma children effectively excluded from the mainstream education system in the Czech Republic and condemned to a future as second-class citizens every year, the Commissioner underlines that it is now time to speed up the implementation of the inclusive education agenda."*⁴⁶

To date, none of the Commissioner's recommendations has been effectively implemented. The Czech authorities have yet to: (a) set clear and measurable targets for transfer of children from special to ordinary education and for overall desegregation of the school system; (b) adopt special measures to facilitate and support Roma children and their parents during the transition process; (c) introduce legislation [and implementation guidelines] explicitly mandating desegregation; (d) set out a clear prohibition on educating children without mental disabilities under programmes and at schools specifically intended for children with mental disabilities; (e) highlight individual integration in mainstream school as the preferred way of education; (f) introduce measures to enable socially disadvantaged children (including Roma children) to fully integrate into mainstream national education;

⁴¹ See also *Human Rights of Roma and Travellers in Europe* (Commissioner for Human Rights February 2012) p.126 at http://www.coe.int/t/commissioner/source/prems/prems79611_GBR_CouvHumanRightsOfRoma_WEB.pdf

⁴² 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 (<https://wcd.coe.int/ViewDoc.jsp?id=1754217&Site=CommDH&BackColorInternet=FEC65B&BackColorIntranet=FEC65B&BackColorLogged=FFC679>)

⁴³ Ibid para. 60

⁴⁴ Ibid para. 63

⁴⁵ Strategy for Combating Social Exclusion for the Period 2011-2015, Prague, Agency for Social Inclusion 2011.

⁴⁶ Ibid para. 66

(g) provide updated, disaggregated data by ethnic origin to be available so as to monitor progress,⁴⁷ or (h) strengthen measures to secure participation of Roma children in mainstream pre-school education and the presence of teaching assistants in all schools where they are genuinely needed.⁴⁸

More recently, following a four-day visit to the Czech Republic, the current Commissioner for Human Rights, Nils Muižnieks, issued the following statement on 15 November 2012 to coincide with the fifth anniversary of the DH decision. Noting that Roma segregation remains a serious problem in the Czech Republic, the Commissioner said that:

“The “practical schools” in the Czech Republic perpetuate segregation of Roma children, inequality and racism. They should be phased out and replaced by mainstream schools that need to be properly prepared to host and provide support to all pupils, irrespective of their ethnic origin. There are certain examples in the country that show the feasibility of this necessary paradigm shift, which will require the government’s political will and sustained commitment”⁴⁹

Commissioner Muižnieks regretted that five years after the DH judgment by the Strasbourg Court’s Grand Chamber, the violations found therein had not been redressed and urged *“the Czech Government to provide a realistic budget, concrete timeline and indicators in order to bring to an end the vicious circle of segregated education that affects Roma children and costs the whole country so much, both financially and socially. The commitment expressed by the Ministry of Education to fully execute the DH judgment and provide quality education to Roma is promising and needs to be fully supported”⁵⁰*.

In his country report emerging from his visit to the Czech Republic, issued on 21 February 2013, the Commissioner went on to note that the country needed to embrace a “paradigm shift that would put the emphasis not on perfecting pupils’ capacity tests but on the inclusion of all pupils in mainstream education and the provision of appropriate support, if necessary.”⁵¹

National

The treatment of Roma pupils has been the subject of concerted criticism by expert Czech national bodies. A report by the Czech School Inspection Authority (CSI) dated March 2010, which reviewed the situation in over 40 per cent of schools for children with mild mental disabilities around the country, concluded that Roma children made up over one quarter of the children who had been assigned to these schools without having been found to have a mental disability,⁵² and around one third of the children

⁴⁷ While it is recognised that the Czech Schools Inspectorate (CSI) has been collecting some data to monitor progress the methodology of the CSI’s 2012 report, it gives rise to concerns about the accuracy of its statistical estimations. See: *DH and Others v Czech Republic: Submission to the Committee of Ministers’ 1157th CM-DH Meeting* (Amnesty International, Justice Initiative, ERRC), November 2012, p.6. Available at: <http://www.amnesty.org/en/library/asset/EUR71/009/2012/en/17003c38-b4ce-477d-aa5c-94a4d9e4b05d/eur710092012en.pdf>

⁴⁸ Ibid paras 69-71

⁴⁹ *Roma segregation remains a serious problem in the Czech Republic* (15/11/12). Available at http://www.coe.int/t/commissioner/News/2012/121115CzechRepublic_en.asp

⁵⁰ Ibid.

