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Universal Periodic Review: Czech Republic

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Executive Summary and Recommendations

1. The Open Society Justice Initiative and the Open Society Fund Prague submit this stakeholder report in preparation for the Czech Republic's Universal Periodic Review by the Human Rights Council in October 2017. This submission takes stock of recent educational reforms and highlights obstacles to their implementation.
2. Nearly ten years have passed since the 2007 European Court of Human Rights issued its landmark judgment, *D.H. and Others v. Czech Republic* (“D.H”), holding that the disproportionate placement of Roma children in “special schools”—where they, along with children with disabilities, were segregated from their mainstream peers and taught a limited curriculum—constituted unlawful indirect discrimination.
3. Despite continuous efforts by civil society organizations over the past decade to promote effective implementation of the *D.H.* judgment, little has changed for Roma pupils in the educational sphere, and systematic discrimination against and segregation of Roma children persists. Recent data (2016) from the Ministry of Education shows that a disproportionate number of Roma children are still diagnosed with mild mental disability (MMD), despite promised changes in the educational assessment regime.
4. The dogged failure to remedy systematic discrimination in education against Roma children in the Czech Republic demands a strong response. Therefore, we encourage members of the Working Group to make the following recommendations to the Czech Government:
 - Ratify the Optional Protocol to the Convention on the Rights of Persons with Disabilities by the end of 2017, consistent with the National Plan for the Promotion of Equal Opportunities for Persons with Disabilities 2015–2020;
 - Amend the Anti-Discrimination Act so that it allows for action in the public interest (*actio popularis*) and class action procedures to challenge institutionalized forms of discrimination;
 - Monitor the implementation of recent educational reforms and submit a detailed report to the Public Defender of Rights in a timely fashion evaluating their on-the-ground impact in ending discrimination and segregation of Roma children;
 - Provide detailed guidance to schools and counselling centers on objective standards and fair processes relating to the provision of support measures for pupils with special needs, and ensure that adequate funding is available for such support measures;
 - Provide anti-discrimination training to teaching assistants and special education teachers, especially in relation to ethnicity with a particular focus on Roma, starting with those mainstream schools that have begun to implement principles of inclusive education;
 - Increase the number of counselors at local counseling centers, and the number and capacity of nursery schools throughout the country;
 - Undertake a nationwide public campaign to inform all parents of their rights under the educational reforms;
 - Request technical assistance and/or country visits by the Special Rapporteur on the Right to Education and the Independent Expert on Minority Issues.

Background: Longstanding discrimination against Roma children in education

5. As noted in our prior submission in relation to the Czech Republic's Universal Periodic Review in 2012, discrimination against Roma children has been a longstanding feature of that country's political and legal landscape. For generations, the country has discriminated against Roma children by channeling them into "special schools" for children with mental disabilities.
6. In 1999, 18 Roma children challenged this discriminatory practice in court. At that time, Roma pupils were 27 times more likely to be sent to "special schools"—where they were taught to a limited curriculum—than their non-Roma peers. Denied a remedy in domestic courts, the students and their families filed a petition against the Czech government in the European Court of Human Rights (ECtHR), arguing that the disproportionate placement of Roma children into special schools without objective and reasonable justification amounted to unlawful discrimination. In November 2007, the ECtHR agreed, finding systemic discrimination in the Czech schooling system. The Grand Chamber ordered the Czech government to halt the violation of Roma children's rights and to redress, so far as possible, the effects of past discrimination.
7. In September 2014, the European Commission launched infringement proceedings against the government of the Czech Republic for the failure to comply with its obligations under the European Union Racial Equality Directive (2000/43/EC of 29 June 2000) to cease the educational segregation of Roma children. In 2015 and 2016, the Czech Government introduced a series of educational reforms, including: a system of free support measures for children with special educational needs (Amendment to the Education Act No 82/2015 and Ministerial Decree No 27/2016); compulsory pre-school education in nursery school for last grade-children and; abolition of the discriminatory system of separate educational programs or facilities for children with mild mental disabilities (Framework Educational Program for Basic Education - Annex Specifying the Education of Pupils with Mild Mental Disabilities).

Implementation of Human Rights

Equality and Non-Discrimination

8. The Czech Republic is a party to the Convention on the Rights of Persons with Disabilities, the International Convention on the Elimination of All Forms of Racial Discrimination, and the Convention on the Rights of the Child. The Czech Republic has not ratified the Optional Protocol to the Convention on the Rights of Persons with Disabilities in 2007, despite its commitment to do so by the next (2017) UPR review in its National Plan for the Promotion of Equal Opportunities for Persons with Disabilities 2015–2020. The government has also declined to request technical assistance and/or country visits by the Special Rapporteur on the Right to Education and the Independent Expert on Minority Issues, as recommended by the UPR.

