



CZECH REPUBLIC

AMNESTY INTERNATIONAL SUBMISSION TO THE UN UNIVERSAL PERIODIC REVIEW 14TH SESSION OF THE UPR WORKING GROUP, OCTOBER-NOVEMBER 2012

FOLLOW UP TO THE PREVIOUS REVIEW

In its response to the recommendations made during the first Universal Periodic Review of the Czech Republic in 2008, the government set out a number of measures it had already undertaken or was planning to take to implement the recommendations made to it by other states.¹ These included measures to adopt anti-discrimination legislation;² to fight discrimination against Roma and to ensure their equal access to education, housing, health care and employment;³ and to provide adequate protection for all marginalized groups against racially motivated violence.⁴

Since then, the government has taken a number of positive steps with respect to implementing the recommendations from the first review. In 2009, the parliament adopted the Anti-Discrimination Act, and in March 2010, the government adopted the National Action Plan for Inclusive Education which aims to address shortcomings in access to education for Romani children. Amnesty International is concerned, however, that the Anti-Discrimination Act has shortcomings which may affect its effectiveness in ensuring access to remedies for Roma families who experience discrimination (this is explained in further detail below).

With regard to the elimination of discrimination and segregation of Romani pupils in schools, Amnesty International is extremely concerned that the government has failed to take the necessary measures that would effectively address this problem. In fact, there have been significant setbacks in the implementation of the necessary reforms. In particular, the National Action Plan for Inclusive Education is not being implemented and the Ministry of Education lacks capacity and political will to put an end to discrimination in access to education.

THE NATIONAL HUMAN RIGHTS FRAMEWORK

INEFFECTIVENESS OF ANTI-DISCRIMINATION LEGISLATION IN SECURING ACCESS TO JUSTICE

In June 2009, and as the last EU Member State to do so, the Czech Republic transposed the EU Race Equality Directive and the Employment Equality Directive into its national law by adopting the Anti-Discrimination Act. The Act came into force in September 2009, providing protection against discrimination on the basis of "sex, age, disability, race, ethnic origin, nationality, sexual orientation, religious affiliation, faith or world-view" in a number of areas including employment, education and healthcare. However, the Act's ability to provide effective remedies for victims is compromised through its failure to provide for public interest litigation, i.e. collective complaints issued by a legal person in the name of the victims of discrimination without directly representing them (*actio popularis*). The exclusion of the possibility for NGOs and other actors to bring such claims without the permission of the victim will significantly undermine the effectiveness of the Act in protecting marginalized and vulnerable groups and individuals who have difficulties in securing access to justice. The Agency for Fundamental Rights, an advisory body of the European Union, has stated that the participation of NGOs may help to reduce the financial and personal burden on individual victims, giving them greater access to justice. It has also observed that the ability to enforce the anti-discrimination provisions is generally higher where the permission of the victim is not required due to the fact that members of ethnic minorities are often unaware of their rights, or unwilling to pursue claims due to various reasons, including fear or lack of support.⁵

THE HUMAN RIGHTS SITUATION ON THE GROUND

ROMANI PUPILS DISCRIMINATED IN ACCESS TO EDUCATION

Amnesty International is concerned that Romani children continue to experience widespread and systematic discrimination in their access to education. Concerns over this serious and ongoing human rights violation have also been raised by a number of international human rights monitoring bodies, most recently by the Committee on the Elimination of Racial Discrimination (CERD) in September 2011. In its concluding observations, CERD found that the segregation of Romani children in education persists and recommended to the Czech government that it take concrete de-segregation measures.⁶ In his March 2011 report on the Czech Republic, the Commissioner for Human Rights of the Council of Europe, Thomas Hammarberg, concluded that the widespread segregation of Romani children in the Czech Republic continues – either through segregation in schools for children with mental disabilities or through segregation in Roma-only classes. It is particularly disturbing that such findings and criticism mirrors that of the European Court of Human Rights nearly five years after its decision that the Czech Republic violated the prohibition of discrimination in access to education.⁷ Despite this decision and the Czech government's subsequent assurances on more than one occasion that it was seeking to address the problem, so far it has failed to effectively implement the necessary changes.

In its decision, the European Court of Human Rights reminded the government of its obligation to take measures "to put an end to the violation... and to redress so far as possible the effects".⁸ In a response to the judgment, the Czech government adopted the National Action Plan for Inclusive Education in March 2010. Amnesty International welcomed the adoption of the National Action Plan as an important step, but expressed concerns that the document did not explicitly address the ongoing racial discrimination within the education system.