⁵¹ See *Report by Nils Muižnieks, Commissioner for Human Rights of the Council of Europe Following his visit to the Czech Republic from 12 to 15 November 2012*, CommDH(2013)1, February 21, 2013, pp 2-3 available at <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2235397&ScMode=1&DocId=1979248&Usage=2>.

⁵² Czech School Inspectorate. *Thematic report: Summary of findings of the monitoring in former special schools*. April 2010, p. 9. Available: <http://www.csicr.cz/cz/Dokumenty/Tematicke-zpravy/Zprava-z-kontrolni-cinnosti-v-byvalych-zvlastnich>

found to have a mental disability.⁵³ In an Opinion rendered in April 2010 at the request of the School Inspection Authority, the Czech Public Defender of Rights (the Ombudsperson) found that both situations constituted discrimination.⁵⁴

More recently, in July 2012 the CSI Report followed up its 2010 report to assess progress in the 41 schools in which deficiencies had been found by previous inspections.⁵⁵ It also analysed surveys completed by 158 head masters from former special schools (which aimed to assess, *inter alia*, the number of students studying according to standard and reduced curriculum, the number of Roma students at each school and the number of schools in an excluded locality). The CSI report found that: (a) no legislative reform had been carried out to enable a more accurate assessment of a child's learning needs before placement in schools or classes ostensibly designed for pupils with "mild mental disabilities"; (b) no progress had been made towards a systemic financing structure for including "socially disadvantaged" students in the mainstream education system; (c) no legislative reform had been carried out to help decrease the number of pupils in practical schools and their (individual) inclusion in mainstream schools; (d) amendments to legislation addressing concerns about informed consent regarding the transfer of children to study a limited curriculum were carried out.⁵⁶

The CSI report estimates that Romani children comprise 26.4% of all children being taught according to a limited curriculum. This, the report argues, represents an 8.6% decrease from the 2009/2010 school year. Although the CSI report considers this finding to be "positive," it noted that "there continues to be a high share of Romani children, which does not correspond to the number of members of Roma ethnicity in the population in the Czech Republic." Though the statistics differ from those collected by the Ombudsman, the high percentage of Roma children being taught a limited curriculum, even under this assessment, would still be sufficient to meet the standard required under the *DH* judgment to constitute *prima facie* evidence of discrimination.

The methodology of this report, however, gives rise to concerns about the accuracy of its statistical estimations. The report did not indicate the methods used to identify the ethnicity of students. Moreover, the CSI report does not analyse the inconsistency in the data that it reported. While heralding an overall decrease in Romani students being taught a limited curriculum, the report also noted that in some regions, the number of Romani children studying such a curriculum has actually increased.⁵⁷ Such variances raise serious questions about the overall effectiveness and national impact of the policy changes put in place during the last school year. Consequently, it remains unclear whether the purported overall decrease in Romani children studying a limited curriculum (1) is in fact accurate, and (2) even if it is, whether such a decrease is indeed a direct result of the state's policy interventions. In June 2012 the Ombudsperson concluded that Roma pupils are disproportionately represented in practical schools, and that such an over-representation amounts to segregation, condemning future generations of Roma to a life of poverty. In the light of its findings, which included the fact that in some regions there has been

⁵³ Ibid., p. 6.

⁵⁴ The opinion of the Public Defender of Rights on the appearance of discrimination against Romani children and pupils - findings from the report of the Czech School Inspectorate thematic inspection in practical elementary schools (Stanovisko veřejného ochránce práv k podezření na diskriminaci romských dětí a žáků - poznatky ze zpráv z tematické kontrolní činnosti České školní inspekce na základních školách praktických), 20 April 2010, p. 3 Available at: <http://www.csicr.cz/getattachment/1ab991e8-c407-44cc-98b0-ab5e875c5c12>

⁵⁵ *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&SeMode=1&DocId=1924992&Usage=2>, p.55.

