

The Reaction of Relevant Czech State Authorities to the European Court of Human Rights Judgment in the Case *D.H. and Others v. the Czech Republic*

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This article was written in July 2008 and the assessment contained herein is valid until that time.

THE judgment of the European Court of Human Rights (“ECHR”) in the case of *D.H. and Others v. the Czech Republic*², delivered on the 13th November 2007, according to which the Czech Republic violated the ban on discrimination of the applicants in conjunction with their right to education, is only the starting point of a longer reformatory process. The result of this process should be the situation when same or similar discriminatory practices are not repeated in the Czech Republic and their victims do not have to protect their right to equal access to quality education through litigation. The current issue is how long this process is going to be. The Czech Government – in practice relevant state authorities responsible for the area of education – is held responsible for its quick and effective implementation. Only in this way the ECHR judgment will really extend beyond the applicants’ interest and will make a difference in the conditions and quality of the Czech educational system into the future. The purpose of this article is to summarise the reaction of relevant Czech state authorities to the ECHR judgment in chronological sequence from November 2007 to the end of June 2008. The time period of more than seven months allows its representative recapitulation.

The immediate reaction of the central state authorities to the ECHR judgment

The main player in the ECHR judgment implementation process is the Czech Ministry of Education, Youth and Sports (hereinafter: the “Ministry”).³ The ECHR judgment did not find the Ministry in its best condition – namely without a relevant departmental minister. The previous Minister Dana Kuchtová announced her resignation as of the end of September 2007, and it took around two months before the government coalition was able to agree on a new suitable candidate. The current Minister of Education, Ondřej Liska, was not nominated to his post until 4 December 2007; in the meantime the Ministry was administered by Vice Premier Martin Bursík who also holds the office of Minister of the Environment.

In contrast to the intense discussion that immediately followed the ECHR judgment in the non-governmental sector, the first reactions of central state authorities were somewhat scanty. The Ministry published on 14 November 2007 only a brief press release⁴ which, after a two sentence summary of the ECHR judgment merits, informed the Czech public that no more detailed statements will be published before a

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² Hereinafter: “ECHR judgment”.

³ The Ministry functions as the central state authority for pre-school facilities, school facilities, primary schools, secondary schools and universities, science policy, research and development, international cooperation and for the state care of children and youth. See Article 7 of the Act Nr. 2/1969 Coll. of Laws, on establishing ministries and other central bodies of the Czech state administration.

⁴ See: <http://www.msmt.cz/pro-novinare/reakce-msmt-na-rozsudek-velkeho-senatu-evropskeho-soudu-pro-lidska-prava-ze-dne-13-listopadu-ve-veci-stiznosti-d-h-a-ostatni-proti-cr>.

careful analysis of the ECHR judgment. “For the clarification of potential misunderstandings in public discussion about the judgment,” the Ministry drew attention to some facts – for example that special remedial (zvladnu) schools as such do not exist in the Czech Republic anymore, that it was not ever possible to enrol a child into special remedial school without parental consent and that the Ministry supports the integration of pupils with special educational needs in every possible way.

On 13 November 2007, the Czech Ministry of Justice contributed a more detailed press release⁵ which introduced more closely the history of the case and the process of hearing the application at the ECHR. The Ministry of Justice emphasised that the applicants’ assertion that many Romani children are illegally placed into special remedial schools on the grounds of their race was based on unofficial statistical data and research of various non-governmental organisations (NGOs) and that the ECHR noted first of all that Romani people constitute due to historical reasons a disadvantaged and vulnerable minority requiring special protection. The fact of “the abolition of special remedial schools” in the Czech Republic was also emphasised. The Ministry of Justice lastly noted that the ECHR judgment would be translated into the Czech language, made accessible on web pages of the Ministry and that the relevant state authorities will react to its conclusions after its analysis.

The first official reactions gave the impression of a certain distance in relation to the ECHR judgment and emphasised the publicly dominating impression that the problem addressed by the case was already eliminated through the so-called school reform that entered into force in January 2005.