In the two years since the adoption of the National Action Plan, concerns have grown both inside and outside the country over the lack of enforcement of the European Court judgment by the Czech government. In one of the most high-profile protests against the government's failure to prioritize equal education for Romani children, two high-level officials responsible for integration of Romani children into mainstream education – an advisor to the Minister of Education and the Director of the Department of Special Education and Equal Opportunities at the Ministry of Education – resigned from their posts in October 2010. This was followed by the resignation of 50 experts, NGOs representatives, academics and government agencies working on inclusive education and equal access to education for Roma, from the advisory working groups of the Ministry of Education in May 2011. The departing experts argued that since the process to implement the National Action Plan had been stopped under the current Minister of Education, appointed in July 2010, remaining in the working groups would amount to participating in a "window-dressing" exercise to mask the lack of action by the authorities.⁹

As a result of the lack of government action to address the problem, Romani children continue to be disproportionately represented in "practical" elementary schools (the former "special schools") and in classes teaching an inferior curriculum. According to the monitoring carried out by the Institute for Information in Education, in 2009 approximately 30 per cent of Romani children attended the former special schools.¹⁰ Amnesty International notes that the name change – from "special" to "practical" schools – has not been accompanied by any measures to ensure that children who had been wrongly placed in the special schools were transferred to schools corresponding to their actual abilities and skills. The name change has not altered anything, but continues to perpetuate segregation.¹¹

Amnesty International considers that the measures adopted by the Ministry of Education so far – specifically the amendments to Decrees no. 72/2005 on the provision of counselling services in schools, and 73/2005 on the education of children, pupils and students with special educational needs – are not sufficient to end illegal practices. Nor do they tackle the underlying causes of discrimination in access to education in a consistent and effective manner.

RECOMMENDATIONS FOR ACTION BY THE STATE UNDER REVIEW

Amnesty International calls on the government of the Czech Republic:

National human rights framework:

- To strengthen the enforcement of anti-discrimination legislation in securing access to justice for victims by allowing NGOs and other actors to bring cases of discrimination to courts through public interest litigation (*actio popularis*).

Discrimination of Romani children in access to education:

- To adopt an immediate moratorium on the placement of all children, including Romani children, in practical schools and classes where an inferior curriculum is taught, pending a comprehensive review to assess the need for this category of schools;
- To confirm the commitment by the Ministry of Education to implement the National Action Plan for Inclusive Education;
- To ensure the effective implementation of the National Action Plan for Inclusive Education, including by making available the necessary human and other resources and by adequate funding from the Ministry of Education and other relevant government agencies;
- To provide the necessary resources to ensure that additional support is immediately available for children who need it in order to effectively participate in and develop to their fullest potential within the mainstream elementary school system;
- To develop a concrete timeline for the transfer of all Romani children erroneously placed in practical schools to mainstream schools containing a mix of Roma and non-Roma pupils;
- To develop a comprehensive plan and timeline with clear, achievable and ambitious annual targets to eliminate the segregation of Romani children within the mainstream education system;
- To systematically gather data, disaggregated on the basis of gender, ethnicity and disability status, in relation to education, with due regard to European standards concerning the protection of personal data and the right to self-identification, in order to monitor and ensure that there is no segregation in education;
- To ensure that the Office of Public Defender of Rights is adequately resourced to monitor the desegregation of schools and the integration of children from practical elementary schools into mainstream elementary schools.

¹ Addendum to the Report of the Working Group on the Universal Periodic Review of the Czech Republic, 25 August 2008 (A/HRC/8/33/Add.1).

² Report of the Working Group on the Universal Periodic Review of the Czech Republic, 23 May 2008 (A/HRC/8/33) recommendation 44.20 (China).

³ A/HRC/8/33, recommendation 44.30 (Algeria, Romania).

⁴ A/HRC/8/33, recommendation 44.3 (Algeria).

⁵ European Union Agency for Fundamental Rights, *The Racial Equality Directive: application and challenges*, Vienna 2012, page 14.

⁶ Committee on the Elimination of Racial Discrimination, Concluding Observations: Czech Republic, 2 September 2011, CERD/C/CZE/CO/8-9, paragraph 12; Committee on the Rights of the Child, Concluding Observations: Czech Republic, 4 August 2011, CRC/C/CZE/CO/3-4, paragraph 30; ECRI 2009, Report on Czech Republic, Fourth monitoring cycle, 2 April 2009, pp. 25-31.

⁷ European Court of Human Rights Grand Chamber Judgment, case of D.H. and others v. the Czech Republic (Application no. 57325/00), November 2007.

⁸ European Court of Human Rights Grand Chamber Judgment, Case of D.H. and others v. the Czech Republic, para. 216.

⁹ Letter of the experts resigning from the working groups to the Minister of Education, 25 May 2011.

¹⁰ UIV, Monitoring RVP, 2009 available at: <http://www.ferovaskola.cz/data/downloads/monitoring%20RVP.pdf> (accessed 10 April 2012).

¹¹ Kateřina Hrubá, *The dubious potential of the Czech 'school reform' to really influence the Czech elementary education system in relation to the position of Romani children*, *Zšvůle Práva*, 2007, page 4.