

## SECRETARIAT GENERAL

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*Item reference: 1100th DH meeting (December 2010)*

Communication from NGOs in the cases of D.H. and others against Czech Republic, Sampanis and others against Greece and Oršuš and others against Croatia and observations of the Greek Government regarding the case of Sampanis against Greece.

Information made available under Rules 9.2 and 9.3 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements.

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*Référence du point : 1100e réunion DH (décembre 2010)*

Communication d'ONG dans les affaires D.H. et autres contre République tchèque, Sampanis et autres contre Grèce et Oršuš et autres contre Croatie et observations du gouvernement grec concernant l'affaire Sampanis contre Grèce.

Informations mises à disposition en vertu des Règles 9.2 et 9.3 des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.

This document will be declassified after the 1100th DH meeting, in accordance with Rule 8 (Access to information) of [the rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements](#). Ce document sera déclassifié à l'issue de la 1100e réunion DH conformément à la règle 8 (Accès aux informations) des [Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables](#).

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**SUBMISSION TO THE COMMITTEE OF MINISTERS:  
THE CONTINUED SEGREGATION OF ROMANI SCHOOLCHILDREN**

*D.H. and Others v. The Czech Republic (13 November 2007)*

*Sampanis and Others v. Greece (5 June 2008)*

*Oršuš and Others v. Croatia (16 March 2010)*

**For Consideration by the Committee of Ministers of the Council of Europe  
Strasbourg, 30 November 2010**

1. On 30 November 2010 at the 1,100<sup>th</sup> Human Rights meeting of the Committee of Ministers of the Council of Europe (Committee of Ministers) the question of the segregation of Romani schoolchildren will be examined when the Committee of Ministers reviews the extent to which three governments have implemented judgments of the European Court of Human Rights (Court) demanding full integration of Roma into ordinary schools and classes, in the cases of *D.H. and Others v. The Czech Republic (D.H.)*, *Sampanis and Others v. Greece (Sampanis)*, and *Oršuš and Others v. Croatia (Oršuš)*.
2. In all three countries, the judgments have not been executed, and the situation is essentially unchanged. In the Czech Republic, Romani children in the city of Ostrava are still sent to Roma-only schools, and in other regions of the country, Romani children are still 27 times more likely to be assigned to special schools than non-Romani children. All of the children in the *Sampanis* case remain in the same Roma-only segregated school, despite a commitment made in December 2009 to the Committee of Ministers that this would be remedied. Romani children in Croatia are still taught in separate classes.
3. The Committee of Ministers should require that concrete steps towards desegregation are taken in all three countries within the next six months, so as to ensure that Romani children starting school in the Autumn of 2011 can go to mainstream schools.

**A. THE CASE OF D.H. AND OTHERS V. THE CZECH REPUBLIC**

4. Three years after the decision of the Grand Chamber of the Court and more than 12 years after the commencement of the original proceedings, the situation is essentially unchanged in the Czech Republic. In some areas of the country, Romani children are still 27 times more likely to be sent to practical schools (former special schools) than non-Romani children. This is the identical numerical ratio contained in the European Roma Rights Centre (ERRC)'s 1998-99 data from the city of Ostrava which the Court condemned in its judgment. In the city of Ostrava, a study by Amnesty International for the school year 2008-2009 revealed that schools remain almost completely segregated. For the first time,

Government statistics demonstrate that across the country as a whole, Romani children are 12 times more likely to attend such schools than non-Romani children, where they receive an inferior education.

5. The Government of the Czech Republic has not taken any concrete steps to bring about changes in the school system, save to prepare an undefined and unfunded plan for future action. The working group designed to implement this plan has only met once since the plan was adopted in March 2010. Recent developments make clear that there is no political will for change. Just in the past year, the Deputy Minister responsible for social programmes in education was demoted; working in an advisory position in the new Government she recently resigned this position in protest against the current Government's lack of commitment to implementing the judgment. The Director of the Department for Special Education and Equal Opportunities (responsible for implementing the judgment) also recently resigned and the department's staff has been cut in half. The Commissioner for Human Rights was forced to resign and has not been replaced. There is no national human rights institution with clear responsibility to ensure that the judgment is executed and the capacity of the responsible department in the Education Ministry is highly questionable.
6. Each year since the Grand Chamber issued its judgment, Romani children have continued to be sent in overwhelmingly disproportionate numbers to schools with an inferior curriculum. The Committee of Ministers should require that concrete steps are taken within the next six months in order to prepare for the new intake of school-children in autumn 2011, to avoid another year's group of children being condemned to a second class education.

