

# Communication on General Measures Needed for the Implementation of *D.H. and Others v. the Czech Republic*

*In September 2008, a coalition of organisations submitted a communication to the Council of Europe Committee of Ministers, Department of Executions, to highlight that despite changes in legislation and a landmark ruling from Europe's highest court, racial segregation of Romani children remains a fixture of education in the Czech Republic. The communication, submitted jointly by the European Roma Rights Centre, the Roma Education Fund, the Open Society Justice Initiative, and the Open Society Institute's Educational Support Program and Early Childhood Program, outlines in detail actions which are urgently needed by Czech authorities in the implementation of D.H. and Others v. the Czech Republic. The full text of the communication follows here.*

## Memorandum

### CONCERNING THE IMPLEMENTATION AND STATE OF GENERAL MEASURES IN THE JUDGMENT OF

#### *D.H. AND OTHERS V. THE CZECH REPUBLIC*

(APPLICATION NO. 57325/00).<sup>1</sup>

#### I. EXECUTIVE SUMMARY

1. Despite the new School Law introduced in 2005, the situation of Romani children in the education system of the Czech Republic has not improved. Changes purporting to end the special school system and improve the integration of Romani children into ordinary schools have resulted in cosmetic changes only.
2. Three years after the new law, Romani children continue to be overrepresented in 'practical' (as opposed to standard) primary schools that teach a special curriculum for mentally disabled pupils. Available data suggests that Romani children continue to constitute the majority of students in what were formerly "special remedial" schools, now re-labelled 'practical' schools.
3. Abolishing the term "special remedial schools" and re-labeling the children attending them as "socially disadvantaged" has not meaningfully improved the educational opportunities for them. Higher education, beyond a vocational secondary school where they may learn a trade, remains unattainable.
4. The new legislation has not led to compliance with the main findings and principles established by the European Court of Human Rights in the *D.H.* case. All children attending primary practical schools follow the special curriculum for students with some degree of mental disabilities.
5. Modifications to the curriculum of Czech Schools introduced by the Framework Education Programme in 2007 have not affected the curriculum of practical primary schools and may further limit the mobility of children between Czech schools by individualising the curriculum of each school.
6. There is no evidence that the measures implemented by the Czech government can reverse or even reduce the degree of segregation in education experienced by Roma. Significant defects in the legal framework for pedagogical-psychological examination of Romani children permit wrongful placement of Romani children in schools and classes

<sup>1</sup> *Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements (Adopted by the Committee of Ministers on 10 May 2006 at the 964th meeting of the Ministers' Deputies).*

with curricula that limit their education and employment potential. In addition, the lack of information provided to Romani parents about educational choices for their children contributes to the continued segregation of Romani children in what were formerly called special schools.

7. Specific legislative measures are required to address the complex barriers to school desegregation and ensure consistent efforts to remedy inequality in education. Functional and effective desegregation policies are possible through binding obligations on public authorities to eliminate segregated education and give effect to the principle of equal treatment.
8. The Czech Government should enact in national legislation an enforceable statutory duty for public authorities to take specific actions and achieve measurable results in desegregating schools.

## II. INTRODUCTION

9. This memorandum is jointly submitted by the following organisations, pursuant to Rule 9, paragraph 2, of the Rules of the Committee of Ministers for the supervision of the execution of judgments and the terms of friendly settlements:
10. The **European Roma Rights Centre (ERRC)** is an international public interest law organisation engaging in a range of activities aimed at combating anti-Romani racism and human rights abuse of Roma. The approach of the ERRC involves, in particular, strategic litigation, international advocacy, research and policy development, and human rights training of Romani activists. Since its establishment in 1996, the ERRC has endeavoured to give Roma the tools necessary to combat discrimination and win equal access to government, education, employment, health care, housing and public services. The ERRC works to combat prejudice and discrimination against Roma, and to promote genuine equality of treatment

and equality of respect. The ERRC was one of the representatives of the applicants in the case of *D.H. and others v. the Czech Republic (D.H. case)*.

11. The **Roma Education Fund (REF)** is a fund registered in Switzerland and Hungary with its head office in Budapest. It was established with the goal of closing the gap in educational outcomes between Roma and non-Roma through the promotion of policies and programmes that support quality education for Roma. The Fund provides policy advice to governments and local organisations involved in Roma education, and finances programmes implemented by NGOs, local governments, and central governments to advocate for institutional and policy changes in education systems to improve Roma inclusion. The Fund is financed by contributions from multilateral donors, European and North American governments and foundations. The REF works actively in 12 countries of Eastern and Central Europe, financing programmes, supporting research and providing policy advice. It collaborates closely with a large number of universities, research centres and independent experts.
12. The **Open Society Justice Initiative (Justice Initiative)** is an operational programme of the Open Society Institute. It pursues law reform activities grounded in the protection of human rights, and contributes to the development of legal capacity for open societies worldwide. The Justice Initiative combines litigation, legal advocacy, technical assistance and the dissemination of knowledge to secure advances in the following priority areas: National criminal justice, international justice, freedom of information and expression and equality and citizenship. Its offices are in Abuja, Budapest and New York.
13. The **Education Support Program – Open Society Foundation (ESP)** and its network partners support education reform in countries in transition, combining best practice and policy to strengthen open society values. ESP works to facilitate change in education and national policy development. Support is

currently provided for OSI initiatives focused in Central Asia, the Caucasus region, Europe and Russia, South Asia and Africa.

