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Mr Zdzislaw Kedzia  
Chairman  
UN Committee on Economic, Social and  
Cultural Rights  
Office of the High Commissioner for  
Human Rights  
UNOG-OHCHR  
1211 Geneva 10  
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**AMNESTY  
INTERNATIONAL**



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Dear Mr Kedzia,

In advance of the 52<sup>nd</sup> session of the United Nations (UN) Committee on Economic, Social and Cultural Rights (the Committee) to review the second periodic report of the Czech Republic, Amnesty International submits this letter in respect to the discrimination of Roma in access to primary education. This letter provides information pertinent to question 21 raised by the Committee in the list of issues about the over-representation of Roma children in certain programmes and classes. The submission raises concerns under articles 2.2 and 13 of the International Covenant on Economic, Social and Cultural Rights, and summarizes the latest developments in respect to the Czech Republic's obligation to eliminate discrimination in access to education.

On 13 November 2007, in the landmark case of *D.H. and Others v. The Czech Republic*, the European Court of Human Rights (European Court) held that the placement of Romani children into special schools for pupils with mild mental disabilities amounted to discrimination. This judgement addressed the situation in the city of Ostrava where the proportion of Roma pupils assigned to special schools was 50.3 per cent whereas the proportion of non-Roma pupils placed in such schools was only 1.8 per cent.<sup>1</sup> According to the surveys published in 2012 by the Office of the Public Defender of Rights and the Czech School Inspectorate, the schooling arrangement of Romani children remained largely unchanged. The proportion of Romani pupils in former special schools in Ostrava region in the school year 2011/2012 was 41 and 39 per cent respectively.<sup>2</sup>

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<sup>1</sup> *D.H. and Others v. the Czech Republic*, European Court of Human Rights Grand Chamber judgment, November 13, 2007, para 18, 190. (*D.H. and Others v. the Czech Republic*). 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#{)

<sup>2</sup> The Public Defender of Rights found that 41 per cent of the pupils in former special schools were Roma. See (in Czech): Description of methods and results of the ethnic composition survey in former special schools in 2011/2012, June 2012, p. 17. The figure 39 per cent was found by the survey of the Czech School Inspectorate. See (in Czech): Czech School Inspectorate Thematic Report "Progress in Transformation of Former Special Schools in the School Year 2011/2012," July 2012, p. 5.

The Czech government adopted various strategies and plans that envisaged implementation of inclusive education policies, but none of them has been fully implemented so far. In October 2013, the government presented a report on the progress in the implementation of the Action Plan for the Execution of the Judgment of the European Court.<sup>3</sup> Commenting on this report, Amnesty International demonstrates that the government has failed to adopt sufficient measures (a) explicitly mandating the desegregation of Czech schools, and ensuring that Roma pupils do not continue to be disproportionately and inappropriately placed in segregated schools and classes, and (b) that would put in place sufficient safeguards against discrimination in access to education to ensure that the goal of any separated education is ultimately inclusion in the mainstream education system.

## 1. Backtracking from the commitment to phase out the practical schools

Despite extensive evidence<sup>4</sup> that the existence of a two-tier system of mainstream and practical schools facilitates the channelling of Romani children towards separate education, the government's report on the implementation of the Action Plan does not envisage a reform that would phase out the schools and classes with reduced curricula. Whereas the previous version of the Action Plan<sup>5</sup> foresaw the revision of the relevant legal provisions with respect to practical schools, the current version of the Action Plan is ambiguous about this, and suggests the possibility of maintaining a specific educational programme for pupils with mild mental disabilities.<sup>6</sup>

In April 2013, the Ministry of Education submitted a draft amendment to the Schools Act for public comments. One of the stated reasons for the legal reform was the necessity to change the schooling arrangements for pupils with special educational needs. The Ministry of Education submitted that the aim of the reform is, among other things, to introduce safeguards against "the abuse of the system of support measures" in the context of the obligations taken upon the government after the decision of the European Court in the case of *D.H. and Others*.<sup>7</sup> However, the draft of the Schools Act envisages the continuation of the existence of a two-tier system in which pupils with mild mental disabilities are educated in separate schools and classes. The draft has been criticized by the Czech Public Defender of Rights (the Ombudsman) who expressed concerns that it fails to introduce the radical reform that is needed. In his comments to the draft, the Ombudsman called on the Ministry of Education to ensure

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<sup>3</sup> Report on the implementation of the 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*, 17 October 2013 (Report on the implementation of the Action Plan), available at: <https://wcd.coe.int/ViewDoc.jsp?Ref=DH-DD%282013%291133&Language=lanEnglish&Site=CM>.

