

**AMNESTY
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European Institutions Office

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Dear Ms Mayer,

**SUBMISSION TO THE COMMITTEE OF MINISTERS OF THE COUNCIL OF EUROPE ON *D.H. AND OTHERS V. THE CZECH REPUBLIC*
(APPLICATION NO. 77325/00)**

Please find enclosed a briefing submitted in accordance to Rule 9 (2) of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements with a view to assisting the Committee of Ministers in its evaluation of the general measures taken to date by the Czech government to fulfil its obligations to implement the Grand Chamber's judgment in *D.H. and Others v. the Czech Republic*. This briefing is submitted as a follow up to Amnesty International's submissions of May and November 2010, as well as the organization's report *Injustice renamed: Discrimination in education of Roma persists in the Czech Republic* (AI Index: EUR 71/003/2009) published on 13 January 2010.

Yours sincerely,

Nicolas J. Beger
Director



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This briefing is submitted in accordance to Rule 9 (2) of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements with a view to assisting the Committee of Ministers in its evaluation of the general measures taken to date by the Czech government to fulfil its obligations to implement the Grand Chamber's judgment in *D.H. and Others v. the Czech Republic*. This briefing is submitted as a follow up to Amnesty International's submissions of May and November 2010, as well as the organization's report *Injustice renamed: Discrimination in education of Roma persists in the Czech Republic* (AI Index: EUR 71/003/2009) published on 13 January 2010.

Amnesty International is extremely concerned that four years after the decision of the Grand Chamber of the European Court of Human Rights (the European Court) in the case of *D.H. and Others v. the Czech Republic*, the Czech authorities have failed to implement the necessary changes and Romani children continue experiencing discrimination in access to education. The perpetuation of "systemic and unlawful segregation of children of Roma origin from mainstream education" was noted with concern by the UN Committee on the Rights of the Child in June 2011.¹ In his March 2011 report on Czech Republic, the Commissioner for Human Rights of the Council of Europe, Thomas Hammarberg held that the segregation of Romani children in the Czech Republic continues – either through segregation in schools for children with mental disabilities or through segregation in Roma-only classes.

While Amnesty International understands that in the Convention system, the Respondent remains free to choose the means by which it will discharge its legal obligation under Article 46 of the Convention, it must ensure that the measures taken are compatible with the conclusions set out in the Court's judgment, and that general measures should be effective in preventing new violations similar to that or those found or in putting an end to continuing violations. Amnesty International submits these notes to raise the attention of the Committee of Ministers to the failure of the Czech authorities to do so, so far.

Summary of the case

On 13 November 2007, the Grand Chamber of the European Court concluded that the Czech Republic had violated the European Convention for the Protection of Human Rights and Fundamental Freedoms (the Convention) by placing Romani children, on the basis of their ethnic origin, in special schools for pupils with mental disabilities. The European Court held that this differential treatment had no justification and amounted to discrimination contrary to Article 14 of the Convention, in conjunction with Article 2 of Protocol 1, on the right to education. The Court reminded the government of its obligations not only to pay just satisfaction to those concerned but also, subject to the supervision of the Committee of Ministers, to take the general and/or, if appropriate, individual measures in the Czech Republic "to put an end to the violation found by the Court and to redress so far as possible the effects".²

Current situation: Unclear future of the National Action Plan for Inclusive Education

To address the problem of the discrimination of Romani children in access to education and to implement the European Court judgment in the case of *D.H. and others*, the Czech Government adopted the National Action Plan for Inclusive Education in March 2010. The document states that inclusive education for all, including Romani children and children with disabilities, is the government's goal, and recognizes that this goal has not been met yet. Amnesty International welcomed the adoption of the National Action Plan as an important step, but it expressed concerns that the document did not explicitly address the ongoing racial discrimination within the Czech education system.

1 Committee on the Rights of the Child, Concluding Observations: Czech Republic, 4 August 2011. CRC/C/CZE/CO/3-4, para. 30.