⁵⁶ Ibid. pp.60-63

⁵⁷ Ibid. Table 2. The increase has been found in the Liberecky and Pardubicky regions

little significant change in the proportion of Romani pupils in segregated education⁵⁸, the report called on the government to take measures to ensure the inclusion of Roma pupils within the mainstream education system.⁵⁹ In July 2012 the Association of Psychological Pedagogical Centres raised serious concern about the accuracy and adequacy of the current assessment process, especially concerning Roma pupils.⁶⁰

RECENT RESEARCH FINDINGS: DISCRIMINATION AND SEGREGATION PERSIST AND HAVE TAKEN ON NEW FORMS

Recent research by Amnesty International and the ERRC confirms that Roma children are still significantly over-represented in segregated environments and taught according to a limited curriculum in disproportionate numbers.

In June and July 2012 Amnesty International and the ERRC conducted field research in Ostrava, in the Czech Republic and published the results in November 2012 to mark the fifth anniversary of the *DH* judgment in the report *Five More Years of Injustice: Segregated Education for Roma in the Czech Republic* (see Annex A).⁶¹ In addition to studying four schools, the organisations conducted an extensive number of interviews with a wide range of stakeholders: Roma families, public officials, education experts, civil society representatives, school directors, teachers and teaching assistants. Nineteen pupils were interviewed in three Roma-only schools in Ostrava-Privoz district, together with pupils enrolled in another school in Ostrava-Vitkovice. The organisations concluded that segregation is actually increasing in some places. Children are now being placed in Roma-only classes, or studying a limited “practical” curriculum, in schools identifying themselves as *mainstream* elementary schools. Segregation in Roma-only schools persists, beginning at preparatory level. In each of four schools covered in the report, Roma children account for at least 90 per cent of the pupils.⁶² In this context it should be noted that schools receive increased funding for every child “diagnosed” as requiring to study a reduced curriculum thereby creating a perverse incentive for such practices not only to persist but to expand.⁶³

Three out of the four schools visited offered “practical” classes parallel to mainstream teaching. In one of the schools (School No. 1), the majority of classes are “practical”. School No. 1’s website states that one of its key tasks is to prepare pupils for the challenges of everyday life and to teach pupils basic social skills necessary for successful social inclusion. However statements such as the need to promote “a positive attitude to work” and that life involves not just rights but obligations reflect wider societal prejudices and stereotypes regarding Roma.⁶⁴

⁵⁸ For example, the proportion of Romani pupils assigned to practical schools in Ostrava region was reported to be 39 per cent in 2012, (State school Inspectorate report 2012, p. 5) compared to 50 per cent in 1999 (See supra note 17)

⁵⁹ Report of the Public Defender of Rights (Ombudsperson) on the ethnic composition of pupils in the former special schools, June 2012, pp12-13

⁶⁰ Supra n.10 p 12

⁶¹ Ibid.

⁶² School No. 1 was until 2006 a former special school with approximately 90 per cent Roma intake. Most classes teach the practical curriculum. School No. 2 is a Roma-only mainstream elementary school with classes teaching both the mainstream and practical curricula. School No. 3 is a former mainly non-Roma institution which is currently a mostly Roma mainstream elementary school teaching a mix of curricula. School No. 4 is a former special school which is now a mainstream elementary school with a permanently Roma intake, teaching mixed curricula.