In TV news coverage which has the potential to address the broad general public, only the government representative of the Czech Republic

in front of the ECHR, Mr Vit A. Schorm, commented on the ECHR judgment immediately. He was invited to give his comments on the main news broadcast of Czech Television on 13 November 2007⁶ and during the discussion on the ECHR judgment that took place the following day on TV news channel CT 24.⁷ The government representative stated that he was surprised by the ECHR judgment but that “the law is not so simple to allow the predication that things are black or white.” He emphasised that there exist big differences between the situation at the end of the nineties and the current situation.

No other representative of the central state administration commented on the ECHR judgment immediately after its delivery and the Czech Government did not include the issue on its regular meeting agenda.

The developments at the Ministry of Education

The current Minister of Education Mr Ondrej Liska was inducted during the first days of December 2007. Shortly before his appointment, he answered the direct question of a journalist as to whether or not he wants to change the practice identified by the ECHR as discriminatory, saying that he “naturally plans to do so because it is one of the big issues.” Minister Liska stated that in spite of the fact that the Czech Republic was not found guilty of directly discriminating against Romani children, the truth is that the state did little to avoid the discrimination and it actually permitted the discrimination to occur, be it consciously or unconsciously. The Minister stated explicitly that it is no solution “to abolish the name of special remedial school but to let the principle function under another name in the same way.”⁸ Surprisingly, when he was asked only a few days later in an open public discussion

⁵ See: <http://portal.justice.cz/ms/ms.aspx?j=33&o=23&k=4176&page=2&d=195202>.

⁶ “The Czech Republic lost the case because of education of Roma” (*Cesko prohralo soud kvuli vzdeleni Romu*), CT, 13 November 2007. Available online at: <http://www.ceskatelevize.cz>.

⁷ “Discussion about the European Court Judgment” (*Diskuse o rozhodnuti Evropskeho soudu*), CT 24, 14 November 2007. Available online at: http://www.ct24.cz/vyhledavani/index_view.php?id=239524.

⁸ “I will make it up” (*Zvladnu to*). *Respekt* Nr. 49/2007, 2 December 2007.

about tasks that he perceives in his position as of highest priority, the implementation of ECHR judgment conclusions was not mentioned.⁹

As the Ministry activities in relation to the ECHR judgment implementation were not apparent during the first three months under the new Minister's management, a coalition of Czech NGOs focusing on the integration of Romani children into mainstream education approached Minister Liska directly.¹⁰ On 10 March 2008 (more or less at the end of the 100 days "protection period" of the new Minister), the NGO Zšvule prava, on behalf of other nine NGOs,¹¹ sent Minister Liska a request for information about particular measures that the Ministry plans to implement in response to the ECHR judgment. The request outlined the following questions: Does the Ministry plan to initiate sociological monitoring of segregation in education? Will it initiate discussion seminars between experts and the public focused on segregation in education and on possibilities of its elimination? Will it actively search for and promote examples of good desegregation practice in education? Will it strive for modification of procedures that lead to misusing pedagogical-psychological testing to segregate Romani children? Will it carry out consistent evaluation and control of practical implementation of all desegregation measures? Minister Liska was also invited to meet personally with NGOs participating in the coalition and to cooperate with them in the process of eliminating segregation in the Czech education system.

Concurrently with this appeal, the Ministry published on 11 March several official statements

summarising the first 100 days of the new Minister in office.¹² The Ministry informed the public that it had started the process of organisational changes wherein a new department (the so-called Group 6 Social Programmes in Education incorporating two relevant departments: the entirely new Department of Equal Opportunities and the Department of Prevention, Special Education and Institutional Care) would be established. According to the statements of the Minister, the aim of this initiative was to give to the social dimension of education unified management and a clear course of development that has been missing up to now. According to the Minister's evaluation there has been a lot of solid work done in the area of education of socially disadvantaged children, Roma integration and equal opportunities but that this work has not brought adequate results because it was not complex and effective enough (that is why the Minister has decided to organisationally join together all relevant activities of the Ministry and all organisations administered by the Ministry). The presentation "Social Programmes in Education" that was made public on the Ministry's web pages gave an idea about the planned activities of the new Group 6. It offered very vague information that the starting point for changes will be the European Court of Human Rights judgment and that the higher effectiveness of the education system for children from socio-culturally disadvantaged backgrounds should be achieved by integration of parents into the pre-school education process, the reinforcement of language skills education and communication, a system of preparation support for entrance exams to high schools and the preparation of a system of