2 European Court of Human Rights Grand Chamber Judgment, Case of D.H. and others v. the Czech Republic, para. 216.

In order to further develop and co-ordinate the implementation of the National Action Plan, the Ministry of Education set up number of working groups in mid-2010. The working groups consisted of more than 100 external experts. In January 2011, however, the Ministry of Education announced a 'restructuring' of the National Action Plan. In a protest against the lack of government action to continue the implementation of the National Action Plan, about 50 experts from NGOs, academia, as well as government agencies, such as the Agency for Social Inclusion of Roma Communities, left the external working groups of the Ministry of Education in May 2011. The departing experts argued that the process of the implementation of the plan had been stopped under the current Minister of Education appointed in July 2010 and that remaining in the working groups would amount to participation in a 'window-dressing' exercise to mask the lack of action from the authorities.

The discontent with the approach of the Ministry of Education to the commitments related to the implementation of the European Court's judgment in the case of *D.H. and others* was expressed also by some of the officials of the Ministry. Following the downsizing of the ministerial Department of Special Education and Equal Opportunities, which has crucial responsibilities in the implementation of the judgment, two high-level officials responsible for integration of Romani children into mainstream education – an advisor to the minister and the director of the department of special education and equal opportunities – resigned from their posts in October 2010. They did so in a protest against the new government's failure to prioritize equal education for Romani children. In the following months, NGOs working on inclusive education and on equal access to education for Roma expressed serious concerns over the lack of experts of the Ministry of Education to implement its obligation to desegregate schools and implement inclusive education. In addition to this, further concerns were raised following the appointment of the new advisor to the Minister.

Government Decrees

In May 2011 the government adopted amendments to the Decree no. 72/2005 on the provision of counselling services in schools and to the Decree no. 73/2005 on the education of children, pupils and students with special educational needs. The amendments entered into force on 1 September 2011. According to the government, the aim of the amendments was "to implement the Court's judgment in the case of *D.H. and others v. the Czech Republic*".

Following the adoption of the decrees, the NGOs expressed concerns that the regulation did not introduce a strong framework necessary for the implementation of inclusive education.

The amendment to **Decree no. 72/2005** aims to strengthen the informed consent of a pupil or his or her legal guardian on the recommendations for proposed changes in the pupil's education. The decree enables the pupil or his or her guardian to object to the recommendations, and is an important step towards the enforcement of the principle of informed consent. However, this change can be instrumental to the implementation of the European Court judgment only if the government ensures and monitors its use³, and when it eliminates the risk of parental consent being used as an 'excuse' to place children into education other than mainstream education without objective circumstances that would justify such action. In his commentary to the 2010 School Inspectorate report on the former special schools, the Ombudsperson echoed the European Court of Human Rights' finding regarding parental consent. He held that "the parents' wish or pressure to have their child placed in special education or practical elementary school is irrelevant in cases when there are no objective circumstances that would constitute a legal claim."⁴ The Ombudsperson further found that the current

³ In its 2010 report into the issue of parental consent, the School Inspectorate noted that it is extremely difficult to assess whether an agreement on a placement with the pupil's legal representatives was based on sufficient information about the differences between the educational programmes. See: Česká školní inspekce (2010) Tematická zpráva, Souhrnné poznatky z tematické kontrolní činnosti v základních školách praktických, p. 11.

⁴ 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

situation, characterized by an excessive number of Romani children recommended for education in practical elementary schools without relevant diagnosis, amounts to indirect discrimination. He further found that disproportionate representation of Romani children among pupils diagnosed with mild mental disability (which does not correspond to the numerical representation of Roma in the Czech society)⁵ amounts to discrimination. The negative consequences of such differential treatment are not justified by any legitimate goal.⁶

The amendment to **Decree no. 73/2005** regulates the education of pupils with special educational needs. It lists various compensatory or support measures for pupils with various forms of disadvantage or need. Amnesty International welcomes that the decree envisages compensatory measures in the education of pupils with social disadvantages and that it strengthens the obligation to obtain the informed consent of the legal guardian of the pupil prior to his or her placement in special education. However, we are concerned that the decree does not introduce an *explicit* duty to educate children from a socially disadvantaged background in mainstream schools. This omission may hinder efforts to address the current shortcomings of the Czech educational system summarized in a finding of the Czech School Inspectorate in 2010. According to the Inspectorate's report, the educational system seems to be unable to distinguish the needs of pupils from socially disadvantaged backgrounds from those with disabilities. As a result, the educational system frequently attributes underperformance at school to light mental disability.⁷ The School Inspectorate further considered that the failure to recognize the needs of children from socially disadvantaged background has a profound negative impact on the Romani pupils.