14. The **Early Childhood Program, Open Society Foundation** supports effective early interventions in the lives of the youngest and most vulnerable children and their families around the world. The Early Childhood Program holds governments accountable for their commitments to young children and families and also promotes the development of a vibrant civil society that fosters children's participation skills and critical thinking, engages parents and communities to advocate on behalf of their children and supports a strong early childhood sector. Through its flagship programme, Step by Step, the Early Childhood Program has introduced child-centered teaching methods and supported community and family involvement in preschool and primary school in 30 countries. The Early Childhood Program promotes the right of all children to a quality education and provides materials and training to ensure equal access for children of minority families, children with disabilities, Roma, refugees and families living in poverty.
15. The purpose of this memorandum is to inform and assist the Committee of Ministers in its evaluation of the impact of the new School Law as well as other measures facilitating the integration of Romani children in the ordinary school system.
16. The Grand Chamber of the European Court of Human Rights ruled in this case that segregating Romani students into special schools is a form of unlawful discrimination. The Grand Chamber decided that the discrimination could not be justified by reliance either on the tests used to place the children or on the parental consent required to action the placement.
17. For the first time, the European Court of Human Rights has found a violation of Article 14 of the Convention in relation to a pattern of racial discrimination in a particular sphere of public life, in this case, public primary schools. As such, the Court has underscored that the Convention addresses not only specific acts of discrimination, but also systemic practices that deny the enjoyment of rights to racial or ethnic groups.
18. In addition, the Court went out of its way to note that the Czech Republic is not alone – discriminatory barriers to education for Romani children are present in a number of European countries.
19. When it comes to assessing the impact of a measure or practice on an individual or group, the use of statistics may be relevant. In particular, statistics which appear on critical examination to be reliable and significant will be sufficient to constitute prima facie evidence of indirect discrimination. The Court confirmed, however, that statistics are not a prerequisite for a finding of indirect discrimination.
20. This judgment has strengthened the doctrine of indirect discrimination such that governments, when formulating policies and laws, can be found guilty of indirect discrimination where such policies or laws have a discriminatory or unequal effect even if they have not intentionally discriminated.
21. The present memorandum is based on findings of the research conducted during the first half of 2008, which investigated former special schools/practical primary schools to determine to what extent the educational career of Romani children has been or is likely to be affected by the 2005 reforms in the Czech educational system and whether these reforms improved the conditions for Roma to access equal educational opportunities.<sup>2</sup>
22. On 1 January 2005, new legislation on education took effect in the Czech Republic,

<sup>2</sup> *The field research was conducted by the ERRC and REF in the period February-April 2008 in three regions of the Czech Republic – Moravskoslezský, Středočeský, and Ústecký regions.*

comprising new and/or amended laws.<sup>3</sup> Amongst the reforms introduced by the Czech School Law was the elimination of the category “special remedial schools” from the educational system. These were re-named “practical primary schools”, falling within the broader category of “primary school” that also encompasses “standard primary schools” where the mainstream curriculum is taught. Article 16(1) of the 2005 Schools Act introduced the category “children with special educational needs”, divided in three subcategories: children with health disability, with health disadvantage and with social disadvantage.<sup>4</sup> While the first two categories are clearly and objectively defined, the last one is vague and is omitted in almost all implementing regulations and related government decrees.<sup>5</sup>

23. The School Law also empowers school directors to create separate schooling arrangements for particular categories of children defined as “children with special educational needs”.<sup>6</sup>

24. Subsequently, the Czech government announced a series of programmes, projects and concepts whose overarching aim was the integration of children with different needs into the Czech school system.<sup>7</sup> The “Report on Implementation of the Concept on Timely Care for Children from Socio-Culturally Disadvantaged Backgrounds in the Area of Education in years 2005 – 2007”, including specific tasks for next reporting period, was completed in April 2008. This Report and its update were approved by the Czech Government on 14 May 2008 together with Government Decree Nr. 539, setting particular tasks for the Minister of Education and other relevant state authorities.<sup>8</sup>

25. The Report concedes that it is difficult to evaluate the results of the support for integration within this programme because quantitative data on the target group – children with special needs – is not systematically available. Amongst other problems noted in the Report is the insufficient financing available to schools integrating socially disadvantaged

<sup>3</sup> Law No. 561/2004 Coll., on pre-school, primary, middle, higher technical and other education (the “2005 School Law”), took effect 1 January 2005; Law No. 562/2004 Coll., which changes some laws in connection with the adoption of the School Law; and Law No. 563/2004 Coll., on pedagogical workers and changes in legislation. The school reform is further developed by implementing regulations (government decrees and public notices by the Czech Ministry of Education, Youth and Sports) and curricular documents.

<sup>4</sup> ‘Health disability’ for the purposes of the Schools Act is any mental, physical, visual or auditory impairment or speech defect or combination thereof, autism, or any learning or behavioural developmental disability. ‘Health disadvantage’ for the purposes of the Schools Act is any health debility, long-term illness, or light health disruption leading to learning or behavioural disruption which requires consideration during education. ‘Social disadvantage’ for the purposes of the Schools Act is a family environment with a low social and cultural position, threatened by sociopathological phenomena; families where the children are sent to state institutions or placed in protective custody; or are in the position of either recognised refugees or asylum seekers on Czech territory per Law No. 325/1999 Coll., on asylum.

<sup>5</sup> 2005/72 Sb. Vyhláška o poskytování poradenských služeb ve školách a školských poradenských zařízeních (Regulation on providing counseling in schools and educational counselling facilities), at: <http://www.atre.cz/zakony/frame.htm>. This Regulation provides that children with health disability and health disadvantage shall be identified by the pedagogical-psychological counselling centers. The latter are not empowered to identify children with social disadvantage.

<sup>6</sup> Article 16(8) of the School Law states, “If the level of health disability so commends, schools may be created for children, pupils and students with health disabilities, on a case-by-case basis with the consent of the regional authority in the framework of the individual classes of schools, departments or study groups with adjusted educational programmes. [...]”

<sup>7</sup> Koncepti (projektu) včasné péče o děti ze sociokulturně znevýhodňujícího prostředí.

<sup>8</sup> See: [http://kormoran.vlada.cz/usneseni/usneseni\\_webtest.nsf/0/D550C8F166A42EA0C12574480023E36F/\\$FILE/539%20uv080514.0539.doc.pdf](http://kormoran.vlada.cz/usneseni/usneseni_webtest.nsf/0/D550C8F166A42EA0C12574480023E36F/$FILE/539%20uv080514.0539.doc.pdf).

children, as no increased subsidies are made available for the higher costs of educating these children. The report acknowledged that this lack of sufficient financing is unacceptable and the Ministry has recommended change in the system of financing education for socially disadvantaged pupils.<sup>9</sup>

26. Despite the fact that programmes for the integration of disadvantaged children have existed for several years, little impact can be seen with regard to the educational integration of Romani children in Czech Republic.<sup>10</sup>

### III. SCHOOL ENROLMENT PATTERNS FOR ROMANI CHILDREN AND ETHNIC COMPOSITION OF THE SCHOOLS AND CLASSES

27. Information gathered by the ERRC on patterns of enrolment in standard schools compared to so-called practical schools since the amendment of the School Law in 2005 indicates serious problems with respect to the efforts to “integrate” Romani children in mainstream education in Czech Republic.

