

**ECRI CONCLUSIONS
ON THE IMPLEMENTATION OF THE RECOMMENDATIONS
IN RESPECT OF THE CZECH REPUBLIC SUBJECT TO INTERIM FOLLOW-UP**

Adopted on 23 March 2012¹

¹ Any developments which occurred after 2 December 2011, date on which the response of the Czech authorities to ECRI's request for information on measures taken to implement the recommendations chosen for interim follow-up was received, are not taken into account in this analysis.

FOREWORD

As part of the fourth round of ECRI's monitoring work, a new process of interim follow-up has been introduced with respect to a small number of specific recommendations made in each of ECRI's country reports.

Accordingly and in line with the guidelines for the fourth round of ECRI's country-by-country work brought to the attention of the Ministers' Deputies on 7 February 2007¹, not later than two years following the publication of each report, ECRI addresses a communication to the Government concerned asking what has been done in respect of the specific recommendations for which priority follow-up was requested.

At the same time, ECRI gathers relevant information itself. On the basis of this information and the response from the Government, ECRI draws up its conclusions on the way in which its recommendations have been followed up.

It should be noted that these conclusions concern only the specific interim recommendations and do not aim at providing a comprehensive analysis of all developments in the fight against racism and intolerance in the State concerned.

¹ CM/Del/Dec(2007)986/4.1.

1. *In its report on the Czech Republic (fourth monitoring cycle) published on 15 September 2009, ECRI strongly encouraged the Czech authorities to complete the work then under way in drafting and enacting a law on legal aid as soon as possible, and no later than two years following the publication of this report, and emphasised the importance of making provision in such a law for legal aid to be granted in cases where racial discrimination¹ is at stake. ECRI drew the authorities' attention to the recommendations made in this respect in its General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination.*

ECRI notes that at the time of drafting of ECRI's fourth report, the Ministry of Justice was preparing a draft law on legal aid, which was expected to improve the rules already in force by ensuring the provision to socially disadvantaged persons of free legal assistance, especially in the civil and administrative law fields and in certain areas of commercial and criminal law. The involvement of NGOs that provide assistance to victims of discrimination in the preparatory work on the draft was seen by the authorities as a means to ensure that the law would significantly facilitate access to legal assistance for victims of discrimination and others. ECRI notes that this draft law was subsequently withdrawn and that no new provisions have since been enacted. The authorities have referred to a major overhaul of the existing system under way. ECRI understands that the concept of the proposed new legal aid scheme was discussed by the Senate Constitutional Law Committee on 17 May 2011. According to this concept, a two-tier system would be introduced. "Basic" legal aid, i.e. legal counselling, would be provided free of charge by lawyers without any financial support from the authorities. "Enhanced" legal aid, covering legal representation in judicial or administrative procedures, would be granted by the court or administrative authority conducting the proceedings and provided by lawyers or legal professionals who chose to be included in a public register, with financial support from the state. It notes, however, that serious reservations about these proposals have been voiced by civil society, especially as regards financing, since lawyers would themselves be expected to bear all costs related to providing "basic" legal aid, and the proposed public funding for "enhanced" legal aid would be significantly lower than standard legal fees. ECRI understands that the Government has recently discussed a Victims of Criminal Acts Bill that includes some provisions on legal aid for victims of criminal offences along the above lines. This Bill has, however, also been criticised as it would prevent NGOs from receiving state funding for legal representation of victims of criminal offences (including racist offences), and may thus be unfavourable to victims.

ECRI notes with regret that the above recommendation has not been complied with. In the meantime, the situation of victims of discrimination as regards access to legal aid has not changed since ECRI's fourth report. ECRI refers to § 26 of its General Policy Recommendation No. 7, according to which the law should guarantee free legal aid and, where necessary, a court-appointed lawyer, for victims who wish to go before the courts as applicants or plaintiffs and who do not have the necessary means to do so.

2. *In its report on the Czech Republic (fourth monitoring cycle), in order to give additional impetus to the process of including every Roma child in ordinary streams of education, with the sole exception of those in need of specialised education due to severe mental disability or multiple disabilities, ECRI urged the authorities at the relevant levels to transfer substantial numbers of children from specialised primary schools to ordinary education, based on clear and ambitious yearly targets. It noted that the implementation of these targets should be monitored and a national supervisory mechanism set up to ensure that the relevant authorities are held to account for the results achieved.*

ECRI recalls that this recommendation formed part of a series of recommendations to the Czech authorities aimed at overcoming the disproportionate representation of Roma children in special ("practical") schools for children with mental disabilities². While other recommendations in this

¹ In line with the definitions set out in ECRI's General Recommendation No. 7 on national legislation to combat racism and racial discrimination, all references to these phenomena include grounds such as "race", colour, language, religion, nationality or national or ethnic origin.

² ECRI notes that the curriculum of the new "practical" schools is identical to that of the former special schools for pupils with minor mental disabilities.

series focused on ensuring that sufficient safeguards are in place to prevent the incorrect orientation of Roma children into practical schools, the focus of the recommendation for interim follow-up was on ensuring that children are rapidly returned in practice to the mainstream educational system and that targets for such transfers are regularly set and their implementation monitored.