Segregation continues

According to the monitoring carried out by the Institute for Information in Education, in 2009, approximately 30 per cent of Romani children attended the former special schools – now termed 'practical' schools.⁸ Amnesty International's research has found that the education provided in the practical schools continues to be inferior to that provided in the mainstream schools. There is at least a two-year gap between the respective curricula.⁹ Amnesty International is further concerned that this name change – from 'special' to 'practical' schools – was not accompanied by measures to ensure that children who had been wrongly placed in the special schools were transferred to another school corresponding to their actual abilities and skills.¹⁰ According to the Czech School Inspectorate, the flaws in the process of placing of children in schools and classes for pupils with 'mild mental disabilities' continue. As a result, Romani children continue to be disproportionately represented in the 'practical' elementary schools, and in classes teaching a curriculum for pupils with 'mild mental disabilities'.

In his March 2011 report on the Czech Republic, the Commissioner for Human Rights of the Council of Europe, Thomas Hammarberg stated 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."¹¹ The Commis-

tematické kontrolní činnosti České školní inspekce na základních školách praktických), 20 April 2010, p. 2. Available at: <http://www.csicr.cz/cz/85126-zprava-z-kontrolni-cinnosti-v-byvalych-zvlastnich-skolach>.

⁵ Ibid. pp. 2-3.

⁶ Ibid. p. 3.

⁷ Česká školní inspekce (2010) Tematická zpráva, Souhrnné poznatky z tematické kontrolní činnosti v základních školách praktických, p. 6

⁸ UIV, Monitoring RVP, 2009 available at: <http://www.ferovaskola.cz/data/downloads/monitoring%20RVP.pdf>, last accessed 1 November 2009.

⁹ Amnesty International: Injustice Renamed: Discrimination in education of Roma persists in the Czech Republic, 13 January 2010, pp. 19, available at: <http://www.amnesty.org/en/library/info/EUR71/003/2009/en>.

¹⁰ Kateřina Hrubá, The dubious potential of the Czech 'school reform' to really influence the Czech elementary education system in relation to the position of Romani children, *Zšvůle Práva*, 2007, p. 4.

¹¹ 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, CommDH (2011) 3, para. 57.

sioner further noted that despite the European Court's judgment in the *D.H.* case, little has changed on the ground. He called on the Czech authorities to fix clear and measurable targets for transfers of children from special to ordinary education and for overall desegregation of the school system. Such progress should materialise in the current, 2011-2012 school year.

In June 2011, the UN Committee on the Rights of the Child held that the segregation of Romani children continues through a number of factors, including:

- “(a) The slow operationalization 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 continued placement of children of Roma origin in separate classes as well as the teaching of Roma children with a reduced syllabus; ...
- (d) The absence of financial support for children from socially or financially disadvantaged situations resulting in the tendency for such children to be categorized as having ‘disabilities’ in order to receive additional financial resources designated for children with disabilities; ...
- (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. ...”¹²

CONCLUSION

Amnesty International is extremely concerned over the developments within the Czech Ministry of Education in relation to the implementation of the National Action Plan in the past 12 months. Amnesty International considers that the measures adopted by the Ministry of Education so far, specifically the amendments to the Decrees no. 72 and 73/2005 are not sufficient to end the illegal practices, nor do they tackle the underlying causes of the violations of the Convention consistently or effectively. Reported statements by Czech public officials suggest that the government lacks political will to ensure that measures are adopted as a matter of urgency to eliminate discrimination against Romani children within the Czech education system.

Amnesty International considers that unless and until the government of the Czech Republic addresses the separate inferior education based on racial and ethnic origin as a policy priority, and until it introduces effective measures that would systematically and vigorously pursue the inclusion of Romani children in mainstream education of equal quality, the essence of the judgment in the case of *D.H. and others v. the Czech Republic* will not be implemented.