#### **Judgment of the Court**

7. On 13 November 2007, the Grand Chamber found that the Czech Republic had violated the European Convention on Human Rights by segregating Romani children in special schools for children with a mild mental disability. The case concerned the city of Ostrava, where the evidence demonstrated that in 1999, Romani children were 27 times more likely to be placed in such schools than non-Romani children. The Court found that this differential treatment had no justification and amounted to discrimination contrary to Article 14, in conjunction with the Right to Education protected in Article 2 of Protocol 1. The Court required the Czech Republic to put in place individual measures to compensate the victims and to undertake general measures to put an end to the violation found by the Court and to redress so far as possible the effects.
8. The reasoning of the Court elucidated several factors that are directly relevant to the steps that are necessary to implement the judgment.
  - *First*, any system which continues to produce “statistically disproportionate numbers of placements” of Romani children in one category of schools will raise a presumption of discrimination which the Government must disprove (paragraphs 193 and 195).
  - *Second*, “schooling arrangements for Roma children” must be “attended by safeguards [to] ensure that ... the State [takes] into account their special needs as members of a disadvantaged class” (paragraph 207).
  - *Third*, a solution will not be acceptable if in practice it sends disproportionate numbers of Romani children to schools “where a more basic curriculum [is] followed than in ordinary schools” or “where they [are] isolated from pupils from the wider population” (at paragraphs 207).

- *Fourth*, in light of the historical mistreatment of Roma, the Czech Government has an affirmative obligation, not merely to end segregation, but to design a system of education which “help[s Roma] to integrate into the ordinary schools and develop the skills that would facilitate life among the majority population” (at paragraph 207).

### Response to the Judgment

9. In briefings to the Committee of Ministers, the Czech Government initially argued that Roma were placed in special schools because of their academic underachievement. However, when the results of official Government surveys were published in 2009 and 2010, they demonstrated that in some regions of the Czech Republic Roma were still up to 27 times more likely to be placed in special schools than non-Roma, and for the first time provided the statistics that demonstrated that across the country as a whole, Roma were more than 12 times more likely to be placed in special schools.<sup>1</sup>
10. In a series of responses filed with the Committee of Ministers, the ERRC and the Open Society Justice Initiative (OSJI) have argued that there is **continuing segregation**, in that Government statistics confirm that Roma are still disproportionately allocated to practical schools. In addition, the Government has taken **no concrete steps** to de-segregate the schools, merely producing a lengthy and general action plan which has no funding, no monitoring and a very general timetable for implementation.
11. The failure to execute the judgment promptly has meant that since the decision of the Court three new classes of Romani children have started their education in segregated classes. In order to ensure that the next intake of children in September 2011 is not segregated, the Government of the Czech Republic must take immediate concrete steps which should be reviewed by the Committee of Ministers in six months time.
12. To fulfill its legal obligation to end the “discriminatory treatment” of Roma, the Czech Government must adopt the following measures:
  - 1. Make a commitment to ensure that no Romani children will be placed into practical schools or classes for pupils with ‘mild mental disabilities’ for the school year 2011/2012.
  - 2. Adopt legislation in 2011 explicitly mandating the desegregation of Czech schools.
  - 3. Adopt a concrete plan and timeline with clear annual targets to eliminate school segregation and secure full integration of Romani children into the mainstream education system within five years.

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<sup>1</sup> See Ústav pro informace ve vzdělávání – Monitoring Rámcových Vzdělávacích Programů (2009), available at <http://spolecnedoskoly.cz/wp-content/uploads/monitoring-uiv.pdf>, “Analýza individuálního přístupu pedagogů k žákům se speciálními vzdělávacími potřebami,” available at: [http://www.msmt.cz/uploads/soubory/tiskove\\_zpravy/Analyza\\_individualniho\\_pristupu\\_pedagogu\\_k\\_zakum\\_se\\_specialnimi\\_vzdelavacimi\\_potrebami\\_PLNE\\_ZNENI.pdf](http://www.msmt.cz/uploads/soubory/tiskove_zpravy/Analyza_individualniho_pristupu_pedagogu_k_zakum_se_specialnimi_vzdelavacimi_potrebami_PLNE_ZNENI.pdf), Czech School Inspection Authority, “Compendium of results from the thematic control activity in practical elementary schools” (2010), available at: <http://www.csicr.cz/file/85127/TZ%20Kontroln%C3%AD%20%C4%8Dinnost%20praktick%C3%A9%20%C5%A1koly%20duben%202010.pdf>, and “Sociological Research Aimed at the Analysis of the Form and Causes of the Segregation of Children – GAC”, January 2009, available at [http://www.msmt.cz/file/11372\\_1\\_1/](http://www.msmt.cz/file/11372_1_1/)

- 4. In order to ensure satisfactory progress toward the plan's targets and timetable, systematically monitor on an ongoing basis and publicly disseminate data on school and class placements disaggregated by gender, ethnicity and disability status.
- 5. Allocate sufficient budgetary resources to ensure fulfillment of the plan, accompanied by public dissemination of budgetary information, including about resources being spent on: i) practical schools, ii) other schools where Romani children make up a disproportionate high number of pupils, and iii) all other schools.