28. When comparing enrolment trends in standard versus former special/practical primary schools in Czech Republic, it is clear that while the student population of standard primary schools is decreasing overall in the research sample, the student population in practical primary schools is static. It has also been reported that there has been an overall increase in the number of pupils in Czech Republic diagnosed with learning difficulties, at 6.5% of the student population in 2005 compared to only 2.5% in 1990 and 1% in 1975.<sup>11</sup>

29. According to information from the ERRC’s school research sample, there has been a general downward trend in the number of pupils enrolled in standard primary schools in Czech Republic since the 2004/2005 school year. In the Ustecky region, the student population dropped from 92.0% to 82.0% of the school’s capacity. In the Stredocesky region, the student population dropped from 78.8% to 70.8% of the school’s capacity and in Moravskoslezsky, the student population dropped from 72.8% to 64.0% of the school’s capacity. Amongst the sample of standard schools targeted, there was an average decrease of 9% in the student population.

30. However, in stark contrast, in the practical schools targeted in this study school directors indicated that number of children enrolled in their school each year since the 2004/2005 school year had not fluctuated. The static nature of student enrolment in practical schools is consistent with information published by the Roma Education Fund in 2007 which revealed that, according to official information in Czech Republic, the overall number of children enrolled in special schools between the 2001/2002 school year and the 2004/2005 school year remained stable at 3.6% of the student population in the country.<sup>12</sup>

31. These indicators, which show decreasing student populations in standard schools and static school populations in practical schools, call into question the impact, if any, of the so-called integration measures of the Czech government since the adoption of the new School Law in 2005 on the transition of Romani children, over 50% of whom in the Ostrava region alone in 1998 ended in special schools, when only

<sup>9</sup> *The Updated Concept of Timely Care of Children from Socially Disadvantaged Environment*, pp 7-8.

<sup>10</sup> *In a press release dated on 4 June 2008, Minister Ondrej Liska was quoted to have stated “Our education system unfortunately still has elements which are justly labelled as segregative” and that Romani children are wrongly placed into schools with lower standards. Information from the Czech Press Agency dated 6 June 2008. Available online at: <http://www.topregion.cz?articleId=34228>.*

<sup>11</sup> *Roma Education Fund. 2007. Advancing Education of Roma in the Czech Republic. Available online at: <http://romaeducationfund.hu/>, p. 25.*

<sup>12</sup> *Eurydice. 30 November 2007. Czech Republic, 2004/2005, Chapter 10.8.1. As quoted in Roma Education Fund. 2007. Advancing Education of Roma in the Czech Republic. Available online at: <http://romaeducationfund.hu/>, p. 25.*

1.6% non-Romani children attended special schools for the mentally disabled.<sup>13</sup>

32. It can be assumed that most Romani children from the formerly-named “special schools” fall in the subcategory of children from socially disadvantaged backgrounds, since most of the Romani children placed in the special schools reportedly do not have any health or mental disability. However, as of June 2008, there was no statistical information available through either the Czech Statistical Office (hereafter “CSO”) or the Institute for Information on Education (hereafter “Institute”) as to the number of socially disadvantaged children in Czech Republic.
33. Information pertaining to the ethnic composition of the schools targeted during the

research was much more difficult to obtain given that data disaggregated by ethnicity is not gathered systematically in Czech Republic. Many people also mistakenly believe that it is illegal to gather such data; school officials often noted this during interviews, and the information publicly available regarding the children enrolled in Czech schools does not provide this type of information.

34. However, when requested to provide unofficial estimates of the proportion of Romani children registered in their school, 19 out of 20 practical primary school directors provided an estimate. Romani parents of children enrolled in the schools were also requested to provide their opinion on the ethnic composition of their child’s school and class.

Percentage of Romani Students Currently Enrolled in Practical Schools Visited by the ERRC					
School	Percentage*	School	Percentage*	School	Percentage*
<i>Ustecky Region</i>		<i>Stredocesky Region</i>		<i>Moravskoslezsky Region</i>	
Roudince nad Labem	50%	Mlada Boleslav	38%	Ostrava – Poruba	15-20%
Trmice	95-97%	Beroun	N/A**	Frydek Mistek	60%
Usti nad Labem	95%	Kraluv Dvur	97%	Ostrava – Vitkovice	100%
Jirkov	70%	Kolin	30-50%	Ostrava – Prizov	90%
Teplice	95%	Neratovice	50%	Marianske Hory	95%
Chomutov	60%			Ostrava – Zabreh	14%***
Bilina	70%			Ostrava – Hrabuvka	45%
				Slezska Ostrava	80%

\* Information provided to the ERRC by the school’s director.

\*\* According to parent estimates, Romani children accounted for approximately 40% of the student population.

\*\*\* During an interview with the ERRC on 3 July 2008, the school director indicated that the school specialised in the education of children with medium to heavy disabilities, whereas most Romani children enrolled in practical schools are diagnosed with mild mental disabilities, which explains the low representation of Roma in this school.

<sup>13</sup> European Roma Rights Centre. 1999. *A Special Remedy: Roma and Schools for the Mentally Handicapped in the Czech Republic*. Available online at: [http://www.errc.org/Countryrep\\_index.php](http://www.errc.org/Countryrep_index.php).

35. In the Ustecky and Moravskoslezsky regions, Romani children were overrepresented amongst the student population of practical schools compared with the Stredocesky Region.

Average Percentage of Romani Students Currently Enrolled in Practical Schools Visited by the ERRC	
Region	Percentage*
Ustecky	76.4-76.7%
Stredocesky	53.7-58.7%
Moravskoslezsky	62.4-63.0%

\* *Average of the information provided to the ERRC by the school's director.*

36. Of the total sample of practical schools visited by the ERRC, Romani children accounted for more than 80% of the student population in 8 out of 19 (42.11%) schools. In 6 out of 19 (31.58%) schools, Romani children accounted for between 50 and 79% of the student population. In only 5 (26.32%) of the practical schools visited by the ERRC did Romani children account for less than 50% of the student population; 14% being the lowest. Three of these schools were in the Moravskoslezsky Region and 2 were in the Stredocesky Region.