⁹ *The Minister mentioned as the main tasks waiting for him in the coming months the completion of preparations for the utilisation of European funds, school-leaving exams at secondary schools administered by the state, funding of universities, science and research, the amendment of the Act on Universities and the sequence between secondary and tertiary education. See www.respekt.cz. Online discussion with Minister Ondrej Liska, 13 December 2007.*

¹⁰ *The coalition of Czech NGOs (with active participation of the European Roma Rights Centre) was established at a meeting of their representatives in November 2007 with the aim to coordinate NGO activities to create targeted pressure on Czech state authorities to enforce relevant changes within the Czech educational system after the ECHR judgment. Zšvule prava coordinated the coalition's activities until the end of May 2008 when the organisations Amnesty International CR and FORINT took over this role.*

¹¹ *Amnesty International CR, Clovek v tisni (People in Need), Drom, Dzeno, European Roma Rights Centre, Liga lidskych prava (The League of Human Rights), Romodrom, Step by Step CR, Vzajemne souziti (Life Together) and Zšvule prava.*

¹² *See, for example, the press release "Ondrej Liska: 100 days in at the head of EduMin." Accessible at: <http://www.msmt.cz/pro-novinare/ondrej-liska-100-dni-v-cele-msmt>.*

education for young mothers. On 11 March, the Ministry also made public its intention to amend the School Act (described in more detail below).

At the beginning of April 2008, the Ministry introduced a new communication medium, the so-called Open Bulletin of the Ministry.¹³ In its first release, Minister Liska admitted that many things in the issue of the equal access of all children to education were underestimated in the past and that “one of the results is also the well known European Court of Human Rights judgment about violation of the ban on discrimination in conjunction with the right to education that has cost the Czech Republic money and unfortunately also a little reputation.”¹⁴ Mr Dusan Luzny, as the newly appointed Deputy Minister for Social Programmes in Education designated the current situation especially in the area of education for Romani children as still unsatisfactory and named as necessary steps to adopt specifications (eventually a new definition) of the legal category “pupils with special

educational needs” as a prerequisite for effective usage of expended financial means, and analysis of current Ministry grant programs’ effectiveness in order to give higher support to the measures that have already proven effective (e.g., preparatory classes at primary schools or teacher’s assistants). The Deputy Minister also named as necessary a “really impartial” analysis of former special remedial schools’ transformation. He emphasised that the ministry wants to use the potential of NGOs in the whole process in the best possible way and to cooperate with them closely.¹⁵ The Open Bulletin also briefly made public the intention to amend the Schools Act, composed of about 10 changes of conceptual character and up to 50 partial changes (the intention is to make changes enter into effect by 1 September 2008). Of particular relevance to the education of Romani children, these amendments include the intention to establish preparatory classes also in special primary schools¹⁶ and the proposal to re-introduce fees for the last year of nursery school attendance.¹⁷

¹³ *It is a quarterly journal accessible via the Internet that gives information about the Ministry and its individual departments’ activities in relation to actual topics. Subjects of individual editions should correspond to the issues that were actually solved during the particular trimester. Copies of the quarterly that have been published until now are accessible at: http://www.msmt.cz/uploads/soubory/Zpravodaj_MSMT_WEB_cislo1_BIG.pdf (1 April 2008) and http://www.msmt.cz/uploads/soubory/K2/MSMT_Zpravodaj_2_08.pdf (20 June 2008).*

¹⁴ *See: Minister’s Introductory Word. Available at: http://www.msmt.cz/uploads/soubory/Zpravodaj_MSMT_WEB_cislo1_BIG.pdf; page 1.*

¹⁵ *Interview with Deputy Minister Dusan Luzny: “My objective is to make non-governmental organisations and the Ministry of Education cooperate closely. [...] NGOs represent the environment that generates innovative attitudes; the Ministry has to take care of clear legislative process. Intersection of these two attitudes means benefit for both sides.” Accessible at http://www.msmt.cz/uploads/soubory/Zpravodaj_MSMT_WEB_cislo1_BIG.pdf.*