In June 2012 the Committee of Ministers of Council of Europe requested the Czech Government to submit a Consolidated Action Plan for the Execution of the Judgement of the European Court. The action plan was submitted on 16 November 2012, and revised on 18 June 2013. In October 2013 the government sent the report on the implementation of the Action Plan as referenced above.

<sup>4</sup> Amnesty International and ERRC. *Five more years of injustice: Segregated education of Roma in Czech Republic* (AI Index: EUR 71/006/2012), 8 November 2012. Available at: <http://www.amnesty.org/en/library/info/EUR71/006/2012/en>.

<sup>5</sup> Consolidated Action Plan 2012 (Update submitted by the government to the Committee of Ministers of the Council of Europe in October 2013). Measure G. The position of FEP BE – MMD annex and subsequent approach regarding this annex. Available: <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2374570&SecMode=1&DocId=2064736&Usage=2>

<sup>6</sup> Report on the implementation of the Action Plan, Measure G.

<sup>7</sup> Note of the Ministry of Education on the draft of the amendment of the Schools Act (no. 561/2004 Coll.).

that the law explicitly gives priority to individual integration of pupils with special educational needs in mainstream schools.<sup>8</sup> Such a provision is currently missing in the draft amendment of the Schools Act.

Amnesty International is concerned that the failure to introduce such provision on the inclusion of pupils with special educational needs into the mainstream schools, and the ambiguity about phasing out practical schools amounts to backtracking from the previous commitments made by Czech Republic with regard to the implementation of the *D.H. and Others* judgment. The government committed to progressively transform the system of schools “for pupils with mild mental disabilities” in its 2010 Strategy for Combating Social Exclusion.<sup>9</sup> The Strategy foresaw a set of medium-term measures – including a legislative ban on the establishment of schools specifically for pupils with mild mental disabilities – that would progressively phase out the system of practical schools. Such measures, however, are no longer envisaged in the government’s Action Plan.

Moreover, in March 2013 the government’s Human Rights Plenipotentiary acknowledged that the transformation of practical schools into mainstream schools was unlikely in the next few years and that the government will update its Strategy for Combating Social Exclusion to reflect this change in its position.<sup>10</sup> In response to a petition demanding the preservation of practical schools, the Minister of Education stated that “Under no circumstances do we intend to go from one extreme to another, to discard the time-tested practices of the Czech school system or to start intruding onto something that has long functioned in our system and has a foundation here, i.e., the practical primary schools.”<sup>11</sup>

## 2. Ensuring that Romani pupils are integrated into mainstream education

The Czech Republic has been repeatedly criticized by national NGOs as well as the Czech Ombudsman<sup>12</sup> for the provision in the law 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. This provision seems to disproportionately affect Romani children. In 2010 and 2012 the Ombudsman highlighted that there was an excessive number of Romani children recommended for education in practical elementary schools without relevant diagnosis. Such overrepresentation, he held, amounts to indirect discrimination of Romani pupils.<sup>13</sup>

According to the government’s Action Plan (Measure A),<sup>14</sup> the Ministry of Education was due to amend the existing regulation and to abolish the provision that allows pupils without a disability<sup>15</sup> to be placed

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<sup>8</sup> Comments of the Public Defender of Rights to the draft amendment of the Schools Act (no. 561/2004 Coll.). 15 May 2013. Available at (in Czech): [http://www.ochrance.cz/fileadmin/user\\_upload/Zvlastni\\_opravneni/Pripominky/PDCJ1334-13\\_MSMT\\_Skolsky-zakon.pdf](http://www.ochrance.cz/fileadmin/user_upload/Zvlastni_opravneni/Pripominky/PDCJ1334-13_MSMT_Skolsky-zakon.pdf)

<sup>9</sup> Agency for Social Inclusion, Strategy for Combating Social Exclusion 2011-2015, p. 26. The Strategy was adopted by the government in September 2010.