#### **Prior submissions to the Committee of Ministers**

13. *First NGO Report.* On 20 August 2008, a coalition of NGOs submitted to the Committee of Ministers a report on the state of general measures taken by the Czech Government with respect to the execution of the *D.H.* judgment.<sup>2</sup> The report was based on research conducted by the ERRC in 2008 which demonstrated that the measures taken by the government did not and could not reverse or even reduce segregation of Roma. A key finding of the report was that the purported abolition of special schools by the 2005 School Act was illusory, as in reality Roma continued to be placed in the same schools that were re-named practical primary schools and educated with the same curriculum for children with a slight mental disability.
14. *First Government Report.* On 9 April 2009, the Czech Government submitted its first report on general measures to the Committee of Ministers.<sup>3</sup> In the report, the government minimized the finding of indirect discrimination by the ECtHR, referring to the “academic underachieve[ment]” of Roma pupils, rather than accepting “discrimination” towards them, and suggested that it may be “very difficult to foresee the real impact of Court’s judgment.” The report did, however, list the measures taken and planned with respect to “modifying the current situation” of Roma such as the formal abolition of special schools by the 2005 School Act, allowing schools to set their own curriculum, and the commission of two statistical reports on Roma segregation.
15. *Second NGO Report.* On 20 May 2009, ERRC and the Justice Initiative submitted a further report responding to the government, which demonstrated that the measures taken by the Czech Government were insufficient as (a) Roma pupils continued to be disproportionately placed into former special schools, (b) there was no integration of Roma children into standard primary schools; (c) no special measures had been introduced to take account of the special needs of Roma; and (d) the judgment of the Court had not been sufficiently disseminated to relevant authorities and the public.<sup>4</sup>
16. *Second Government Report.* On 1 July 2009, the Government submitted a second report in which they presented the results of the two statistical surveys mapping the state of Roma pupils in Czech elementary schooling. The report identified a number of barriers to inclusive education, such as the underfunding of the education system, a shortage of school counselors and teacher’s assistants, and the pro-segregation attitude of public opinion. With respect to the former special schools the Government stated that it intended to “implement measures to help (gradually) educate at least some of the children in today’s ‘practical

<sup>2</sup> See “Memorandum Concerning the Implementation and the State of general measures in the Judgment of *D.H. and Others v. The Czech Republic* (Application No. 57325/00),” 20 August 2008, available at <http://www.errc.org/db/03/47/m00000347.pdf> (last visited 4 November 2009).

<sup>3</sup> See *First Government Report*, note 7 above.

<sup>4</sup> See “*D.H. and Others v. Czech Republic*, Memorandum concerning the state and implementation of general measures to the Committee of Ministers of the Council of Europe from the European Roma Rights Centre and the Open Society Justice Initiative,” 20 May 2009.

primary schools' under the educational mainstream curriculum." and to "enroll children in [practical primary schools] only after all forms of support within the educational mainstream have conclusively been exhausted."<sup>5</sup>

17. *Third NGO Report.* On 11 October 2009, ERRC and the Justice Initiative submitted a third report to the Committee of Ministers which presented the results of a survey undertaken in April 2009 by the Institute for Information in Education commissioned by the Czech Government. The results demonstrated that in the Zlinsky region, Roma pupils were 26 times more likely than non-Roma to be educated in "former special schools," while in the Vysocina region, Roma were 27.5 times more likely to be educated in such schools than non-Roma.<sup>6</sup> The original data from 1999 submitted to the European Court of Human Rights revealed that in the city of Ostrava, Roma pupils were 27 times more likely to be placed in special schools than their non-Roma counterparts.<sup>7</sup> The April 2009 survey also found across the country as a whole, 26.7% of all Roma pupils were in former special schools, as opposed to 2.2% of non-Roma. Roma pupils in the Czech Republic are therefore at least 12 times more likely than non-Roma to be attending former special schools.<sup>8</sup> A further survey commissioned by the Czech Government confirmed that some former special schools were almost completely ethnically homogenous – Roma accounted for at least 90% of total pupil population at a tenth of former special schools in the surveyed sample.<sup>9</sup>