¹⁶ *In the school year 2007/2008, 164 preparatory classes for socially disadvantaged children were running in the Czech Republic (attended by 1929 children). According to the opinions of Jirina Ticha, Director of the Department for Pre-School, Primary and Art Primary Education of the Ministry of Education, and Radka Soukupova, Director of the Office of the Council of the Government of the Czech Republic for Roma Community Affairs, preparatory classes significantly help Romani children in managing education at the primary school level. According to the Ministry evaluation, 80% of Romani children that have attended preparatory classes enter standard primary schools and have a higher chance of staying there. Romani children attending preparatory classes at practical schools subsequently enter standard primary schools only at the rate of 10%. (See information from the Informative Centre for Youth at: <http://www.icm.cz/v-cr-funguje-164-pripravných-trid-pro-romske-deti-pribyva-jich/>). If the reality indicates that Romani children attending preparatory classes at schools with special curricula tend to stay there in the vast majority of cases the trend should be to increase the number of preparatory classes at standard primary schools and to avoid the possibility for Romani children to be “caught” in the preparatory class at the former special schools.*

¹⁷ *According to the statement of the Ministry, the gratuitousness of the final year of nursery school (introduced in 2005) does not act as intended and has not attract considerable numbers of children from socially disadvantaged, especially Romani, families. The number of Romani children in nursery schools allegedly has not increased and the founders of nursery schools only have to bear higher costs. The Ministry perceives as a sufficient instrument the possibility for the nursery school director to*

Deputy Minister Luzny responded to the above mentioned request of the NGO coalition to Minister Liska on 14 April, expressing the Ministry standpoint. He claimed that the Ministry “is engaged in the issue seriously” and is preparing an analysis of desegregation possibilities, including the prevention of segregation of Romani pupils. The analysis should describe the current situation including measures for the integration of Romani pupils into mainstream education implemented so far, introduce selected attitudes in other EU countries and prepare the proposal of next steps in the Czech Republic in the context of the ECHR judgment.¹⁸ According to Deputy Minister Luzny, the Ministry intends to focus more on monitoring because it perceives the data on the situation of Romani children in the educational system to be insufficient. The monitoring of some partial measures was ordered by the Ministry: in 2007 the Czech School Inspection (CSI) was asked to implement (during the year 2008) a thematic survey focused on the evaluation of conditions, process and results of pre-school education of children from socially disadvantaged environments in preparatory classes of primary schools. The CSI Report should be completed at the beginning of the year 2009 and should include also an evaluation of preparatory classes’ effectiveness. Deputy Minister Luzny further emphasised Ministry support for relevant programmes (e.g. for the transition of Romani pupils from primary to secondary schools and the programme supporting teacher’s assistants for socially disadvantaged pupils), the continuous realisation of seminars aimed at good integration practices and support of undergraduate and further

education of pedagogical workers in order to make them competent to use all possibilities in creating conditions for integrating Romani children into mainstream education.¹⁹

According to the Deputy Minister, the Ministry perceives as one of the basic measures for eliminating obstacles for Romani children in access to education the complex system of pre-school education. The Report on Implementation of a Concept on Timely Care for Children from Socio-Culturally Disadvantaged Backgrounds in the Area of Education in years 2005 – 2007, including its updating and specific tasks for further period, (hereinafter: “Report on the Concept”) was completed in April 2008, prepared for the Czech Government. Timely care as a complex of programmes and measures focused primarily on children between the ages of three years and the age when entering the primary school education should increase the number of socially disadvantaged children in mainstream education, increase their success in schools and the cooperation with children’s families.²⁰ It is of relevance that the document itself admits that it is currently difficult to evaluate the results of the support aimed at children from a socially disadvantaged environment because quantitative data on this group and its educational results are not systematically disposable. It means that in the status quo it is factually not possible to assess objectively the number of socially disadvantaged pupils and to evaluate the impact of implemented measures in a valid way.²¹ An important problem – also mentioned in the Concept – is insufficient financing for schools

lower or abolish the fee in well-founded cases, for example on grounds of social disadvantage. Quite intense discussion follows this intention. For example, the shadow Minister of Education, Jiri Havel, holds the opposite opinion and the Vice-Rector of Charles University, Stanislav Stech, perceives this Ministry proposal as an impetuous and improvident decision that contrasts with principal European Commission documents (stating that one of the main pillars of a quality educational system should be the pre-school education that should be made accessible to as many children as possible, first of all from socially disadvantaged groups). Information from discussions during the programme “Questions of Vaclav Moravec” (Otazky Vaclava Moravce), broadcast by Czech Television on 1 June 2008.