37. Comparing the proportion of Romani children in practical schools against the overall proportion of Roma in the Czech population which is estimated to be up to 2.9%, the representation of Romani children in the practical schools visited is alarming, as is the reported stability of these school's student population and the negative implications of this for the educational integration of Romani children.

38. During discussions with parents of Romani children attending the practical schools about the differences between local standard and practical schools, a majority of parents spoke

about the ethnic composition of the school as a major differentiating factor, with practical schools often noted to be schools for Romani children. One 6<sup>th</sup> grade Romani boy with whom the ERRC spoke in Trmice stated clearly: "A practical school is a Gypsy school."

39. Comparing the proportion of Romani students in standard versus practical schools, the director of practical primary school in Trmice estimated that at the local standard school Romani students account for about 50%, while their practical school has at least 95% Romani students.

#### IV. INSUFFICIENCY OF SCHOOL INTEGRATION SUPPORT MECHANISMS

40. Since the 2004/2005 school year, Czech law has allowed for the establishment of preparatory classes for children in primary schools. Preparatory classes for children from disadvantaged communities are intended to improve the child's capacity to cope with the transition from the home to the "institutional" educational environment. Section 34(4 & 7) of the School Law specifies that preschool education should create the basic conditions for continuing in the school system and help equalise the different rates of development for different children prior to the start of their primary education, as well as provide special pedagogical care to children with special educational needs.

41. According to these principles, the existence of preparatory classes in "practical" primary schools should be counter to the aims of the classes themselves, which should help students enter ordinary schools. However, 4 of the 20 practical schools visited by the ERRC operated preparatory classes,<sup>14</sup> and during a telephone interview with the ERRC, the director of Prague's Pedagogical-Psychological Counselling Centre stated that most preparatory classes exist in practical schools.<sup>15</sup>

<sup>14</sup> *Usti nad Labem (since 2004); Marianske Hory (since 1997); Ostrava-Hrabuvka (since 2004); and Slezska Ostrava (since 2005).*

<sup>15</sup> *ERRC telephone interview with the director of Prague's Pedagogical-Psychological Counselling Centre. 30 May 2008.*

42. According to statistics from the Institute for Information on Education, the number of preparatory classes in Czech Republic is rising. In 2004/2005 there were 126, in 2005/2006 there were 123, in 2006/2007 there were 146 and in 2007/2008, there were 164. During a presentation in the Czech parliament on 17 March 2008, Ms Jirina Ticha of the Ministry of Education indicated that approximately 300 preparatory classes in the country would be necessary to fully meet the needs of socially disadvantaged children. It is difficult to see, however, where this estimate comes from, given that statistics about socially disadvantaged children are not gathered and it is therefore not possible to accurately determine the number of socially disadvantaged children currently attending preparatory classes or the number in need of a place in a preparatory class.
43. Notwithstanding the growth in the number of schools with preparatory classes, it is unclear whether schools which should open preparatory classes for disadvantaged children have done so, and whether disadvantaged Romani children are actually taking preparatory classes. According to the director of a practical primary school in Usti nad Labem, “kindergartens are not accessible to most Romani families and standard schools are not willing to establish preparatory classes, probably due to the fact that many Romani children would attend.”<sup>16</sup>
44. Information made available by the Czech government supports the theory that the establishment of preparatory classes in practical schools reinforces the segregated nature of the practical school system. According to an evaluation by the Ministry of Education, Youth and Sports, while only 10% of Romani children attending preparatory classes in practical schools subsequently enrol in standard primary schools, 80% of Romani children that attend preparatory classes in standard schools enrol in standard primary schools and have a higher chance of staying there.<sup>17</sup>
45. Research conducted in the course of this study highlighted the critical role of strong support for integrative measures at the individual level. For example, the director of one practical primary school interviewed by the ERRC was obviously very keen on the integration of Romani children in the standard school system, and the integration measures implemented in the school seemed to be yielding some results. Director Horská told the ERRC that her school experienced an increasing number of pupils attending its two preparatory classes, about half of whom are Romani. At the same time, Director Horská stated about 75% of the children from her preparatory classes end up enrolling in the nearby standard primary school.<sup>18</sup>
46. Czech schools may voluntarily engage in programmes, in addition to those required by government initiatives, to contribute to the educational integration of Romani children. However, schools are not obliged to do so. Discussions with the directors of practical schools indicate that few schools exercise this option. This may be seen as the result of the lack of additional financing made available to schools with higher costs of education due to the higher learning needs of the pupils, as noted by the Ministry.
47. However, according to the information provided on the projects implemented in the schools visited, where voluntary programmes exist, the aims and effects of these usually do not contribute to the integration of Romani children in standard schools in the country. In Bilina, the practical school visited by the ERRC had a project to hold a Romani cultural week at the school. In Teplice and Chomutov, both schools visited by the

<sup>16</sup> Interview with Director Bartunková. Practical Primary School Karla IV 34/12. Usti nad Labem, 6 and 10 March 2008.

<sup>17</sup> Informative Centre for Youth. Available at: <http://www.icm.cz/v-cr-funguje-164-pripravnych-trid-pro-romske-deti-pribyva-jich/>.

<sup>18</sup> Telephone interview with Director Hana Horská. Practical Primary School Listopadu Street 17. Chomutov, 3 July 2008.



ERRC were implementing a project originating at Leipzig University, just across the border in Germany. The overall aim of the projects was, according to the school directors, to improve the attitude of Romani children concerning the different educational portfolios, focusing on after-school activities and supplementary educational services, but was not focused on the school integration of Romani children.

48. There is no evidence available to support the claim of the Czech government that that children graduating from practical schools have not experienced practical or formal barriers to further education and, later, employment, since the School Law was amended in 2005.

49. During in-depth interviews, all school representatives expressed that the only changes to have taken place in their school since 2005 was a change of the school's name, and the introduction of the Framework Education Programme (hereafter "FEP"), operational since the beginning of the 2007/2008 school year.