⁶³ Supra n.10, p. 18

⁶⁴ Ibid., p. 5

In a similar vein, the website for School No. 4 states that the majority of its pupils (90 per cent) come from “large families from socially disadvantaged backgrounds... [pupils have a] different hierarchy of values, different lifestyle, deficient language skills, zero pre-school preparation or preparation for school at home.” It states that the pupils are “hot tempered, [and] have no inhibitions and habits.”⁶⁵ This characterisation is at odds with the principle of equal treatment as enshrined in both the Anti-Discrimination Act and the 2004 Education Act which guarantees “equal access of all citizens ... to education without any discrimination based on any ground such as race, colour, sex, language, belief or religion, nationality, ethnic or social origin, property, kith or kin, or the health condition or any other status of a citizen.”⁶⁶ It is also at odds with the objectives of elementary education as established by the government’s Framework Programme for Elementary Education under which education should motivate pupils to further study and development of their potential.⁶⁷

Few of the pupils from any of the schools featured in the report go on to mainstream secondary education. For example, in the school year 2010-11 none of the 30 children leaving School No. 4 was accepted by a secondary grammar school (*gymnázium*) that could provide the opportunity to access university education. Of the 30 pupils who completed their elementary education, 18 graduated at a lower level than ninth grade.⁶⁸ In School No. 3 an estimated 30 per cent of pupils finish school in the eighth grade without going on to ninth (final) grade.⁶⁹

In School No. 2 only two girls out of all the school graduates have been accepted by secondary schools providing diplomas.⁷⁰ A social worker expressed concern that children attending the fourth grade in this school lacked basic education skills. Many cannot read properly: “Children attending that school have almost no chance to further their education, they don’t develop their potential.”⁷¹

Several parents interviewed by Amnesty International and the ERRC whose children were enrolled in practical schools, maintained that they did not consent to placement.⁷² This indicates that, despite the amendment to the regulation of the process by which students are assigned to practical schools,⁷³ in practice it continues to rely on the authorities’ willingness and ability to explain the consequences of transfer to practical schools. Moreover, the new regulation only vaguely defines the categories of information that should be provided to the parent or guardian while there is no explicit requirement to inform about the potential limits on future education or employment opportunities. This undermines the principle of fully-informed consent and continues to place the Czech Government in breach of its obligation to implement the DH judgment.⁷⁴ Furthermore, as stressed by the Court in the DH judgment,

⁶⁵ Educational Programme of Primary School No. 4 (“Přes tři schody do života”, Educational Programme of the Primary School Salounova) adopted in 2007, p. 4

⁶⁶ Education Act No. 561/2004 Coll, of 24 September 2004, Section 2(1)a

⁶⁷ Framework Programme for Elementary Education available at <http://www.vuppraha.cz/>

⁶⁸ Annual report of School No. 4 2010/2011

⁶⁹ Supra n. 10, p. 17

⁷⁰ Supra n. 10, p. 16

⁷¹ Interview with Amnesty and ERRC, Ostrava, 26 July 2012 at supra n.10, p.16

⁷² Supra n.10, p. 11

⁷³ In 2005 and again in 2011 the Czech authorities amended the assessment process regulation with the result that children have to be reviewed by both the mainstream Pedagogical-Psychological centres and Special Pedagogical Centres prior to their placement in classes teaching a reduced curriculum and, only then, if their parents or guardian gives informed consent. The text of the decrees in English is available here:

<https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=1962655&ScMode=1&DocId=1797718&Usage=2>

⁷⁴ Supra n.13, para 202

there can be no waiver of the right to be discriminated against regardless of the parents' informed consent.⁷⁵

The continuing discrimination and segregation evidenced in Ostrava is compounded (as it is in the rest of the country) by the lack of an truly independent and effective monitoring and inspection system given that the Czech Schools Inspectorate operates under the Ministry of Education and is not equipped and empowered to monitor segregation in education.

When questioned by the organisations, the Ministry of Education was unable to provide information on the number of children being taught the reduced curriculum across the country.⁷⁶ Romani parents themselves are often not clear about the type of school or class in which their child is enrolled.

There is no evidence that the transformation of the education system has translated into the transfer of any significant number of pupils from former special schools to inclusive mainstream schools, nor from studying a reduced curriculum to a full curriculum. Through its systematic discrimination, the school system is clearly continuing to fail Roma children. On completing their elementary education, many Roma are barely able to read or write and are not equipped for secondary level. Unsurprisingly, a substantial number of Roma pupils leave school with no qualifications at all.