¹⁸ The material was not publicly available as of 30 June 2008.

¹⁹ Financial support programmes in the area of education are realised with the support of the Czech state budget and financial means from European Social Fund Programmes.

²⁰ The main activities are, for example, pre-school education in nursery schools and preparatory classes at primary schools, in centres and clubs run by NGOs, activities of counselling centres and work with families.

²¹ Report on the Concept, p. 7.

integrating socially disadvantaged children when these have to cover their higher costs through their own activities (e.g., through projects supported by the Ministry grant programme for support of the Romani community). The Ministry acknowledges that this can not be maintained and advises systemic change in the financing of education for socially disadvantaged pupils.²²

The Report on the Concept was approved by the Czech Government on 14 May 2008 with Government Decree Nr. 539,²³ setting particular tasks for the Minister of Education and other relevant state authorities. The Minister of Education is now obliged to cooperate with the Minister of Labour and Social Affairs and the Minister of Health and to coordinate continuously the activities of individual institutions responsible for the care of children²⁴ in order to increase joint development of social and pedagogical-psychological diagnostics in cases of children from an at-risk environment, to implement continually measures in the education of pedagogical workers focused on the development of their competency in educating children from socially disadvantaged environments between the ages of three and six years, to create quality standards of timely care of children from socially disadvantaged environments, to implement continuously measures for increasing number of children from socially disadvantaged environments attending pre-school education in nursery schools or preparatory classes for socially disadvantaged children, to implement pilot projects (e.g., programmes for the development of Czech language skills, verification of methods for cooperation among socially disadvantaged families and schools), and to establish a system of reviewing the expert opinions of pedagogical and psychological counselling centres. The Minister of Education is also obliged to elaborate the Action Plan on the Concept's Implementation by 30 December 2008 and to inform continuously the

Czech Government about the concrete results of the Concept's implementation. The Minister of Education, the Minister of Labour and Social Affairs and the Minister of Health are obliged to implement continuously joint measures in order to influence the parents of children from socially disadvantaged environments to make them assume the responsibility for their child's development in the time period of pre-school education. The Government Decree includes also recommendations addressing regional hetmans and mayors to be actively involved in the Concept implementation and recommendations for public universities rectors to include the importance of timely care in their educational programmes.

The Ministry of Education responded to the challenge to cooperate with the NGO sector and Deputy Minister Luzny expressed interest to meet with an NGO coalition. This meeting took place on 19 May 2008 with representatives of Czech NGOs and the European Roma Rights Centre, Minister Liska, Deputy Minister Luzny and representatives of Ministry's Department for Equal Opportunities. The Ministry chose as base material for the discussion the Report on the Concept and presented to the attendees some of its above-mentioned plans. A significant part of the meeting was devoted to the discussion about the real situation in Czech primary schools monitored by three of the participating NGOs during research focused on former special remedial schools in Central Bohemia Region, Ustecky Region and North Moravia Region.²⁵

The most current activities of the Ministry of Education, Youth and Sports

More intense "resuscitation" of the topic is apparent since the beginning of June 2008 when Minister Liska repeatedly stated his interest in

²² *Report on the Concept*, p. 8.

²³ 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).

