



EUROPEAN INSTITUTIONS OFFICE

**COMMENTS TO THE CONSOLIDATED ACTION PLAN 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***

SUPPLEMENT TO THE SUBMISSION TO THE COMMITTEE OF MINISTERS OF THE COUNCIL OF EUROPE

28 November 2012

Executive Summary

In its decision in June 2012 with respect to the execution of the judgment of the European Court of Human Rights in the case of *D.H. and Others v. the Czech Republic*, the Committee of Ministers asked the Czech Government to submit a “*consolidated action plan based on clear medium- and short-term strategy, with a time-table and budget for implementation of the measures foreseen*”.

Based on its own extensive research, Amnesty International respectfully submits these comments to assist the Committee of Ministers in assessing the effectiveness of the Government’s recently submitted Action Plan in ensuring that the following safeguards against discrimination, as identified by the European Court, are in place, namely:

- To ensure that the goal of any separated education is ultimately inclusion in the mainstream education system¹
- If tests are applied to assess the academic suitability of Roma students for mainstream education to ensure that these identify clear criteria unrelated to ethnic origin and meet a legitimate, educational need²
- 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 discrimination³

Amnesty International appreciates that the plan envisages measures that aim to abolish provisions that allowed placement of pupils without diagnosed disability in practical schools and classes,⁴ enhances the quality and accuracy of the pupil’s assessment (the diagnostic tests) and strengthens the monitoring system, but it remains concerned that the plan:

- Fails to provide sufficient details on how inclusion of Romani pupils in the mainstream education system will be achieved
- Provides only for overly narrow diagnostic tools
- Does not provide for sufficient resources for effective monitoring and accountability
- Fails to adequately address segregation in mainstream education

In the absence of express measures to address the discriminatory patterns which exist in the current educational system, the plan falls short of introducing safeguards that would ensure that Romani children have an access to the right to education free from discrimination.

1. Insufficient detail on how inclusion in the mainstream education system is to be achieved

1.1. Phasing out of Practical schools

Amnesty International considers that although the Action Plan submitted to the Committee of Ministers contains some measures with respect to advancing mainstream education inclusion⁵, these are insufficient to provide the necessary safeguards that would ensure that the goal of any separated education is ultimately inclusion in the mainstream education system.⁶

¹ *D.H. and Others v. the Czech Republic*, European Court of Human Rights Grand Chamber judgment, 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#{) para. 207

² *D.H. and Others v. the Czech Republic*, para. 201

³ *D.H. and Others v. the Czech Republic*, paras. 202-204.

⁴ Practical schools are the former ‘special schools’. Despite the change of name following the legal reform in 2005, they continue teaching under reduced educational programmes designed for pupils with mild mental disabilities.

⁵ Such as abolition of provisions that placements of pupils without a diagnosed disability to practical classes (Measures A,B).

⁶ Memorandum of the Committee of Ministers, CM/Inf/DH(2010)47 24 November 2010, Available at: <https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Inf/DH%282010%2947&Language=lanEnglish&Ver=original&Site=&BackColorInternet=B9BDEE&BackColorIntranet=FFCD4F&BackColorLogged=FFC679>

According to Amnesty International's research,⁷ several factors facilitate the channelling of Romani children towards separate education, including:

- Existence of a two-tier system of mainstream and practical schools
- Lack of measures ensuring implementation of the equal treatment principle enshrined in the Anti-discrimination legislation by the schools (directors, teachers and other staff). This is a result of, among other things, lack of guidelines that would ensure understanding and enforcement of this principle by authorities at various levels (national, regional and local)
- Lack of available support measures to successfully integrate pupils coming from socially disadvantaged backgrounds into mainstream education

Amnesty International appreciates that the submitted Action Plan follows some of the commitments made by the government in the *Strategy for Combating Social Exclusion 2011-2015* (Strategy) with regard to the placement of pupils in practical education. However, when it comes to the commitment to progressively transform the system of schools established for "pupils with mild mental disabilities" including the phasing out of practical schools, the Action Plan falls well short of the commitments made in the Strategy.

The Strategy foresaw a set of medium-term measures that would progressively phase out the system of practical schools. These measures included:

- A legislative ban on the establishment of schools specifically for pupils with mild mental disabilities and establishing a compulsory maximum number of group integration classes at one primary school based on the number of other classes
- Transferring the capacities from practical to mainstream schools, or transforming schools that are specifically established for pupils with mild mental disability (based on implementation of the standard educational plan)
- Abolishing the Framework Educational Program for Mild Mental Disability⁸

However, the Action Plan submitted by the Czech Government on 20 November 2012, does not include any of these measures. The only commitment made in the Action Plan with respect to the transformation of practical education, is the "long-term measure" (measure to revise the relevant legal provisions with respect to the curricula for pupils with mild mental disability (see the annex to the educational programme for elementary schools, hereafter: Annex).⁹ Moreover, the government does not envisage allocating any funding for implementing this measure, arguing that funding will only be required once the practical education system is abolished.