ECRI notes that in response to research finding that Roma children continued to be overrepresented in practical schools, the Government in 2010 approved the National Action Plan for Inclusive Education (NAPIV),³ which aims at increasing inclusiveness in education. The NAPIV is still in its preparatory phase and implementation is not planned to begin until 2013. Some measures are, however, already being implemented, in particular through the amendment in 2011 of Decree No. 72/2005 on the provision of counselling services in schools and school facilities and of Decree No. 73/2005 on the education of children, pupils and students with special educational needs and exceptionally gifted children, pupils and students.⁴ ECRI welcomes in general the adoption of measures designed to prevent the discriminatory placement of Roma children in special education but observes that it is outside the scope of the present interim follow-up exercise to examine the content or impact of all of the measures so far adopted or envisaged in the field of inclusive education, in particular the preventive-type measures just referred to as well as measures intended to improve the access to and outcomes of socially disadvantaged children at pre-school level. Measures not examined here will, however, be followed up by ECRI in future monitoring work.

As regards the transfer of substantial numbers of children from practical schools to mainstream schools, ECRI strongly regrets that the authorities have provided no information as to the specific elements set out in its interim follow-up recommendation, i.e. targets set, monitoring carried out, numbers of children transferred from practical to mainstream schools or the creation of a national supervisory mechanism in this respect. It nonetheless notes with interest that Decree No. 73/2005 as amended by Decree No. 147/2011 now expressly provides for compensatory measures that may be applied (in mainstream schools) to socially disadvantaged pupils, including inter alia through individual pedagogical support and the services of a teaching assistant, and enlarges the scope of assistance that can be provided by teaching assistants.⁵ ECRI welcomes these provisions and emphasises the need to set aside sufficient financial resources to ensure their success. ECRI is, however, concerned that it remains possible for socially disadvantaged children with no disabilities but who, despite compensatory measures such as those described above, have not succeeded in the mainstream system to be placed in a school, class or study group for pupils with disabilities for a period of up to five months.⁶ ECRI has serious reservations about this mechanism and stresses that unless the aim of the education delivered to these children is to equip them to return to mainstream education quickly and sustainably, it will clearly not be instrumental in reducing segregation in education.

Despite the steps that have been taken toward improving inclusiveness in education in the Czech Republic, ECRI is not in a position to conclude that its recommendation to transfer substantial numbers of children from specialised primary schools to ordinary education, based on clear and ambitious yearly targets, has been fulfilled. ECRI stresses that the victims of such racial discrimination are children and that every year of education lost is vital for them.⁷ It moreover draws the authorities' attention to recent research showing that Roma children previously placed in Czech practical schools can and do succeed in mainstream schools, even in a foreign language.⁸

³ Government Resolution No. 206 of 15 March 2010.

⁴ English translations of both of these decrees, as amended in 2011, are available in document DH-DD(2011)825, issued by the Secretariat of the Committee of Ministers of the Council of Europe on 11 October 2011.

⁵ See notably sections 1(2), 1(6) and 7(1) of Decree No. 73/2005 as amended by Decree No. 147/2011.

⁶ See notably sections 3(4), 3(5)(b) and 9(1) of Decree No. 73/2005 as amended by Decree No. 147/2011.

⁷ See also Ministers' Deputies Information document CM/Inf/DH(2010)47, Supervision of the execution of the judgment in the case of D.H. and others against Czech Republic, judgment of 13/11/2007 – Grand Chamber, Document prepared by the Department for the Execution of Judgments of the European Court of Human Rights (DG-HL), § 22.

⁸ Equality, From Segregation to Inclusion: Roma Pupils in the United Kingdom: A pilot research project, November 2011.

3. *In its report on the Czech Republic (fourth monitoring cycle), ECRI strongly urged the Czech authorities to develop and put in place, as a matter of high priority, a coherent system of social housing in the Czech Republic, including a clear definition both of the concept of social housing itself and of the social criteria to be applied in allocating it to persons in need.*

ECRI recalls that in the Czech Republic, housing falls within the competence of local authorities. To date, in the absence of an overall policy for the provision of social housing based on clear social criteria, only a few local authorities have set up their own systems or sought to address such matters with the assistance of the Agency for Social Inclusion. ECRI notes that in July 2011 the government approved a “Concept of housing policy until 2020”.⁹ The authorities have stated that part of the Concept proposes improving the accessibility of housing for groups at risk of social exclusion by stimulating supply and demand. Accordingly, the state will focus inter alia on supporting the construction of flats, removing barriers to access to existing flats and strengthening the legal framework for social housing. It is also proposed to run pilot projects for reintegration in normal rental housing, based on a three-tier system of crisis housing, “training” housing and rental housing. The authorities have also referred to some rental assistance schemes and to a system of credits set up by the Ministry for Regional Development in 2003 to provide incentives to local authorities and, since 2009, private parties to build or refurbish housing for persons in need of social housing.

ECRI welcomes these steps, which go some way towards fulfilling its recommendation, but is concerned that the proposals made in July 2011 remain largely theoretical; for the moment, the projects being carried out in practice are isolated, dependent on the political will of municipalities and mostly in the form of pilot projects implemented in practice by NGOs.

ECRI continues to be deeply concerned at the situation with regard to housing of socially excluded persons in the Czech Republic, most of whom are Roma. It notes with concern that the number of socially excluded localities is reported to have increased since ECRI’s fourth report to 400 and that such issues continue to be at the heart of tensions between the majority population and Roma in some parts of the Czech Republic, in particular where municipalities are doing little to improve the situation of Roma living in segregated areas. Moreover, discrimination in the housing market continues to affect the access of vulnerable groups such as Roma and migrants to housing. ECRI emphasises that more needs to be done urgently to address the problems at stake. This should include making appropriate provision in practice for social housing, as ECRI already recommended in its fourth report.

⁹ Government Resolution No. 524 of 13 July 2011.