50. Many school directors expressed concern about the Framework Education Programme (FEP). The director of a practical primary school in Teplice expressed that relative to the investment in this programme, its end effect is "clearly inadequate".<sup>19</sup> In the main, the implementation of the FEP has resulted in the inclusion of English language and some arts and crafts type classes for most schools. The director of a practical primary school in Bilina stated that the FEP does not bring about any integration-related changes

because the adjustment of the curriculum according to the FEP does not bring the practical school curriculum in line with that taught in standard schools (which are generally about 2 years ahead).<sup>20</sup> Another school director went further to state that the FEP actually accentuates the learning of practical rather than knowledge-based competencies.<sup>21</sup>

51. In Jirkov, the director of the practical primary school visited by the ERRC found it problematic that the FEP gives responsibility for curriculum development to teachers who are not adequately paid, and stated, "it is a big drawback that the curricula [between schools] are not compatible, which causes problems when children are transferred to another school [even within the same category of schools]."<sup>22</sup> This system of curricula individually tailored by class and school was also noted to be incompatible with the migration of some Romani families for work.<sup>23</sup>

## V. TRANSFER BETWEEN CATEGORIES OF SCHOOLS

52. The School Law also regulates the transfer of children from one school to another, elaborating on the transfer of children with health disabilities. On this basis, Government Decree 73/2005 Coll. which deals with the education of children with special educational needs provides for the types of education for these children – individual integration, group integration (separate classes within the mainstream school) or education in separately established schools.<sup>24</sup> However, the Decree

<sup>19</sup> Interview with Director Kellnerova. Practical Primary School U červeného kostela 110/29. Teplice, 11 March 2008.

<sup>20</sup> Interview with Director Krzakova. Practical Primary School Kmochova 205/10. Bilina, 14 March 2008.

<sup>21</sup> Interview with Director Frantisek Kovar. Practical Primary School Na Celne 2. Mlada Boleslav, 11 March 2008.

<sup>22</sup> Interview with Director Mrazkova. Practical Primary School Mostecka 309. Jirkov, 7 March 2008.

<sup>23</sup> Interview with Director Bendlova. Practical Primary School Fugnerova. Trmice, 5 March 2008.

<sup>24</sup> 2005/73 Sb. Vyhláška o vzdělávání dětí, žáků a studentů se speciálními vzdělávacími potřebami a dětí, žáků a studentů mimořádně nadaných, at: <http://www.atre.cz/zakony/frame.htm> (Regulation on the education of children and pupils with special educational needs). Article 2(4) of the Regulation laid down that the following schools were available for children and pupils suffering from mental disability: specialised nursery schools (speciální mateřské školy), special schools, auxiliary schools (pomocné školy), vocational training centres (odborná učiliště) and practical training schools (praktické školy).

however is solely focused on children with health disabilities. It has no provisions for the integration of children from socially disadvantaged backgrounds, nor does it elaborate supportive measures for this category of children. Thus, the authorities are under no obligation to integrate children from socially disadvantaged backgrounds into regular schools or classes. (Emphasis added)

53. Although under Czech law there are no formal barriers to transfers from practical schools to standard schools and the standard curriculum, school officials from several locations visited by the ERRC indicated that as a practical matter such transfers are impossible. According to ERRC research, the transfer of Romani children from practical to standard schools indeed appears to happen in very few instances.
54. Amongst the 7 practical schools and 4 Pedagogical-Psychological Counselling Centres visited by the ERRC in the Ustecky Region, there has not been a single transfer of a child from practical to standard schools since the School Law came into force, according to the interviews conducted.
55. Amongst the 5 practical schools and 3 Pedagogical-Psychological Counselling Centres visited by the ERRC in the Stredocesky Region, there was only 1 child transferred from a practical to standard school since the School Law came into force, according to the interviews conducted.
56. In the Moravskoslezsky Region, the school director at the Ostrava-Poruba practical school visited by the ERRC indicated that one boy had been sent to a standard school in the period. At the practical school visited in Ostrava-Privoz, the director indicated that 4 children had been transferred to a standard school in 2006 and 18 had been transferred in 2007 following diagnostic testing. According to the director, there had been about 10

recommendations to transfer in which the parents had not agreed.<sup>25</sup>

57. Based on his experience, the director of the practical school visited in Mlada Boleslav stated, “in practice the transfer of a child from special to standard curricula is not possible.” According to the director, the nature of the special curriculum and the disability of the child contribute to this. The significant difference between the special curriculum and the standard curriculum (for example, practical school students in grade 3 reportedly study at the level of grade 1 students in standard schools) make it impossible for children from practical schools to switch between the two curricula.
58. The Director of the Roudnice nad Labem PPCC stated that “there is no way back from special curricula because in the course of the time, the child’s below average intellectual skills comes closer to the limit of mental retardation. The longer a student attends “special” or “practical” school, the worse his or her competencies are and the child can thus realistically not be transferred to standard curricula.”<sup>26</sup> Many of the other school directors and directors of the Pedagogical-Psychological Counselling Centres visited by the ERRC expressed similar opinions. These kinds of statements raise serious questions as to whether so-called disabilities are “manufactured” in Romani children who are unnecessarily placed in practical schools and forced to follow the special curriculum for children with mild mental disabilities.

## VI. ASSESSMENT AND TESTING PROCEDURES; DIAGNOSTIC PLACEMENTS AND OTHER PROBLEMS

59. Several significant defects in the legal framework with regard to the pedagogical-psychological examination of Romani children, including the so-called diagnostic placements

<sup>25</sup> Interview with Director Otzipka. Practical Primary School Ibsenova 36. Ostrava-Privoz, March 2008.

<sup>26</sup> Interview with Director Pokorna. Pedagogical-Psychological Counselling Centre. Roudnice nad Labem, 4 March 2008.

(diagnostický pobyt), can be seen to be highly problematic. The directors of 10 Pedagogical-Psychological Counselling Centres interviewed by the ERRC across the 3 targeted regions stated that the role of their centre is defined by the laws on education. According to the law, the PPCCs co-operate with schools and parents to conduct pedagogical-psychological examinations of identified children and recommend educational strategies and actions for children with mental or physical disabilities, and educational plans and recommendations for children with learning disabilities.