In the light of extensive evidence that the existing two-tier system is a crucial factor in the continuing segregation of Romani pupils in sub-standard education,¹⁰ Amnesty International submits that the measures outlined in the Action Plan are wholly inadequate in outlining concrete measures and timelines for reforming the system to meet the requirements of the European Court judgment. Amnesty International therefore reiterates its call on the Czech Government to:

- Immediately adopt a moratorium on placement of children, including Romani children, in schools and classes for pupils with "mild mental disabilities" and undertake a comprehensive review of the system to ensure compliance with international and regional standards on education and non-discrimination and at all times, ensuring the best interests of the child

⁷ Amnesty International. *Injustice renamed: Discrimination in Education of Roma persists in Czech Republic*. 2010. Available at: <http://www.amnesty.org/en/library/info/EUR71/003/2009>

⁸ Agency for Social Inclusion, *Strategy for Combating Social Exclusion 2011-2015*, p. 26

⁹ Consolidated Action Plan. Measure G. The position of FEP BE – MMD annex and subsequent approach regarding this annex.

¹⁰ Amnesty International and ERRC. *Five more years of injustice: Segregated education of Roma in Czech Republic*. 8 November 2012. Available at: <http://www.amnesty.org/en/library/info/EUR71/006/2012/en>

- Start implementing measures for progressive transformation of the system of schools established for “pupils with mild mental disabilities” including the phasing out of practical schools within a realistic period and their replacement with inclusive education within the mainstream system in line with the Strategy

1.2. Ensuring that pupils without a disability are integrated into mainstream education

Amnesty International welcomes the fact that the Action Plan in Measure A¹¹ reiterates the commitment from the Strategy to abolish the legislative provision that allows pupils without a disability to be placed in classes for pupils with mild mental disability. **However, the Action Plan fails to clarify how the Czech Government aims to integrate those pupils into mainstream education and also assumes that this measure does not require any additional funding.**

Amnesty International also welcomes the commitment in the Action Plan (Measure B)¹² to abolish the “diagnostic stay” provision which allowed placements of pupils without a disability in classes for pupils with a mild mental disability and this to be possibly replaced by diagnostic monitoring. **However, the organisation is concerned that the Action Plan fails to provide any details on the diagnostic monitoring (including how would it add to or differ from other measures ensuring inclusion into mainstream education). Nor does it specify the funding required to implement this latter measure.**

2. Overly narrow diagnostic tools

Amnesty International welcomes the commitment in Measure C of the Action Plan to revise the assessment tools for diagnosing mild mental disability. In particular, the organisation appreciates the Czech Government’s commitment to using appropriate tools and approaches to diagnosis which focus on providing educational support.¹³ However, it remains a source of concern that in the description of the current situation, **the Action Plan does not expressly reflect the need to ensure that the assessment is sufficiently based on a range of relevant issues relating to the situation of Roma (including social disadvantage and/or language), as opposed to an overly narrow focus on mental disability.** Although the Action Plan declares that “[d]iagnosis must never be a tool for discrimination,”¹⁴ it does not specify how the measures outlined will eliminate the impact of racial discrimination against Roma in applying the tests.

The Action Plan (Measure D) envisages implementation of a system of supervision that will “prevent incorrect placements of Roma children” into programmes for pupils with mild mental disabilities.¹⁵ However, the Action Plan fails to clarify whether and how the parents or legal guardians and pupils will be able to appeal against or challenge the diagnosis and subsequent decisions on their education.

3. Insufficient resources for effective monitoring and accountability

Amnesty International welcomes the fact that the Czech Republic aims to implement non-discriminatory supervision of the diagnostic system to prevent the incorrect placement of Romani children into practical education.¹⁶ It also welcomes the commitment to carry out annual surveys to establish the number of Romani pupils in practical education.¹⁷ However, in order to ensure both accuracy and consistency of the data collected, the body responsible for the survey (the School Inspectorate) will need to have adequate financial resources and to be provided with robust, detailed guidelines and procedures on how to identify,

¹¹ Consolidated Action Plan. Measure A, p. 4.

¹² Consolidated Action Plan. Measure B, p. 5.

¹³ Consolidated Action Plan. Measure C, p. 6.

¹⁴ Consolidated Action Plan. p.5

¹⁵ Consolidated Action Plan. Measure D, p. 7.

¹⁶ Consolidated Action Plan. Measure D, p. 7.