²⁴ *Authorities for socio-legal protection of the child, health facilities, pedagogical and psychological counselling centres, terrain social workers, health – social workers.*

²⁵ *The research, undertaken by the European Roma Rights Centre, in cooperation with the Roma Education Fund, was implemented between February and April 2008, together with Vzajemne souziti and Zšvule prava.*

solving the problem of education of Romani children in the Czech mainstream media.²⁶ He announced his intention to publish Ministry plans to achieve the increased number of Romani children attending standard primary (not special) schools. The basis for this should be the specification of the system of enrolling children into special and practical schools (mainly conditions of informed consent of parents and the elimination of the possibility to evade the legal conditions for enrolling children into practical or special school). He noted that although it is public knowledge that practical primary schools are largely filled with Romani children, relevant statistics showing how many Romani children attend these schools and how many Romani children attend standard primary schools do not exist. For this reason, the Ministry plans to realise comprehensive research in Czech primary schools and publish the results by the end of the year 2008.²⁷

On 4 June 2008 on the occasion of a press conference for the promotion of the project “Fair School” sponsored by Minister Liska,²⁸ the Minister acknowledged explicitly that elements rightly named as tending toward segregation still remain in the Czech educational system and that Romani children are wrongly placed into schools with lower standards.²⁹

The Minister and his Deputy introduced more concrete plans of improving the position of children from socially disadvantaged environments

in the Czech educational system at another press conference on 26 June 2008.³⁰ The Minister acknowledged that the transformation of the former special remedial schools that were criticised by the European Court of Human Rights into practical primary schools has not produced desirable results until now and that Romani children living in socially excluded environments are often automatically incorporated into an educational regime for children with “mild mental disabilities” although it significantly constrains their chances to reach the secondary school education. The Ministry perceives as the main causes the absence of a coordinated system supporting the school successes of children endangered by social exclusion, problematic diagnostics, but also the family environment when parents themselves require practical primary school for their children (without any acknowledgement of the factors contributing to this).

In order to obtain relevant data, the Ministry has decided to implement sociological research focused on analysis of forms and causes of early exclusion of children from socio-culturally disadvantaged environments. It also plans a detailed analysis of the individual approach of pedagogues to pupils with special educational needs that will also focus on monitoring the situation in former special remedial schools after their transformation into practical primary schools. The Ministry should find out how many Roma really attend primary practical

²⁶ See, for example, “The Minister wants more Romani children in primary schools,” *Lidove noviny*, 6 June 2008. Available online at: <http://www.msmt.cz/ministerstvo/ministr/lidove-noviny-ministr-chce-vic-romskych-deti-v-zakladnich-skolach/>; “Romani children fail already in the first class. Because of the Czech language.” Available online at: http://www.denik.cz/z_domova/romske_deti20080613.html/. It is apparent that the Ministry uses data coming, for example, from the study realised in 2007 by GAC Ltd. under the direction of sociologist Ivan Gabal.

²⁷ On this occasion, Deputy Ministry Luzny stated, “All are afraid to make such statistics only because it could be perceived as racist. But the fact that these children attend those schools is reality.”

²⁸ The project “Fair School” of the League of Human Rights focuses on supporting integrative trends in the Czech primary education system. Schools meeting the standards of a “Fair School” (created in cooperation with pedagogical experts) can obtain a certificate valid for a two-year period.

²⁹ Information from the Czech Press Agency dated 6 June 2008. Available online at: <http://www.topregi.on.cz?articleId=34228>.

³⁰ See, for example, Ministry press release “Heading to more open educational system,” 26 June 2008. Available online at: <http://www.msmt.cz/pro-novinare/smerem-k-otevrenejsimu-skolstvi/>; see also <http://www.msmt.cz/ministerstvo/ministr/cro-radio-cesko-dostupnost-vzdelani-pro-deti-ze-socialne-slabsich-rodin>.

schools and how many of them are educated according to the educational documents intended for children with mild mental disabilities. On the basis of this data, the Ministry plans to elaborate an amendment of the School Act regulating the education of pupils with special educational needs. The Minister further intends to intensify inclusive approaches in pre-school education and in some cases to enable a child to attend preparatory class already two years before the start of obligatory school attendance (it should consequently enable better adaptation to the conditions of standard primary school). The salaries of teaching assistants should be improved because the Ministry perceives them as key participants in the inclusion process. Diagnostics free from cultural bias should also be developed according to the Ministry's plans.

The Ministry of Education shows its cooperative attitude to the NGO sector by inviting representatives of NGOs into commissions selecting projects for financial support for integrating Roma children³¹ and by enabling the participation of NGOs in working groups for example aimed at the elaboration of the School Act amendments.³² Planned changes of school legislation deserve certainly maximum attention and deeper analysis.