The findings of Amnesty and the ERRC are reinforced by the conclusions of the Ombudsperson in his recent report of June 2012 in which he found that during the school year 2011-12, 35 per cent of the pupils in 67 surveyed practical schools and classes were Roma. Accordingly, he concluded that the "special schools" have been merely renamed and have been effectively unchanged, there is a persistent use of inappropriate diagnostic testing resulting in indirect discrimination with the problems being compounded by the failure of the Ministry of Education to effectively monitor the system.⁷⁷

INADEQUATE RESPONSE FROM GOVERNMENT

The Czech Government's response to the continuing situation of systemic discrimination has been, and continues to be, wholly inadequate, manifesting itself through various weaknesses and omissions.

(i) Failure of authorities to adequately respond to national and international criticism

The continued and persistent segregation and discrimination experienced by Roma pupils provides compelling evidence of the lack of an effective response of the Czech authorities to the repeated findings of monitoring bodies, international, regional and national (as outlined above) concerning the over-representation of Romani pupils in practical schools amounting to unlawful discrimination. The re-branding of special schools to practical schools has not ended the discriminatory practices but in some respects has actually compounded them.

Most notably, there continues to be a lack of an effective response to the DH judgment over five years after it was handed down. The safeguards required by the Grand Chamber as a means of determining whether any differential treatment of an ethnic group has a "legitimate aim" which can be objectively and reasonably justified are not effectively in place. The Department of Execution of Judgments noted three specific safeguards in schooling arrangements which would meet the criteria laid down in the DH

⁷⁵ Ibid.

⁷⁶ Interview with Amnesty International and ERRC, Prague 22 June 2012, supra n.10, p.9

⁷⁷ Report of the Public Defender of Rights (Ombudsperson) on the ethnic composition of pupils in the former special schools, June 2012, pp. 12–16.

judgment: (1) inclusion in mainstream education as a goal for any segregated education system; (2) non-discriminatory testing; and (3) informed parental consent. With the exception of the measures taken to address some of the shortcomings regarding parental consent, these safeguards have yet to be effectively addressed.

(ii) Weak legal framework and monitoring systems

It is recognised that the 2009 Anti-Discrimination Act (together with the Counselling Services in Schools and School Counselling Facilities and Decree No. 73/2005 Coll on the Education of Children, Pupils and Students with Special Education Needs and Children, Pupils and Students, who are Exceptionally Gifted) was a major step forward in addressing race discrimination. However, it contains some serious deficiencies. First, it does not include any express provisions which would directly prevent the discriminatory segregation of Romani children into separate schools, classes or study groups by implementing the obligation under Article 5 of the Directive to take positive action to address discrimination. Second, it does not provide for public interest litigation in the form of collective complaints, despite the recommendation by the European Union's Fundamental Rights Agency that such a provision would make it easier for victims of discrimination to challenge a rights violation without exposing themselves. Third, no monitoring systems, such as the annual collection of data disaggregated by ethnicity, as well as disability and gender (in compliance with EU data protection requirements), are yet in place. Consequently, all the assessments undertaken by government bodies to date have employed vastly different methods, making it difficult to accurately measure progress.

(iii) Lack of effective implementation of policy initiatives and plans

The Ministry of Education appears to lack not just the necessary capacity, but, crucially, the political will to put an end to discrimination in access to education. The National Action Plan for Inclusive Education is not being effectively implemented, culminating in a series of high profile resignations in 2010 and 2011.