¹⁷ Consolidated Action Plan. Measure E, p. 8.

monitor and advise on measures to combat segregation in practice. In this regard, **Amnesty International remains concerned that the Action Plan neither envisages any additional funding for the School Inspectorate, nor does it provide any assessment of whether the Inspectorate is currently adequately resourced to fulfil this role.**

Amnesty International also stresses that although the planned measure (the survey) follows the requirements of international human rights standards and relies on self-identification of pupil's ethnicity, it fails to acknowledge that in an environment marked by prejudice and discrimination based on ethnicity, self-identification may lead to inaccurate data unless the surveys are accompanied by awareness-raising activities and campaigns.

In order to assess the impact of the measures taken on the situation in schools, the Czech Government should go beyond surveys to establish the number of Romani pupils in schools and classes for pupils with mild mental disabilities. The government needs to introduce a system of collecting disaggregated data (on schools) according to ethnicity, gender and disability.¹⁸

4. Failure to adequately address segregation in mainstream education

The Action Plan envisages in Measure F, as a long-term measure, to ban the option of establishing preparatory classes and nurseries in practical schools. Amnesty International welcomes this measure, but also wishes to **highlight the fact that the problem of segregation of Romani pupils in Roma-only classes or schools goes beyond practical education.** This was recognised in the Government's own Strategy for combating social exclusion, when it admitted that preparatory classes in mainstream schools function as collection filters for Romani children and facilitate segregation since children from a preparatory class often continue studying together as they progress through the school.

To prevent segregation based on ethnicity, the Czech Government needs to address the segregatory impact of preparatory classes beyond practical schools and adopt measures that would ensure that preparatory classes do not serve as a "collection points" for Romani pupils who then continue studying in ethnically segregated settings.

According to the Action Plan (Measure F/3), placements in preparatory classes will be left to the discretion of school head-teachers who will carry out their own assessment of the special needs of a pupil.¹⁹ It remains unclear on what basis a head-teacher would make such an important decision about a pupil's future educational trajectory. The plan also fails to specify whether the head-teachers will be given the necessary training to carry out such assessment and whether and/or how will such assessment be scrutinised. The Action Plan also fails to specify how any possible ethnic bias or discriminatory attitudes by head-teachers which could have an impact on the outcome of their assessment could be prevented by putting in place specific safeguards against discrimination.

Amnesty International is concerned that the Czech Government's Action Plan neither adequately addresses the reality of segregation within mainstream education nor envisages any additional funding for the compensatory measures that are required to mitigate the effects of banning preparatory classes and nurseries within practical schools. The Government should at the very least clarify how it envisages that the current funding available for practical schools, which are running preparatory classes or nurseries, will be transferred to mainstream schools to ensure effective integration and that segregation does not persist.

¹⁸ Committee on the Elimination of Racial Discrimination. Concluding Observations: Czech Republic. 8 August–2 September 2012 CERD/C/CZE/CO/8-9, para. C.6, p. 2.

¹⁹ Consolidated Action Plan. Measure F/3, p. 10.

One of the factors that lead to segregation in mainstream schools is the wholesale transfer of non-Romani pupils to other schools (“white flight”).²⁰ One of the directors of Roma-only schools in Ostrava explained to Amnesty International: “Once the proportion of Romani pupils exceeds a certain threshold, the non-Roma parents start taking their children out of the school”.²¹ While recognising the importance of parental choice, the Czech authorities should start addressing its discriminatory consequence. It is regrettable that the Action Plan does not envisage, even in the long term, measures that would prevent school segregation, including the development and implementation of national and local level desegregation plans.

5. Statistical under-representation of pupils actually being taught the practical curriculum

In the Action Plan, the Czech Government argues that while 56 to 70 per cent of pupils in (then) special schools were Roma, the proportion of Romani pupils taught the curriculum for pupils with mild mental disabilities has dropped to 26.4 per cent in the 2011/12 school year. Amnesty International considers such comparison methodologically questionable. The later figure does not represent a total number or pupils taught under the curriculum for pupils with mild mental disabilities. Instead, it is a result of a survey carried out in 2012 by the School Inspectorate of 158 directors of the former special schools (out of a total of 210).²²

According to research by Amnesty International and European Roma Rights Centre, there is also a practice of establishing classes for pupils with mild mental disabilities in mainstream schools.²³ Focusing solely on the number of pupils in practical schools will therefore not provide accurate data about the total number of pupils enrolled in practical education. In June 2012, the Ministry of Education acknowledged that it has no available evidence of how many children are actually taught the practical curriculum for pupils with mild mental disabilities.²⁴

²⁰ European Commission against Racism and Intolerance, Report on the Czech Republic (Fourth monitoring cycle), 2009, p. 29, para. 89.

²¹ Interview with Amnesty International, Ostrava, 20 June 2012.

²² 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>, p. 3.

²³ Amnesty International and ERRC. *Five more years of injustice: Segregated education of Roma in Czech Republic*.

²⁴ Interview with Amnesty International and ERRC, Prague, 22 June 2012