9. The Charter of Fundamental Rights and Freedoms (“the Charter”) is part of the 1993 Czech Constitution. Article 3 of the Charter prohibits discrimination on the basis of gender, race, colour of skin, language, faith and religion, political or other conviction, national or social origin, membership in a national or ethnic minority, property, birth, or other status. Anyone who violates the prohibition against discrimination may be found guilty of offenses under the Criminal Code (Law No. 40/2009). The 2009 Anti-Discrimination Act, which transposes the EU Racial Equality Directive, covers labor relations, access to employment on all grounds, and provides protection with respect to education, healthcare, housing, social security, social advantages, and access to goods and services. The Act prohibits discrimination on the grounds of race, religion or belief, age, disability, and sexual orientation.

The Anti-Discrimination Act must be amended to permit actio popularis suits

10. During its Universal Periodic Review in Geneva on October 22, 2012, the Czech government noted that “anyone whose rights have been affected by discrimination may bring action in court and request that the discrimination be ceased, the consequences of the discriminatory action remedied and reasonable satisfaction granted.” Notwithstanding this stated commitment to provide remedies to victims of discrimination, the Anti-Discrimination Act does not, in practice, effectively safeguard against discrimination in education. A 2015 report of the Public Defender of Rights on discrimination in the Czech Republic indicates that, out of the 56 cases of discrimination brought in Czech courts between 2004 and 2014, the courts found in favor of the plaintiffs in six cases, and awarded monetary compensation in only one case.¹ The report further suggests that the dearth of reported discrimination cases demonstrates a public unwillingness to use legal remedies to tackle discrimination. The lack of knowledge of the Anti-Discrimination Act, the high financial costs associated with discrimination proceedings, and the lack of widely available legal aid are multiple barriers that prevent victims of discrimination from asserting their rights.
11. Section 11 of the Anti-Discrimination Act provides that a party to proceedings can be represented by a legal entity so long as that entity’s mandate includes protection against discrimination. Nevertheless, this provision is limited, as these legal entities are not entitled to challenge discrimination before Czech courts through class action lawsuits or by action of public interest (*actio popularis*), proceedings in which a representative claimant is allowed to initiate proceedings in the name of a class of claimants in order to terminate a discriminatory practice.
12. Article 9.2 of the Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation provides that:

Member States shall ensure that associations, organisations or other legal entities which have, in accordance with the criteria laid down by their national law, a legitimate interest in ensuring that the provisions of this Directive are complied with, may engage, either on behalf or in support of the complainant, with his or her approval, in any

¹ Office of the Public Defender of Rights, ‘Discrimination in the Czech Republic: Victims of Discrimination and Obstacles Hindering their Access to Justice’ (2015), 88-98

judicial and/or administrative procedure provided for the enforcement of obligations under this Directive.

13. Under this Article, read in conjunction with Article 7.2 of the Council Directive 2000/43/EC of 29 June 2000 (also known as the Race Equality Directive²), the Czech government is obligated to amend its anti-discrimination laws to permit NGOs and the Public Defender of Rights to initiate legal action on behalf of victims of discrimination. The government withdrew bill no. 379/2015—which granted legal standing to the Public Defender of Rights in *actio popularis* proceedings and gave her the power to monitor the Convention on the Rights of Persons with Disabilities—due to an alleged lack of support from members of Parliament. As a result, the Minister for Human Rights, Equal Opportunities and Legislation introduced a watered-down bill (no. 1015/2017) to Parliament that only included the Public Defender of Rights’ extended monitoring powers. The new bill fails to provide effective legal protection and remedies for victims of discrimination.

Education

14. Article 33 of the Charter provides that “everyone has the right to education. School attendance shall be obligatory for the period specified by law.” Article 2.1 of the Education Act on Pre-School, Basic, Secondary, Tertiary Professional and Other Education (Act No. 561/2004) further upholds the right to equal opportunities in education, irrespective of racial or ethnic origin. In 2015, the Czech Government introduced a series of promising education reforms that have the potential to improve equal access to mainstream education for Roma children, provided that the reforms are accompanied with detailed implementation guidance, adequate funding and material support.

Support measures for children with education needs must be standardized, made accessible, and properly funded

15. The amended Education Act provides for a system of free support measures for children with special educational needs, defined as those pupils who require additional help to “fulfil their educational opportunities or for the enjoyment or exercise of their rights on an equal basis with others.” Such measures include teaching assistants and individual educational plans and materials, and should be offered in mainstream schools. The Act also stipulates, in Section 26 para. 9, that only pupils with “mental, physical, visual or hearing impairments, severe learning disabilities, severe development disorders, multiple disabilities or autism can be placed into special schools or classes.”
16. The clear intent of the Act is to enable pupils who need additional support to receive it wherever they go to school, be it in mainstream or special schools. Previously, special education schools were dependent on diagnoses to stay open and receive extra funding. According to a 2015 study by inclusive education experts, special schools received 2.2 times more funds for educating a child with mild mental disability than mainstream schools.³ With this change in the amended Education Act, the funding is “attached” to the child

²Article 7.2 of the Race Equality Directive provides that “Member States shall ensure that associations, organisations or other legal entities, which have, in accordance with the criteria laid down by their national law, a legitimate interest in ensuring that the provisions of this Directive are complied with, may engage, either on behalf or in support of the complainant, with his or her approval, in any judicial and/or administrative procedure provided for the enforcement of obligations under this Directive.”