While some promising developments emerged in the second half of 2012, a new Minister of Education has been appointed, the government submitted a new consolidated plan aimed at addressing key elements of the DH judgment, and it has publicly stated to ensure equal access to education for all in the mainstream schools, a clear unequivocal commitment to desegregate schools and to take the necessary measures is still missing. Moreover, in March 2013, the Minister of Education Petr Fiala said that the Ministry will not phase out the "practical primary schools".⁷⁸ Such statements are at odds with the government's commitment to review the need for the existence of such schools and their progressive transformation and replacement with inclusive education within the mainstream schools.⁷⁹

During the Universal Periodic Review in the UN Human Rights Council Geneva the government stated that it did plan to abolish temporary placements of "socially disadvantaged children into practical schools" and focus on "individual integration into mainstream schools." It also told the Council that "the methods and tests for assessing children are being revised to be non-discriminatory and culturally neutral" as well as responsive to the "needs of every child regardless of his or her disability or disadvantage." The government also said that it planned to "introduce monitoring of the ethnicity of children in practical schools to be able to evaluate the progress of integration of children with special needs into mainstream education." During its response to state questions, it also stated that practical schools will be abolished, and that the government plans to establish a standing forum with civil society

⁷⁸ See: Romea: *Czech EdMin: "Practical primary schools" will not be closed*. 22 March 2013. Available at: <http://www.romea.cz/en/news/czech/czech-edmin-practical-primary-schools-will-not-be-closed>

⁷⁹ Agency for Social Inclusion, *Strategy for Combating Social Exclusion 2011-2015*, pp. 25.26

to follow up the implementation of the DH judgment.⁸⁰ While these statements are certainly a welcome development, the government's track record suggests that they rarely translate into genuine change on the ground.

In November 2012, the Czech Government submitted a Consolidated Action Plan for the Execution of the Judgment of the European Court of Human Rights in the case of *DH and Others v the Czech Republic*. While Amnesty International, ERRC and the Justice Initiative appreciate that the plan envisages measures that aim to abolish the provisions that allowed placement of pupils without a diagnosed disability in practical schools and classes (while we also recognise that children with disabilities have the right to appropriate, integrated and high quality education); enhance the quality and accuracy of the pupil's assessment (the diagnostic tests) and strengthen the monitoring system, the organisations continue to be concerned that the plan:

- Fails to provide sufficient details on how inclusion of Romani pupils in the mainstream education system will be achieved
- Provides for overly narrow diagnostic tools which tend to operate as a tool for segregated placement of Roma children and children with disabilities⁸¹
- Does not provide for sufficient resources for effective monitoring and accountability
- Fails to adequately address segregation in mainstream education for both Roma children and children with disabilities

In the absence of express measures that would address the discriminatory patterns existing in the current educational system, the plan falls short of introducing safeguards that would ensure that Romani children have access to the right to education free from discrimination. A truly inclusive system of education would provide the strongest safeguard.

We believe the Czech Government's Action Plan should be amended, and brought into line with the existing government Strategy for Combating Social Exclusion⁸², to adequately address the reality of segregation within practical and mainstream education. Such a plan will need to ensure that any assessment process is carried out in the best interests of the child in line with Article 3(1) of the UN Convention on the Rights of the Child; providing schools and individual students with support to study in mainstream classes, introduce clear annual targets to eliminate school segregation and secure inclusive education; and ensure that the designation of school districts does not result in racial segregation of Romani children.

To implement the plan, the government must allocate sufficient resources to ensure its effective implementation. This has not happened to date, despite the availability of significant EU structural funds. In fact, the Czech Government's use of structural funds to help transform its education system has caused the European Commission concern. The Commission decided in January 2012 to halt the disbursement of structural funds to the Czech Republic – worth approximately €1.9m after it found serious irregularities in the way the country was spending monies intended for inclusive education

⁸⁰ Opening Statement of Mr. Vladimír Galuška, Head of the Delegation of the Czech Republic at the Universal Periodic Review, October 22, 2012, Geneva, Switzerland, as well as notes from the discussion among states (copy on file with the Justice Initiative and available upon request).

⁸¹ For a more detailed critique of the flawed testing system currently in place see *Pitfalls and Bias: Entry testing and the Overrepresentation of Romani Children in Special Education (Roma Education Fund April 2012)* pp. 33-47 available at http://www.romaeducationfund.hu/sites/default/files/publications/pitfalls-and-bias-screen_singlepages.pdf

⁸² Agency for Social Inclusion, Strategy for Combating Social Exclusion 2011-2015, p. 26

projects. In its letter to the Czech Government on 24 January 2012, the Commission reported finding “serious shortcomings” in the management and control of funds, and expenses linked to “serious inconsistencies” which were “not justified”. The Commission also noted the “systemic problem of low-quality national projects being proposed for structural funds use. The use of such funds should be clearly and explicitly linked to the implementation of the Czech Government’s obligations under the Race Equality Directive in the field of education.