60. The director of the Ostrava-Poruba practical school visited by the ERRC insisted that “If we do not have the recommendation [from the PCC], we can not enrol the child.”<sup>27</sup> This fact was confirmed by the Ostrava-Poruba PPCC, who maintained, “Parents can not enrol their child to that school [the practical school visited by the ERRC] without our recommendation.”<sup>28</sup>
61. The PPCC officials with whom the ERRC spoke during this study indicated that since the school reforms of 2005, there have been no change in their methodologies; indeed, it was noted that for approximately the past 10 years the same methods had been utilised, including the VISC 3/CZ tests.<sup>29</sup>
62. While only a small sample of parents provided information about the pedagogical-psychological examinations performed on their children, about half of those who provided this information stated that the examination had lasted between only 15 to 30 minutes. In most of the remaining cases, the examination lasted a maximum of one hour. In very rare cases had the examination apparently lasted more than one hour, with the maximum length
- of the examination being 2 hours.<sup>30</sup> The findings of this examination were non-conclusive and the child was recommended for a “diagnostic stay” in a practical school, after which time the child remained in the practical school without further examination.
63. At the same time, the parents interviewed were aware of the limitations inherent in following the special curriculum offered in practical primary schools; indeed most parents were acutely aware of it. As one parent cynically stated, “No one has informed us of the educational opportunities for our son but it is not necessary; we know his possibilities.”<sup>31</sup>
64. Whilst the request and consent of the legal representative of children is paramount in the Czech system regarding pedagogical-psychological testing, in many cases, parents seem not to be aware that it is *their* choice in these matters. Further, there are no legal requirements for the repeated examination of children placed in practical schools, including for a diagnostic period, unless the parent so requests. Therefore, most Romani children who enter practical schools continue today to remain there until they reach grade 9 and leave the school. It was also not clear from the research that Romani parents are actually involved in decision making at the end of their child’s diagnostic period which sees them remain in the practical school setting.
65. According to Article 9(1) of Decree 73/2005 Collection of the law on education of children, pupils and students with special educational needs, “Enrolment of the pupil with health handicap into some form of special education according to Article 3 can be preceded by diagnostic placement of this pupil

<sup>27</sup> Telephone interview with Director Capanda. Practical Primary School Ckalovova 942. Ostrava-Poruba, 26 June 2008.

<sup>28</sup> Telephone interview with Director Kostelna. Ostrava-Poruba’s Pedagogical-Psychological Counselling Centre, 27 June 2008.

<sup>29</sup> Interview with Director Pokorna. Roudnice nad Labem Pedagogical-Psychological Counselling Centre. Roudnice nad Labem, 4 March 2008.

<sup>30</sup> ERRC interview with the parent of a 4<sup>th</sup> grade Romani boy. Jirkov, 7 March 2008.

<sup>31</sup> ERRC Interview with the parent of a 4<sup>th</sup> grade Romani boy. Roudnice nad Labem, 3 March 2007.

at school, which he should be enrolled at for the length of 2 to 6 months.”

66. Diagnostic placements are allowed in cases in which it is uncertain whether or not the child at question actually has a disability. Diagnostic placements may be recommended to parents if the results of the pedagogical-psychological examination are inconclusive to provide a longer period in which the child may be examined to specially trained teachers. The director of Prague’s Pedagogical-Psychological Counselling Centre informed the ERRC that psychologists recommend the length of the diagnostic placement, but that the actual length of the phase is determined through agreement between the child’s legal representative and the director of the school at which the diagnostic placement takes place. In addition, following the completion of the diagnostic period there is no legal requirement that the child undergo further pedagogical-psychological testing; the teacher provides a report to the school director who discusses this with the parents and, based on this the decision is to be made by a parent as to whether or not the child remains in the practical school or goes to a standard school.<sup>32</sup>

67. ERRC field research in Czech practical schools and pedagogical-psychological counselling centres revealed manipulation of this mechanism with regard to Romani children; particularly in so-called “borderline” cases, according to PPCC

representatives. Many Romani children are reportedly judged as so-called border cases. Psychologists do not recommend their transfer to practical schools, but instead suggest a diagnostic placement. However, in almost all cases, the children concerned remain in the practical school indefinitely.<sup>33</sup>

68. As a result, very few transfers of Romani pupils to standard schools had taken place in the 3 regions covered by the research. Education policies at the central and local levels are not contributing to the desegregation of schools for the vast majority of Romani children.

How Romani Children End Up in Practical Schools*			
Region	Transfer From Standard School	Directly into Practical School	Unclear
Ustecky (of 70 parents)	80%	15.7%	4.3%
Stredocesky (of 37 parents)	62.2%	37.8%	N/A
Moravskoslezsky (of 73 parents)	61.6%	11.0%	27.4%

\* Based on information provided by parents during interview with the ERRC.

Source of Referral of Romani Children to Practical School*			
Region	Initiated By		
	School	Parent	Other**
Ustecky (of 70 parents)	52.5%	15.8%	28.7%***
Stredocesky (of 37 parents)	35.1%	56.8%****	8.1%
Moravskoslezsky (of 73 parents)	53.4%	19.2%	27.4%

\* Based on information provided by parents during interview with the ERRC.  
 \*\* The category of “Other” includes referral by paediatrician, kindergarten, psychologists or cases where it was unclear from the interview with the parent.  
 \*\*\* In 9 of these cases, answers provided by the parents indicated that they had not initiated the transfer, but that they had agreed.  
 \*\*\*\* In 14 out of 21 cases, the children had been placed directly in the practical school.

<sup>32</sup> Telephone interview with the director of Prague’s Pedagogical-Psychological Counselling Centre. 30 May 2008.

<sup>33</sup> Interview with Director Krzalkova. Practical Primary School Kmochova 205/10. Bilina, 14 March 2008.

69. During a telephone interview with the ERRC, the director of Prague's PPCC stated that the re-examination of children studying according to the special curriculum in both standard and practical schools must be requested by the parent; there is no provision in the law requiring or, indeed, permitting re-evaluation otherwise.<sup>34</sup> There is no provision in the School Law for the regular re-examination of children studying in so-called "non-integrated" environments – i.e. children studying in practical primary schools. Nor is there a requirement to review the expert opinions of PPCCs; only in 2008 did this become a responsibility of the government.<sup>35</sup>

70. The various forms of influence, direct or indirect, exerted by standard school representatives and the overall school environment continue to constitute a major determining factor in the streaming of Romani children into practical schools where special curriculum is taught.

71. Within the overall framework of the inadequate educational environment provided for Romani children in standard primary schools in Czech Republic noted above, interviews conducted in the course of the research indicated a general increase in the number of Romani parents requesting the transfer of their children to practical primary schools. This trend was noted by the head of the PPCCs and practical primary schools visited by the ERRC. One third of the Pedagogical-Psychological Counselling Centres visited by the ERRC indicated an increasing number of Romani parents requesting the examination/transfer of their children to the practical school.