#### **Reports on the Situation in the Czech Republic**

18. In January 2010 **Amnesty International** published a report on discrimination in education of Roma in the Czech Republic entitled "Injustice Renamed." Amnesty researchers conducted a study of four schools in a particular district in Ostrava, visiting the schools in February and April 2009 in order to assess the situation for the school year 2008-2009. Their research revealed that the four schools in the district had become *more* segregated in recent years, rather than less segregated. One practical school, following the same curriculum as the special schools, had 80% Romani pupils. One mainstream primary school with classes for children with mild mental disability had nearly 100% Romani pupils, while another primary school without special classes was also Roma-only, while a third primary school had only 10% Romani children. The schools were described as "gypsy schools" and the "white school" by both the parents of children and some of the teaching staff.<sup>10</sup>
19. On 26 February 2010 the **Committee on Legal Affairs and Human Rights** of the Parliamentary Assembly of the Council of Europe issued a report on "The Situation of Roma in Europe"<sup>11</sup> (Doc 12174) in which the Rapporteur expressed concern as to the

<sup>5</sup> See *Second Government Report*, note 8 above.

<sup>6</sup> See *Ústav pro informace ve vzdělávání – Monitoring Rámcových Vzdělávacích Programů* (2009), at pages 9-14. Available at <http://spolecnedoskoly.cz/wp-content/uploads/monitoring-uiv.pdf>

<sup>7</sup> See *D.H.*, at para. 134. This figures include both Roma children at special schools or practical primary schools and Roma children at other schools but following the sub-standard curriculum for children with mild mental disability.

<sup>8</sup> See *Ústav pro informace ve vzdělávání – Monitoring Rámcových Vzdělávacích Programů* (2009), at pages 9-14. Available at <http://spolecnedoskoly.cz/wp-content/uploads/monitoring-uiv.pdf>, at page 8.

<sup>9</sup> See "Analýza individuálního přístupu pedagogů k žákům se speciálními vzdělávacími potřebami," 106, available at

[http://www.msmt.cz/uploads/soubory/tiskove\\_zpravy/Analiza\\_individualniho\\_pristupu\\_pedagogu\\_k\\_zakum\\_se\\_specialnimi\\_vzdelavacimi\\_potrebami\\_PLNE\\_ZNENI.pdf](http://www.msmt.cz/uploads/soubory/tiskove_zpravy/Analiza_individualniho_pristupu_pedagogu_k_zakum_se_specialnimi_vzdelavacimi_potrebami_PLNE_ZNENI.pdf) (last visited 13 July 2009). A total of 49 former special schools provided actual data or estimates of the proportion of Roma.

<sup>10</sup> See Amnesty International, "Injustice Renamed: Discrimination in Education of Roma Persists in the Czech Republic", January 2010, available at <http://www.amnesty.org/en/library/asset/EUR71/003/2009/en/8572b7e5-4435-4f43-bb2d-462fd7fdb905/eur710032009en.pdf>, accessed 3 November 2010.

<sup>11</sup> <http://assembly.coe.int/Documents/WorkingDocs/Doc10/EDOC12236.pdf>

“continuing existence of Roma-only classes in the Czech Republic”, and noted the concerns of NGOs that recent Government initiatives had changed nothing.

20. In May 2010 the **Czech Helsinki Committee** issued its 2009 human rights report, which found that the rights of Roma were being violated and discrimination in education was persisting.<sup>12</sup>
21. On 20 October 2010, the “**Strasbourg Declaration on Roma**”, which resulted from the Council of Europe High Level Meeting on Roma made specific recommendations with regard to education.<sup>13</sup> The Declaration calls on Member States to “take fully into account the relevant judgments of the European Court of Human Rights...in developing their policies on Roma” (at paragraph 15) and agreed on priorities including the need to “adopt and effectively implement anti-discrimination legislation ... including access to ... key public services, such as .... education” (paragraph 19), to “promote through effective measures the equal treatment and the rights of Roma children, especially the right to education” (paragraph 24) and to “ensure effective and equal access to the mainstream educational system, including pre-school education, for Roma children and methods to secure attendance, including, for instance, by making use of school assistants and mediators. Provide, where appropriate, in service training of teachers and educational staff” (paragraph 33).