The reaction of other persons potentially involved in the implementation process

It is possible to briefly mention also the comments of other official representatives of the state administration to give a more detailed impression of the situation in the Czech Republic.

The government representative of the Czech Republic before the ECHR, Mr Vit Schorm, summarised in more detail his attitude to the ECHR judgment during the March 2008 seminar "The education of Romani children in the Czech Republic."³³ He pointed out that the ECHR judgment is not formally a so-called pilot judgment that would immediately mean the obligation of the sentenced state to guarantee reparation to other persons in the same situation as applicants. He mentioned possible measures that could be adopted by the Czech Republic to reform some aspects explicitly addressed by the ECHR. He perceived as appropriate to support through solid scientific research whether the current procedures used in pedagogical and psychological counselling centres can disadvantage Romani children and to increase the provision of information to parents in choosing a school for their child. Because the Czech Government was not able to refute statistical data introduced by the applicants (official or scientific data were not at its disposal) it should guarantee in the frame of a positive obligation to prevent indirect discrimination the collection of relevant data and its statistical processing. According to Mr Schorm's opinion, when choosing appropriate measures it will probably be necessary for the Czech state to be inspired by other international documents focusing on the issue of education of Romani pupils.

Asked for more detailed information about particular steps by the Ministry of Justice in favour of the ECHR judgment implementation,³⁴ Mr Schorm emphasised that it is not the role of the Ministry of Justice to draw up implementation measures as this task naturally belongs to the Ministry of Education. Mr Schorm noted that

³¹ *The author was, as the representative of organisation Zšvule prava, named by Deputy Minister Luzny a member of the commission for the evaluation of project requests within the programme for the support of integration of the Romani community which met on 16 June 2008. The Commission's decision making process was transparent.*

³² *For example, the League of Human Rights prepared the proposal of new legislative definition of children with special educational needs and of the new regulation on financing their education.*

³³ *The conference, held on 17 March 2008, was initiated by Michaela Sojdrova, Vice President of the Committee for Science, Education, Culture, Youth and Physical Training in the Chamber of Deputies. Mr Schorm participated with his presentation "The judgment of the European Court of Human Rights related to the problem of including Romani children in special schools in the Czech Republic and the execution of the judgment."*

³⁴ *Email communication with the author, June 2008 (on file with author).*

the Ministry of Education was “quite soon” after the ECHR judgment delivery asked to submit the plan of general measures for the judgment’s implementation but the elaboration of this plan has become somewhat longer. The Ministry of Justice itself has realised standard measures: it translated the ECHR judgment in its full content into the Czech language and made it accessible to the whole public on the Ministry’s website. Mr Schorm also noted that the judgment is mentioned during seminars realised by the Judicial Academy or during seminars for judges specialised on the European Convention on Human Rights in relation to the need to guarantee the protection against indirect discrimination.

A surprisingly pronounced opinion on the ECHR judgment was presented during the above mentioned seminar by Mr Pavel Svoboda, the resident representative of the Czech Republic to the Council of Europe in Strasbourg. He stated that he perceives the ECHR judgment as not logical, stable and consistent and that in his opinion this judgment could have a counter-productive impact on the human rights development as a consequence. Mr Svoboda perceived the ECHR judgment in its character as a global decision about the Romani community and he evaluated the Court’s attitude as “worthy of the attitude of some non-governmental organisation not the objectivity and professionalism of a judicial body.”

The Czech NGO coalition has also actively addressed the Public Defender of Rights (Ombudsman) Otakar Motejl with questions about his relevant activities following the ECHR judgment. He was requested in a brief dated 10 March 2008 to evaluate the current situation in guaranteeing the equal access of Roma children to education and to give his expert opinion if the current situation is consistent with requirements articulated by the ECHR judgment. He was also asked for his own recommendations as to what should be done in the interests of the successful implementation of the ECHR judgment as well as about his own planned activities. The Ombudsman stated in his response dated 30 May 2008 that he perceives the situation of access of Romani pupils to primary education as serious but also perceives the implementation of ECHR judgment conclu-

sions in practice as a long-term process. That is why he focuses his activities first of all on monitoring and influencing the legislative process (he has a representative in the work group of the Ministry’s Group 6 as well as the work group established by the Institute for Pedagogical and Psychological Counselling). The Ombudsman also emphasised that immediately after the so-called Anti-discrimination Act enters into force he will focus as one of his priorities on the access of national minorities to education.