72. The reasons for which Romani parents might request that their children be streamed into

practical schools are complex, but include the erroneous belief that practical schools are standard schools; racism, discrimination and harassment of children and parents in the standard school; financial considerations (in the practical school, the costs borne by parents are lower<sup>36</sup>); convenience of enrolling several children from the same family in the practical school; and being better informed about their children's performance at school, often through the child's school workbook.

## VII. CONCLUDING REMARKS

73. Three years after the entering into force of the 2005 School Law and despite assurances by the Czech government to the contrary, Romani children continue to be overwhelming segregated in practical primary schools following a special curriculum for mentally disabled pupils. The educational potential for these children has not improved in any significant way from the years prior to January 2005.

74. Evidence collected in 2008 indicates that Romani children continue to be overrepresented amongst the child population of practical schools. Of the total sample of practical schools visited by the ERRC, Romani children accounted for more than 80% of the student population in 42.11% schools. In 31.58% of schools, Romani children accounted for between 50 and 79% of the student population. In only 26.32% of the practical schools visited by the ERRC did Romani children account for less than 50% of the student population.

75. While the School Law of 2005 changed the name of schools from "special remedial" to "practical", the curriculum taught in the schools

<sup>34</sup> Telephone interview with the director of Prague's Pedagogical-Psychological Counselling Centre. 30 May 2008.

<sup>35</sup> See: *Report on Implementation of Concept on Timely Care for Children from Socio-Culturally Disadvantaged Backgrounds in the Area of Education in years 2005 – 2007 plus its update, approved by the Czech Government on 14 May 2008 with Government Decree Nr. 539. Available online at: [http://kormoran.vlada.cz/usneseni/usneseni\\_webtest.nsf/0/D550C8F166A42EA0C12574480023E36F/\\$FILE/539%20uv080514.0539.doc.pdf](http://kormoran.vlada.cz/usneseni/usneseni_webtest.nsf/0/D550C8F166A42EA0C12574480023E36F/$FILE/539%20uv080514.0539.doc.pdf).*

<sup>36</sup> Interviews with parents in Kraluv Dvur, Beroun and Neratovice.

has not changed. According to the directors of the practical primary schools visited by the ERRC, all children attending their schools follow the special curriculum for students with mild (or greater degrees of) mental disabilities, and all children in their schools are categorised as having a mental disability.

76. While there are no formal barriers for these children with regard to their future education, it is noted to be nearly impossible for these children to attend anything beyond a vocational secondary school where they may learn a trade.

77. With the introduction of the Framework Education Programme, the curriculum taught in Czech schools was modified beginning in the 2007/2008 school year. These modifications, however, do not bring the special curriculum taught in practical primary schools in line with the curriculum taught in standard primary schools, and therefore will not contribute meaningfully to the integration of Romani children in standard schools. Indeed, concerns have been raised that amendments under the Framework Programme will further limit the mobility of children between Czech schools by further individualising the curriculum of each school and making transfer more difficult.

78. In addition, there is no systematic programme for anti-racism and anti-discrimination training in the Czech school system targeting school authorities/teachers and students to reduce discrimination and harassment experienced by Romani children and parents in standard schools, to make standard schools a more welcoming environment.

79. The evidence collected indicates an alarming trend in the increasing number of Romani parents are requesting the placement of their children in practical schools, including against the recommendation of pedagogical-psychological counselling centres at times. Many such children do not have any special learning needs and they are, however, permitted to attend practical schools where they follow an inferior curriculum. In its judgment in the

case *D.H. and Others v. the Czech Republic*, the European Court of Human Rights stated “in view of the fundamental importance of the prohibition of racial discrimination [...] no waiver of the right not to be subjected to racial discrimination can be accepted, as it would be counter to an important public interest [...]”

## VIII. RECOMMENDATIONS

### 1. Enabling legal and financial factors:

- i) Enact in national legislation an enforceable statutory duty to desegregate education requiring public authorities to take action to eliminate segregated education, and declaring publicly that, in light of the *D.H.* judgment, it is a goal of the Czech government by 2015 to achieve desegregation of its school system and to ensure equal access to educational opportunity for all by 2015.
- ii) The government should formulate and adopt a comprehensive, multi-year and multi-dimensional strategic plan with clear two year and four year targets to eliminate school segregation of Romani children in a nation-wide consultation process involving Romani organisations, educator and representatives of central, regional and local authorities. This strategic plan should include a realistic cost estimate.
- iii) Design a system of incentives for standard schools that accept children from practical schools in order to facilitate transfer of children from practical to regular schools.
- iv) Allocate in the national budget targeted funding for the implementation of the plan, including for academic and social support of children who transfer from practical to standard primary schools and that may be required to enable the foregoing measures.

### 2. Reliable data collection:

Reliable and regular data is essential both for effective policy and tracking progress towards school segregation. While indeed the protection

of privacy in data collection is important, the European data protection laws do not outlaw ethnic data collection outright and their collection is permissible under strict safeguards.<sup>37</sup>

### **Data collected at school level by education authorities**

- i) Data should be disaggregated by school, type of school, class, grade, gender, it should also include *voluntarily provided* information on religion home language and ethnicity. The *voluntary provision* of data implies the fully informed consent of all parents, particularly from religious and ethnic minorities.
- ii) All data should be integrated into the regular Education Management Information System (EMIS) that also reflects learning outcomes and other data that enable effective quality monitoring in the schools; i.e. there needs to be a broad yet coherent framework for monitoring education quality that allows for diversity and difference.
- iii) The progress made integrating children from practical schools into standard primary school should also be reported on annually and assessed.

### **Census data by government statistical services**

- i) While census and population data should also be disaggregated by ethnicity, religion and language, this should also be provided voluntarily and self-reported.
- ii) Governments should collaborate fully with Roma and other minority communities to develop effective ways to research and provide this information on a regular and systematic basis.
- iii) Central services should provide yearly monitoring and publication of anonymous, school

by school, and district by district, data capable of demonstrating tangible progress toward the goal of desegregation.