### **Recent Political Developments**

22. There have been a number of political developments in the Czech Republic that demonstrate a lack of political will to execute the judgment of the Court.
23. The department within the Education Ministry responsible for the de-segregation of schools was closed down, and the Deputy Minister with responsibility for Roma was demoted to a new role. Following the parliamentary elections in May 2010 the situation has considerably worsened.
24. In January 2010, then-Deputy Education Minister for Social Programmes Klara Laurencikova gave an interview in which she described the Amnesty International report as “high-quality,” and said that it drew attention to problems of which the Ministry was already aware. She said the Ministry had introduced “short-term” measures but that longer-term measures were needed to “address all of the causes” of the situation.<sup>14</sup>
25. At the same time, then-Education Minister Miroslava Kopicova sent a letter to the head teachers of all practical schools encouraging them to be particularly careful when assessing Roma, as recent Government research had established that more than 26% of Romani children were attending such schools, and it is “highly unlikely that the number of children of Romani origin with such mental disability is actually this high.”<sup>15</sup> The Minister called on practical schools to refuse the enrolment of children without a genuine disability.
26. The Minister’s letter received an angry response from educators, particularly in West Bohemia, who very vocally defended the existing system.<sup>16</sup> This response led a senior official from the Ministry of Education, Petr Roupec, to give an interview in which he

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<sup>12</sup> See “Dva roky od rozsudku D.H.: kvalitnější vzdělávání pro romské děti?” Mgr. Bc. Lucie Obrovská, available at <http://www.helcom.cz/view.php?cisloclanku=2010051703>, Accessed 16 October 2010

<sup>13</sup> Available at [http://www.coe.int/t/dc/files/source/2010\\_cm\\_roma\\_final\\_en.doc](http://www.coe.int/t/dc/files/source/2010_cm_roma_final_en.doc)

<sup>14</sup> Interview with Klara Laurencikova, Deputy Education Minister, 13 January 2010, Ro 1 – Radiožurnal page 1, 07:50, Morning interview.

<sup>15</sup> 19 January 2010, Letter from the Minister of Education, Youth and Sport, 1084/2010-60. On file with the authors.

<sup>16</sup> As reported in RESPEKT magazine on 11 February 2010, [http://www.romea.cz/index.php?id=detail&detail=2007\\_7536](http://www.romea.cz/index.php?id=detail&detail=2007_7536), accessed 18 April 2010.



sought to justify the segregation of Roma, arguing that if improved methods of research “proved that such a high percentage of Roma have a lower intellect, we must accept it as a fact.” He sought to justify the slow pace of change, arguing that “There is no point in seeking radical solutions. It is positive that we are leading a discussion and we have a certain strategy, it is even positive that the practical school teachers reacted to the minister’s letter so openly. This all has pushed us forward. But it will take a long time.”<sup>17</sup>

27. In January 2010 the Ministerial Council proposed the “National Action Plan for Inclusive Education” (NAPIE) which stated that inclusive education for all was a goal of the Government which had not yet been achieved. The Czech Government adopted the NAPIE on 15 March 2010, together with a very general timeline of implementation.<sup>18</sup> However, as of October 2010 there has been only one meeting of the working group charged with implementation of the NAPIE.
28. In a letter to the Minister of Education dated 29 January 2010, Amnesty International, the ERRC and OSJI set out their concerns that the NAPIE does not begin to satisfy the needs of Romani children, even if it were to be implemented:
  - *Firstly*, the NAPIE makes no firm commitments, in that it only lays out a timeline for the development of more concrete policies, and does not include specific targets for the inclusion of Roma into mainstream education.
  - *Secondly*, the NAPIE makes no reference to ethnic discrimination, and thus fails to recognise the failing identified by the ECtHR.
  - *Thirdly*, there is no timeline or plan for the desegregation of Czech schools.
29. On 11 March 2010, Education Minister Kopicova closed the Department for Social Programmes within the Ministry, citing budget cuts,<sup>19</sup> and the Ministry’s “education reform group” was also subsequently closed. Deputy Minister Klara Laurencikova, the head of this department who had been the sole promoter of the implementation of the *D.H.* judgment at the Ministry and who was one of the only Ministry staff open to input from civil society on the topic of desegregation, was demoted to the position of head of the “Special Education Programmes” Section.
30. At the end of March 2010, the Czech School Inspection Authority issued a report and announced it would be fining 34 practical schools (former special schools) that had illegally enrolled children without testing their intellectual capacity or obtaining the consent of their parents. Most of the children concerned were Roma.<sup>20</sup> None of the schools have been fined to date. The report also found that 83% of the former special schools had not transformed and were described as “hidden special schools.” Across the country as a whole, Romani children still constitute 35% of children diagnosed as having light mental retardation, and in some regions they amount to more than 50% of children diagnosed as such. The report concluded that there were at least 5,000 children without any disability at the practical schools.<sup>21</sup>

<sup>17</sup> “Education Official Justifies Status Quo”, ČTK, 25 February 2010, on file with the authors.

<sup>18</sup> Resolution of the Czech Republic Government nr. 206 from 15 March 2010, on file with the authors.