VIOLATION OF RACE EQUALITY DIRECTIVE

Relevant EU law

Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (‘Race Equality Directive’) imposes on the Czech Republic a duty to combat racial discrimination.

Article 2 of the Race Equality Directive forbids direct discrimination, “where one person is treated less favourably than another is, has been or would be treated in a comparable situation on grounds of racial or ethnic origin” and indirect discrimination, “where an apparently neutral provision, criterion or practice would put persons of a racial or ethnic origin at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.”

According to Article 3(1) the Directive “shall apply to all persons, as regards both the public and private sectors, including public bodies, in relation to ... (g) education.”

Article 14 provides that:

“Member states shall take the necessary measures to ensure that: (a) any laws, regulations and administrative provisions contrary to the principle of equal treatment are abolished”

Article 19 provides that:

“Member states shall adopt the laws, regulations and administrative provisions necessary to comply with this Directive by 19 July 2003 . . .”

It is submitted that the protections guaranteed by the Race Equality Directive are consistent with race equality obligations in human rights law, where the disproportionate assignment of children of an ethnic group without an objective and reasonable justification is a form of racial discrimination in violation of human rights law.⁸³

Czech Republic’s failure properly to implement the Race Equality Directive

The Czech Republic joined the European Union on 1 January 2004. The Directive was required to be implemented with effect from that date.

In 2006, the Commission brought infringement proceedings against the Czech Republic for its failure properly to implement the Race Equality Directive and Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation. The Commission discontinued the infringement proceedings only after the Czech Republic Anti-Discrimination Act came into force on 1 September 2009. At the time, the Czech Republic was the last country in the EU to adopt legislation to implement the requirements of the EU anti-discrimination legislation. Adoption of the law was a

⁸³ See supra n.13, paras 184, 196 and 210.

necessary step to avoid legal proceedings by the European Commission for failing to implement the obligations contained in the EU Race Equality Directives.⁸⁴ There had been no complex law governing legal relations related to discrimination in the Czech Republic before the Anti-Discrimination Act was adopted.

CONCLUSION AND RECOMMENDATIONS

Under international human rights law, which is binding on the Czech Republic, the segregation of Roma in education (in the absence of an objective and reasonable justification) is a particular form of racial discrimination which violates human rights.⁸⁵

That the Czech Government continues to segregate students on the basis of real or alleged special learning needs, whether Roma children or children with disabilities, into separate educational settings, at the same time that the European Union is embracing inclusiveness as an important tool to combat all forms of discrimination, is a major and continuing concern. The Race Equality Directive is one means of promoting inclusion and human rights principles, while combating discrimination. The fact that a great number of Romani pupils in both practical and Roma-only elementary schools continue to be segregated and consequently follow an inferior quality reduced curriculum with little chance of succeeding (or even accessing) academic secondary and higher education, serves to secure their exclusion from broader society and consigns them to a cycle of poverty and deprivation.

Despite widespread and repeated criticism and its own public pronouncements, the Czech Government has failed effectively to address the continued problem of discrimination and segregation as a matter of priority. Consequently, in the light of findings based on our own research and that of other national, regional and international monitoring bodies of the lack of an effective response by the Czech authorities, we urge the Commission to start the infringement procedure according to Art. 258 TFEU by submitting formal notice to the Czech Republic Government for breaches of the Race Equality Directive.

⁸⁴ Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, and Council Directive 2000/78/EC of 27 November 2000 establishing a general framework of equal treatment in employment and occupation

⁸⁵ The European Convention on Human Rights (Art. 14; Art. 2 of Protocol No. 1); the International Covenant on Civil and Political Rights (Art.26); the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination (Art.1,3); the Convention on the Rights of the Child (Art.28); Convention against Discrimination in Education (Art. 1).