### **3. Assessment and tracking**

- i) The use of standardized tests that have not been normed for the Romani population (including the VISC 3/CZ test) should be immediately discontinued.
- ii) The Czech government should review and restructure assessment testing of children identified with learning or developmental delays to comply with international and European norms. Any assessments of children should be culturally and linguistically appropriate to the circumstances and competencies of the individual child, sensitive to the child's prior knowledge, experiences and developmental stage multifaceted (i.e. not relying on single measure) and authentic (i.e. gathered in realistic settings and situations by familiar adults with whom the child feels at ease).
- iii) A system should be established to ensure that children who are placed in practical schools for diagnostic or observational purposes receive follow up reviews that include input from parents, teachers and specialists. This would require compulsory review of expert opinions by Pedagogical-Psychological Counselling Centres, particularly for any recommendations relating to school placement.
- iv) The purpose for testing, including psychological assessment, must be clear and needs to focus on the best interests of the child; that is, it should support maximising a child's potential for learning and development, not limit his/her future opportunities, as often occurs through the use of "high

<sup>37</sup> *EU Directive on the Protection of Individuals with Regard to the Processing of Personal Data and on the Free Movement of Such Data, 95/46/EC, 24 October 1995; CoE, Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data (1981) and Recommendation No. R (97) 18 of the Committee of Ministers Concerning the Protection of Personal Data Collected and Processed for Statistical Purposes (1997).*

stakes” intelligence testing. Regular formative assessment in schools should inform the learning process for young children. The purpose of this should be to improve and/or adapt teaching methods rather than identify which children should be excluded from regular school.

- v) There should be provision for specialist assessment to identify children that may have special education needs that arise from physical disability, learning difficulties or social disadvantage; however, the emphasis should still be on getting the system to accommodate rather than exclude children. The OECD SENDDD approach, i.e. special education needs through disability, learning difficulties and social disadvantage, could provide useful guidelines here.<sup>38</sup> The third category of need in SENDDD, social disadvantage, must be clearly defined and used only to refer children and families to appropriate social services. This category should not be used to determine school placement. Careful guidelines must be developed as to what constituted care that requires highly specialised support that ordinary teachers and schools may find it difficult to provide.
- vi) Parents should be involved in the assessment process and any tracking and /placement decisions that affect their children.
- vii) Provide targeted support to civil society organisations to carry out information campaigns amongst Romani parents on the benefits of integrating children from practical into standard schools and providing assistance to parents to what to enrol their children in integrated schools.

#### 4. Extend and prioritise early childhood provision for the most disadvantaged children

- i) Children who participate in quality early education are more likely to succeed in school and less likely to need special education or other remedial supports. These benefits are strongest for the most disadvantaged children, even though they are less likely to attend quality kindergarten than children who are better off. Most OECD countries provide at least two years of access to free early education and care before school entry. The 2002 Barcelona targets call for EU Member States “to provide childcare by 2010 to at least 90% of all children between 3 years old and the mandatory school age and at least 33% of all children under 3 years of age.”<sup>39</sup>
- ii) Although the Czech Republic has not met these targets,<sup>40</sup> and Romani children are underrepresented in kindergartens and child care settings, which charge fees, to address early disparities in children’s home learning environments and to help promote children’s readiness for school, the government should entitle all children from disadvantaged backgrounds to two years of free early education before they begin school.
- iii) We recommend targeting young children in socially and economically disadvantaged communities in general, rather than only Romani communities to promote integration and reduce stigma. To reach this goal, the range of early childhood provision may need to be expanded to include not only formal kindergartens, but also part-day play groups and caregiver support for children aged 3–6. Regardless of the setting, it is

<sup>38</sup> Centre for Educational Research and Innovation Availability 2004. *Equity in Education: Students with Disabilities, Learning Difficulties and Disadvantages*. OECD Publishing; Paris.

<sup>39</sup> Commission of the European Committees 2002. *Communication from the Commission to the Spring European Council in Barcelona: “The Lisbon Strategy – Making Change Happen.”* Brussels, 15 January 2002 (28.01).

<sup>40</sup> *Figures on kindergarten enrolment: 89% for 3 to 6 year olds (75% for 3 year olds and 98% for five year olds)* Source for enrolment figures: Rabušicová, M. (2007). *Early education/care and professionalisation policies in the Czech Republic. Commissioned Report for the seepro-project. State Institute of Early Childhood Research (IFP), Munich: Unpublished Manuscript.*



important to ensure that disadvantaged children are exposed to rich learning environments and individualised pedagogical approaches and receive home language support.

## 5. Teacher, school, and classroom support for Romani children

- i) Full integration and inclusion at the national level and clear legal frameworks for fair assessments must be backed up by a system of monitoring and support for educational quality at the local government, school and teacher levels. This requires deeper attention to attitudes prevalent in the education system, teacher training, teacher assistants, curricula, classroom materials and practices.
- ii) School systems must be prepared to develop and implement attitudes and practices that support inclusion of children from diverse backgrounds with special educational needs, whether through physical disadvantage, learning difficulty or social disadvantage. Indeed, anti-bias training should be part of the professional development of all educators, administrators, relevant local education authorities and school inspectors regardless of the linguistic, cultural, or ethnic backgrounds of the families with which they work. This implies adjustments to pre-service training as well as in-service teacher and administrator training systems.
- iii) If preparatory classes are expanded, they should exist in regular primary schools (not “practical” ones) and they should enrol both Romani and non-Romani children. These classes should promote strong early childhood pedagogy (child-centred, individualised approaches) rather than provide a “crash course” based on the curriculum and formal instructional practices of primary school.
- iv) The provision of Romani teaching assistants have also proved useful elsewhere and should be considered as a general strategy for the inclusion of the Romani minority in order to support home language and culture and facilitate transitions.
- v) Provide adequate information to all Roma about their roles and rights as the main representatives of their children, including making clear that the decision regarding in which school children are enrolled is theirs and providing information about the educational prospects for different types of schools.
- vi) The Ministry of Education should encourage and foster respect for diversity through multicultural curricula and anti-bias approaches. Given that attitudes about ‘others’ form at an early age, early childhood and primary teachers need to start early to promote social inclusion values among all children before deep prejudices form.
- vii) Education systems can foster inclusive classrooms that also impart positive messages about minorities through:
  - Activities and materials in classrooms that support differences and diversity;
  - Children’s books and textbooks that clearly include Roma culture, but also Roma and Czech children and families together; and
  - Provision of additional assistance in home language and second language acquisition.