<sup>19</sup> “Ministryneš školsství odvolá kvůli úsporám tři své námestky”

<http://www.ct24.cz/domaci/83608-ministryne-skolstvi-odvola-kvuli-usporam-tri-sve-namestky/>, news server of CT 24 (Czech Television), Accessed 31 March 2010.

<sup>20</sup> “Children Unjustifiably Enrolled in ‘Special Schools’ – they face Closure as a Result”, Romea, 2 April 2010, available at [http://romea.cz/english/index.php?id=detail&detail=2007\\_1582](http://romea.cz/english/index.php?id=detail&detail=2007_1582)

<sup>21</sup> The Czech School Inspection Report is on file with the authors.



31. In April 2010 the Public Defender of Rights (Ombudsman) issued an evaluation of the Czech School Inspection Authority report which found that:
- A) It is indirectly discriminatory for a disproportionate number of Roma children to be recommended by school counselling facilities for education in ‘practical elementary schools’ without a diagnosis of mental disability or any other disability as defined by the School Act. There does not exist a justifiable reason for this distinction being made which could explain the disproportionately high percentage of Roma children being recommended for education in the ‘practical elementary schools’. Moreover, assignment to education in a ‘practical elementary school’ without a diagnosis of mental disability constitutes a fundamental error on the part of the body responsible, irrespective of whether the children are Roma or not.
- B) It is discriminatory that one-third of the children diagnosed as mentally disabled are also Roma. As in the above question, the negative effects of this different treatment of Roma and non-Roma children are not justified by any legitimate aim and cannot be qualified as anything other than discriminatory.<sup>22</sup>
32. Also during March 2010, media reported on the Education Ministry’s intention to introduce the Romani language as an elective subject in schools. Shortly thereafter, a Facebook page opposing Romani language instruction was established and quickly gained more than 40,000 fans.<sup>23</sup>
33. The Matrasovova Elementary School, one of the few schools in the Czech Republic with a proven track record of successfully integrating Czech and Romani children, was closed in 2010. One of the local officials involved in the process, Liana Janáčková, is a senator who has regularly made racist statements about the Roma.<sup>24</sup>
34. Meanwhile, the anti-Roma climate in the Czech Republic has escalated. In April 2010 the newspaper *Mladá Fronta DNES* reported that someone with access to an official e-mail address at the Nedvedova Elementary School in Olomouc had been sending anti-Roma jokes to faculty members. Police were investigating; supposedly only the school Director and two Deputy Directors had access to the account. The school had been established by the city, and Mayor Martin Novotny told the press that the incident was inexcusable.<sup>25</sup> Also in April 2010, a group calling itself “D.O.S.T.” (an acronym meaning “enough”) held a demonstration in Prague entitled “There has been enough anti-discrimination” and calling for the closing of the Office of the Human Rights and Minorities Minister. The League against Anti-Semitism reported that it had long been monitoring many of the groups supporting D.O.S.T. because of their anti-Semitic, fascist, racist and xenophobic views and actions.<sup>26</sup>
35. In June 2010 the outgoing Government adopted its “Report on the State of Roma Communities in the Czech Republic for 2009.” The report praised the Education Ministry’s initiatives to implement inclusive education in the Czech school system and steps leading

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<sup>22</sup> “Opinion of the Public Defender of Rights on suspicions of discrimination against pupils and students of Romani origin - findings from a report on the inspection activities of the Czech School Inspectorate at practical primary schools”, available at: <http://spolecnedoskoly.cz/wp-content/uploads/stanovisko-verejneho-ochrance-prav-k-diskriminaci-romskych-zaku.pdf>, Accessed 3 November 2010.

<sup>23</sup> “Facebook group against Romanes language in Czech schools: 40 000 strong”, ROMEA, 24 March 2010, available at [http://www.romea.cz/english/index.php?id=detail&detail=2007\\_1571](http://www.romea.cz/english/index.php?id=detail&detail=2007_1571), Accessed 16 October 2010.

<sup>24</sup> See “Podraný family seeks legal advice regarding Czech Senator Liana Janáčková”, ROMEA, 19 March 2010.