<sup>10</sup> Idnes.cz, Practical schools will not be closed, regular elementary schools are not ready for the change, March 6, 2013, Available at: [http://zpravy.idnes.cz/zvlastni-skoly-se-rusit-nebudou-doe/domaci.aspx?c=A130305\\_214029\\_domaci\\_brm](http://zpravy.idnes.cz/zvlastni-skoly-se-rusit-nebudou-doe/domaci.aspx?c=A130305_214029_domaci_brm)

<sup>11</sup> Romea.cz, Czech Minister of Education: “*Practical primary schools*” will not be closed, March 22, 2013, Available at: <http://www.romea.cz/en/news/czech/czech-admin-practical-primary-schools-will-not-be-closed>

<sup>12</sup> 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 (The opinion of the Public Defender of Rights) (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/cz/85126-zprava-z-kontrolni-cinnosti-v-byvalych-zvlastnich-skolach>

<sup>13</sup> The opinion of the Public Defender of Rights, p. 3.

<sup>14</sup> Report on the implementation of the Action Plan. October 2013. Measure A, p. 2.

in classes for pupils with mild mental disability. It also aimed to remove the provision allowing the *temporary placement* of pupils with health or social disadvantage into classes for pupils with disabilities.<sup>16</sup>

Although in 2013, the Ministry of Education prepared the amendment of the regulation abolishing some of the provisions allowing for inappropriate placements into “practical schools”, the regulation has so far not been adopted. The government initially announced that the amendment would enter into force on 1 December 2013. However, this deadline was not met with the amendment still to be approved.

### **3. Monitoring: collection of ethnically disaggregated data**

The Action Plan includes a commitment to carry out annual surveys to establish the actual number of Romani pupils in practical education.<sup>17</sup> In September 2013, the Czech School Inspectorate announced that it had started a survey of all schools in which five or more pupils were following the curricula for “pupils with mild mental disabilities”. The directors of the schools are under obligation to provide anonymised data disaggregated by ethnicity to the Inspectorate.

Amnesty International welcomes this measure but remains concerned that in the absence of the other reforms required to introduce the necessary safeguards against discrimination in education a measurable impact on the situation in schooling arrangement of Roma pupils remains unlikely. In other words, it is insufficient to monitor rights violations taking place without the necessary commitment to take appropriate remedial action.

As the collection of such data by state bodies can cause suspicion among members of minority communities, it is important to involve minority representatives in the process of designing and implementing data collection mechanisms.<sup>18</sup>

### **Conclusion**

Amnesty International considers that the measures taken by the government so far do not represent the basis for the systemic reform needed to adequately address the discrimination of Roma in education. Instead of urgently adopting the necessary systemic changes, the government appeared to have backtracked from its previous commitments to prioritize the inclusion of Roma pupils into mainstream education.

Amnesty International therefore reiterates its calls on the Czech government to:

- Return to the initial commitment<sup>19</sup> to implement 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 time period and their replacement with inclusive education.

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<sup>15</sup> The Decree of the Ministry of Education no. 73/2005, Art. 10, para. 2.

<sup>16</sup> The Decree of the Ministry of Education no. 73/2005, Art. 3, para. 5.

<sup>17</sup> Report on the implementation of the Action Plan. Measure E, p. 8.

<sup>18</sup> Article 2(3) of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.

<sup>19</sup> Agency for Social Inclusion, *Strategy for Combating Social Exclusion 2011-2015*, p. 26.

- Introduce sufficient support measures for mainstream schools to teach pupils coming from socially disadvantaged backgrounds and pupils with special education needs.
- Include concrete measures, with transparent numerical targets for Roma and non-Roma children, to ensure the desegregation of Czech schools (both practical and mainstream) within a reasonable timeframe, and which address all causes and forms of segregation.
- Immediately transfer all pupils placed into practical schools without an appropriate conclusive diagnosis to mainstream schools, and provide the relevant support to facilitate their successful integration.

Yours Sincerely,

Tania Baldwin-Pask

International Advocacy Programme