Evaluation of the state authorities’ response in past months

The reaction of the relevant state authorities – first of all of the Ministry of Education, Youth and Sports – can be evaluated in several “time phases.” The Czech Republic somewhat “overslept” after 13 November 2007 when the first official reactions were vague, overcautious, or rather defensive and of a disavowing nature. The more complex reaction came afterward and more concrete measures that the Ministry plans to implement were formulated more than seven months after the delivery of the ECHR judgment.

It is impossible to leave aside that NGOs have already been striving for the introduction of the majority of the measures listed for years – for example for the necessity of establishing valid monitoring including the collection of ethnic data (this proposal especially met with intense resistance of state authorities), for more intense attention paid to the relations between pedagogical and psychological counselling centres and special schools, to the content and procedure of psychological testing and to the level of awareness of Romani parents, as well as to the definition and financing of education for children from the socially disadvantaged category.

It is also the fact that conceptual materials emphasised by Ministry of Education as important instruments for the ECHR judgment implementation would be elaborated in any case (according to the time schedule set by the Czech Government). Their content appears to be of relevance but planned measures encounter quite down-to-earth

problems during their implementation and consequent evaluation. For example, the absence of official monitoring and valid data collection leads to the absurd situation that the Czech government, responsible for the ECHR judgment implementation, does not officially know how many Romani children attend what kinds of schools and what the results of their educational process are. The question stands what is the very starting point of all state activities if not thorough and valid knowledge about the real situation. The tasks based on the cooperation of more ministries can turn out to be very problematic because the experience in implementing other conceptual materials (e.g. focused on children's protection against abuse and neglect or commercial sexual exploitation) shows that the results are not too impressive (more showing the personal attitude of individual people involved than the effectively functioning system).

It is possible to welcome that the representatives of the Ministry of Education admit explicitly that the current practice of the education system still shows many elements of segregation and discrimination and that Romani children are often wrongly enrolled in schools for children with mental disabilities. Such unqualified statements have appeared in last months and have finally replaced the "magic formula" notoriously used by state authorities that "former special remedial schools have been abolished" and that the ECHR judgment actually addresses an "old" situation existing before the school legislation reform of 1 January 2005.

Proposals for measures that the Ministry shares with the public more or less correspond to NGO proposals and try to respond to the main aspects criticised by the ECHR judgment. It is possible

to acknowledge plans for valid monitoring of the situation of former special remedial schools and for work with relevant statistical data, the support of culturally neutral testing methods, support for sharing desegregation best practices, specification of the legal conditions for enrolling children in special primary schools, and increasing the provision of information to parents to ensure informed choice regarding the schooling of their children. Intense attention should be paid to legislative changes underway which should have a pro-integration impact. The delay in articulating and further implementing these plans is nevertheless highly regrettable.

Findings coming directly from practice raise the question if the Ministry of Education will really be able to address some of the problems. High quality data collection appears as significantly important in this regard and the choice of bodies implementing relevant surveys is of key importance. It is not acceptable to rely upon samples that are not representative enough. Also, the involvement of the Czech School Inspection in the evaluation of the current situation and in punishing illegal practices should have been supported more by the Ministry already in the past. The selection of an expert for the position of advisor for the inclusion of Romani children into mainstream education will be also of high importance.³⁵

The evaluation of the Czech State's success in implementing ECHR judgment conclusions will depend on the success of state authorities in moving from their declarations towards real implementation of the plans. The Ministry of Education, Youth and sports still stands in the "preparatory phase."

³⁵ *The scope of his/her employment is, according to the official announcement of the Ministry: conceptual work in the area of equal opportunities for Romani children and pupils in education, working on expert opinions in the area of inclusion of Romani pupils, elaborating strategic documents and the coordination of their implementation, expert reviewing of grant programmes and organising the agenda of working groups.*