Amnesty International believes that the placement of children in practical elementary schools or to classes designed for pupils with ‘mild mental disabilities’, simply because they are Roma or because they are socially disadvantaged, must end.

In this regard Amnesty International calls on the Committee of Ministers to consider recommending that the Government of the Czech Republic takes the following measures without delay:

1. Adopt an immediate moratorium on the placement of all children, including Romani children, in practical schools and classes for pupils with ‘mild mental disabilities’ pending a comprehensive review of the system to assess the need for such a curriculum and this category of schools. In the meanwhile the authorities should provide all the necessary resources to ensure that additional

¹² Committee on the Rights of the Child, Concluding Observations: Czech Republic, 4 August 2011. CRC/C/CZE/CO/3-4, para. 61.

- support is made immediately available for children who need it in order to effectively participate in and develop to their fullest potential within the mainstream elementary school system.
2. Develop a concrete timeline for the transfer of children presently studying in practical schools to mainstream schools containing a mix of Roma and non-Roma pupils, with such transfer to begin in 2011. As a matter of priority, the authorities should ensure the reintegration into integrated mainstream schools of pupils who had been erroneously placed in practical schools.
 3. Develop a comprehensive plan and timeline with clear and ambitious annual targets to eliminate school segregation of Romani children within the mainstream education system.
 4. Ensure the implementation of the National Action Plan for Inclusive Education that would expressly address the discrimination of Romani children; ensure the availability of necessary staff capacity and funding within the Ministry of Education, and in the relevant government agencies.
 5. Ensure that the Decree no. 73/2005 which regulates the education of pupils with special educational introduces an *explicit* duty to educate these pupils in the mainstream schools.
 6. Repeal the provision in the law, and prohibit the practice, permitting temporary enrolment (diagnostic stay) in practical elementary schools and classes for pupils with 'mild mental disabilities', for children whose test results are inconclusive, and for children who have not undergone any testing.
 7. Enact in national legislation, including through the amendment of the Schools Act and the Anti-Discrimination Act, an enforceable duty on all school authorities to desegregate education, and declare publicly that it is a goal of the Czech Government to achieve desegregation of its school system by 2015.
 8. Through the Institute for Information in Education systematically gather data, disaggregated on the basis of gender, ethnicity and disability status, in relation to education, with due regard to European standards concerning the protection of personal data and the right to self-identification, in order to monitor and ensure that there is no segregation in education in practice. Data should be collected on school enrolment (including type of school), attendance, drop-outs, class repetition, and other fields; and there should be close monitoring of the ethnic composition of classes in schools to ensure that there is no racial segregation.
 9. Publicly disseminate budgetary information concerning resources being spent on all aspects of the inclusion programme, including comparative information about resources being spent on: i) practical schools, ii) other schools where Romani children make up a disproportionate high number of pupils, iii) all other schools.
 10. Systematically roll out special measures and ensure their funding wherever they are needed; ensure that they pursue the objective of inclusive mainstream equal education, which adapts to the needs of the pupil, including linguistically and culturally.
 11. Consider making available to all children from socially disadvantaged backgrounds, including Romani children, two years of free pre-school education in integrated kindergartens in mainstream elementary schools.
 12. Assist Romani parents in sending their children to pre-school education, including by the provision of free transport where needed, to improve the children's integration in mainstream elementary schools and to their school performance.
 13. Make compulsory in the Schools Act the provision of preparatory classes and teaching assistants in all districts which currently have a high number of practical elementary schools and in other areas in which there are significant numbers of children from socially disadvantaged backgrounds. These provisions should be primarily introduced in mainstream elementary schools, aiming at facilitating the transition of Romani pupils into mainstream education and assisting children in adapting to the higher demands of mainstream elementary school curriculum.

14. Employ teaching assistants for pupils coming from a socially disadvantaged background in all mainstream elementary schools as a general strategy to facilitate the transition of Romani pupils into mainstream elementary schools and assist children in adapting to the higher demands of mainstream elementary school curriculum.