³ Klusáček, Jan, Hrstka, Daniel: Nákladnost vzdělávání dětí s lehkým mentálním postižením v základních školách praktických, 2015.

rather than to the school, thereby eliminating the financial incentive to place a child in a special education school. Since the system equalizes the financial support between mainstream and special education, the reform has the potential to play an important role in desegregation.

17. However, it is failing to do so in the Czech Republic, in part, because the Ministry of Education has declined to disseminate clear guidance concerning the new provisions of the Amended Education Act, leading to their confused, inconsistent, and in some cases, nonexistent implementation. In particular, the government must: a) provide guidance on both the objective standards for and processes to allocate support measures to pupils according to their pupils' individual needs; b) allocate adequate financial resources for the implementation of education reforms; c) provide training on inclusive education principles and practices to all teaching assistants and special education teachers, starting with mainstream schools that have demonstrated an interest and commitment to inclusive education; d) increase the number of counsellors at counselling centers; and e) embark on a public awareness-raising campaign to ensure that all parents are aware of their rights with respect to access to equal education and related opportunities.

Free preschool education must be made available to all children

18. Amendments to the Education Act require mandatory attendance for the last grade of pre-school education in nursery schools, an important reform given that research demonstrates the importance of nursery school attendance to children's development and success in education.⁴ The measure, however, will only be effective if the government commits to substantially increase the number and capacity of nursery schools throughout the country. The insufficiency of nursery school places in the Czech Republic, combined with the permissible waiver of mandatory attendance if parents decide to homeschool their children, give rise to concerns that Roma parents may decide (or be forced) to homeschool their children, resulting in further segregation of Roma children. The Ministry of Education's failure to present a detailed plan for how schools will adapt to the mandatory pre-school education measure, and how parents will be made aware of their rights, must be rectified.

Improper and illegal classification and segregation of Roma children must cease

19. The Czech government's own data indicates that Roma children are frequently and incorrectly classified as children with mild mental disabilities. Roma children make up less than 4% of elementary school children in the Czech Republic, yet they represent more than 30% of children diagnosed with mild mental disability. This number has not significantly changed over the last four years. Roma children also fare systematically segregated in mainstream schools. According to data from the 2016/2017 school year, there are 83 segregated schools in which the overwhelming majority of the pupils are Roma children.

⁴ See, Sociological Research Aimed at the Analysis of the Image and Causes of Segregation of Children, Pupils and Young People from the Socially and Culturally Disadvantaging Environment, available at: http://www.gac.cz/userfiles/File/nase_prace_vystupy/GAC_Research_the_segregation_of_children.pdf?langSEO=en&parentSEO=documents&midSEO=nase_prace_vystupy&submidSEO=GAC_Research_the_segregation_of_children.pdf

School year	2013/2014	2014/2015	2015/2016	2016/2017
Number of all children with MMD	14,908	10,695	14,810	13,983
Number of Roma with MMD	4,198	3,468	4,539	4,318
Share of Roma children with MMD	28.4 %	32.4 %	30.6 %	30.9 %
Number of Roma children in elementary schools	<i>no data</i>	<i>no data</i>	34,191	33,858
Share of Roma children in elementary schools	<i>no data</i>	<i>no data</i>	3.9 %	3.7 %

Source: Czech School Inspectorate, Ministry of Education, Sports and Youth

Conclusion

20. Reforms to the Education Act in 2015 and 2016 initially gave hope that the persistent systematic discrimination against Roma pupils decried by the European Court of Human Rights in the 2007 *D.H.* judgment might finally be eliminated. These reforms have been largely rhetorical, however, and have failed to produce meaningful impact: ethnically homogeneous, segregated classes and schools remain the norm for Roma children, who continue to be disproportionately classified with “mild mental disability.” For the promise of the Amended Education Act to be realized, the government must take seriously the need to implement education reforms through concrete actions, ensuring that all Roma children receive quality education in mainstream schools. In the event Roma pupils are unable to access equal education, they must be able to effectively assert their rights in judicial proceedings through *actio popularis* or class action proceedings.

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The Open Society Justice Initiative uses law to protect and empower people around the world. Through litigation, advocacy, research, and technical assistance, the Justice Initiative promotes human rights and builds legal capacity for open societies. Our staff is based in Abuja, Amsterdam, Bishkek, Brussels, Budapest, The Hague, Cape Town, London, Mexico City, New York, Paris, Santo Domingo, and Washington, D.C.