<sup>25</sup> “MfD: Teachers at an Olomouc elementary school make jokes at expense of Roma”, ROMEA, 30 April 2010, available at [http://www.romea.cz/english/index.php?id=detail&detail=2007\\_1625](http://www.romea.cz/english/index.php?id=detail&detail=2007_1625), Accessed 16 October 2010

<sup>26</sup> “Czech MP supports event called ‘There Has Been Enough Anti-Discrimination’”, ROMEA, 5 April 2010, available at [http://www.romea.cz/english/index.php?id=detail&detail=2007\\_1585](http://www.romea.cz/english/index.php?id=detail&detail=2007_1585), Accessed 16 October 2010

to the preservation of the Romani language.<sup>27</sup> The Government also adopted its Report on the State of Human Rights in the Czech Republic, which mentioned that in response to the *D.H.* judgment that the Government had commissioned a sociological survey of 99 schools serving socially excluded localities in order to analyze the forms and causes of the segregation of “children and young people from socio-culturally disadvantaging backgrounds”, and that the study showed “great variations” in the degree to which children with “special educational needs” are integrated. The report also mentions the activities of the “Together to School” NGO coalition and identifies the problem of the “still insufficient transformation of the former special schools and diagnoses by school counseling facilities which are neither sufficiently individualized nor of sufficient quality.” The report notes that the Education Ministry, the Czech School Inspection Authority and NGOs have discovered “many deficiencies in the process of enrolling children into special education.”<sup>28</sup>

#### The situation since the May 2010 elections

36. As a result of the May 2010 parliamentary elections, the human rights apparatus at the Office of the Government of the Czech Republic has been severely reduced, and significant changes have taken place within the Education Ministry making the execution of the Court’s judgment in the *D.H.* case virtually impossible.
37. On 13 June 2010, a new Minister of Education, Josef Dobes, was appointed. The new Government has announced that there will no longer be a separate group within the Ministry responsible for the education of children from a socially disadvantaged environment (previously led by Deputy Minister Laurencikova), but that this responsibility will be merged into the group with responsibility for general, vocational and continuing education.
38. The Minister announced on 1 September 2010 that staff within the Section for Operational Programmes, which oversees the use of EU Structural Funds for education, would be cut by 30% in order to save money, which may reduce resources available to support desegregation.
39. According to Together to School, the Ministry has made no plans to implement the media campaign to de-stigmatise Romani children announced by the previous Education Minister and Deputy Minister in November 2009.
40. The Education Minister has confirmed that the Ministry is considering the plan proposed by Member of Parliament Petr Gazdik that children who have to repeat a year twice should be recommended to attend a practical school. A first meeting on this topic has been convened in the Ministry and there is speculation that this measure will be included in an amendment to the Schools Act due to be discussed by the Government in November 2010.
41. The post of Human Rights and Minorities Minister (first established in 2006) was not re-appointed in the new cabinet despite many protests from civil society. When it existed, this cabinet-level position was responsible for horizontal implementation of human rights and minority concerns across Government policy. The two office-holders of this post advanced legislation to protect human rights, combated discrimination, and enforced protection of the Roma minority in particular. During his time as minister, Michael Kocab espoused the view that “Roma children need to be integrated into the mainstream school system, and the

<sup>27</sup> “Czech government approves Report on the State of Roma Communities in 2009”, ROMEA, 15 June 2010, available at [http://www.romea.cz/english/index.php?id=detail&detail=2007\\_1653](http://www.romea.cz/english/index.php?id=detail&detail=2007_1653), Accessed 16 October 2010

<sup>28</sup> “Zpráva o stavu lidských práv v České republice v roce 2009”, pp. 53-55, available at [http://www.rynet.cz/romea/dokumenty/zprava\\_LP-2009.pdf](http://www.rynet.cz/romea/dokumenty/zprava_LP-2009.pdf), Accessed 16 October 2010. Translation from Czech original by Gwendolyn Albert.

prejudice that they are of a lower mental capacity needs to be remedied.”<sup>29</sup> There is currently no-one who is specifically assigned responsibility for overseeing implementation of the judgment within the Office of the Government.

42. Following the elections, Roman Joch was appointed to the position of human rights advisor to the Czech PM. This appointment has been criticised by human rights observers who objected to the fact that Mr Joch opposed the transposition of EU Race Directive 2000/43 into Czech legislation and has expressed admiration for Chilean dictator Augusto Pinochet.<sup>30</sup> In a radio interview in August 2010, Mr Joch said he would be advising the Prime Minister to close the Office of the Human Rights Commissioner entirely.<sup>31</sup> Shortly thereafter, in September 2010, Prime Minister Necas asked Commissioner Kocab to resign. Even though Commissioner Kocab indicated he would prefer not to resign until it was clear who his successor would be, he was eventually forced out. Inside the Czech Republic, Commissioner Kocab was broadly viewed as having placed great emphasis on the human rights of the Roma minority during his time in office, first as Human Rights and Minorities Minister and then as Human Rights Commissioner, a fact which made him unpopular.<sup>32</sup> As of October 2010, a new Human Rights Commissioner has yet to be appointed. Mr Kocab has recently commented as to the lack of responsibility for human rights within the Czech Republic as a result of the failure to replace him:

I unfortunately expected the PM to take this lax approach, and that is why I said I did not want to leave until I could hand the office over to the specific person who would replace me. That was not possible. The office is now in a state of total anarchy. Given our obligations to the Council of Europe, the EU, the OSCE, and the UN this state of affairs is unsustainable. Moreover, 14 days ago the office was told it would no longer be handling the agenda on human rights in the EU, which I consider completely scandalous. The Czech Republic will no longer be overseeing its own implementation of human rights treaties within the EU framework.<sup>33</sup>

43. In this context it is important to recall that the Czech Republic does not yet have an independent human rights body in place which meets the requirements of the Paris Principles.<sup>34</sup>
44. In June 2010 the Coalition Together to School (Coalition)<sup>35</sup> called on the incoming Government to specifically mention the issue of Roma inclusion in education in its Programme Declaration, arguing that enrolling Roma in mainstream schools would save the state dozens of billions of crowns. The Coalition said the World Bank had calculated the losses to the country in potential income due to the continued under-education of Romani children at CZK 16 billion annually.<sup>36</sup> In addition, the Coalition called on the

<sup>29</sup> See <http://www.praguepost.com/print/1162-ministry-maps-school-segregation.html>

<sup>30</sup> “Incoming human rights advisor to Czech PM praises authoritarianism, Pinochet”, ROMEA, 21 August 2010, available at [http://www.romea.cz/english/index.php?id=detail&detail=2007\\_1793](http://www.romea.cz/english/index.php?id=detail&detail=2007_1793), Accessed 16 October 2010.

<sup>31</sup> “Joch navrhně premierove zrusit urad zmnocnenec pro lidska prava”, ROMEA, 18 August 2010, available at [http://www.romea.cz/english/index.php?id=detail&detail=2007\\_8484](http://www.romea.cz/english/index.php?id=detail&detail=2007_8484), Accessed 16 October 2010

<sup>32</sup> “Czech Government removes Kocab as Human Rights Commissioner”, ROMEA, 19 September 2010, available at [http://www.romea.cz/english/index.php?id=detail&detail=2007\\_1900](http://www.romea.cz/english/index.php?id=detail&detail=2007_1900), Accessed 16 October 2010

<sup>33</sup> See [http://www.romea.cz/english/index.php?id=detail&detail=2007\\_1996](http://www.romea.cz/english/index.php?id=detail&detail=2007_1996)

<sup>34</sup> See the ranking of the Office of the Ombudsperson of the Czech Republic at <http://www.nhri.net/NationalDataList.asp?MODE=1&ID=1>, accessed 16 October 2010.

<sup>35</sup> Together to Schools is an informal coalition of NGOs including Zšvůle práva, the ERRRC, Step by Step ČR, OSF Praha, DROM, IQ Roma Servis, ROMODROM, Czech Helsinki Committee, Life Together, League of Human Rights, Romské sdružení Čačipen, Slovo 21, SPOLEČNĚ – JEKHEETANE, LIGA and Envi.

<sup>36</sup> The policy note on which this information is based is at: [http://siteresources.worldbank.org/INTROMA/Resources/Policy\\_Note.pdf](http://siteresources.worldbank.org/INTROMA/Resources/Policy_Note.pdf), accessed 16 October 2010.

Government to introduce a year of mandatory pre-school attendance and to launch a media campaign to combat anti-Roma prejudice.<sup>37</sup>

45. In June 2010 Prime Minister Necas publicly announced that school desegregation would be included among the priorities of the Government Programme Declaration: this commitment was not fulfilled.
46. In July 2010 the Czech State took up the presidency of the “Decade of Roma Inclusion 2005-2015”. The previous Government had made a commitment to host a conference as part of the presidency on “Desegregating Education in CEE: Good Practices and the Way Forward”. However, the new Education Minister has failed to publicly support the conference, originally scheduled for 10-11 November 2010, and it has had to be indefinitely postponed after organisers (including the ERRC and OSJI) were informed that the Education Ministry was not able to confirm whether it would support the conference, or provide funding or organisational assistance for it.
47. In October 2010, members of the Coalition learned that the amendments to Education Ministry Decrees 72 and 73 on which they had consulted with the previous Education Ministry for more than a year would not be adopted after all and were being reworked. Decree 72 would have regulated the provision of psychological evaluations at counseling facilities and schools, i.e. the testing procedures that were criticised by the Court in its judgment, and was intended to ensure that the process could not be abused. Decree 73 would have regulated special needs education, in order to ensure that such education is only provided to those who genuinely need it.
48. In October 2010, two key Education Ministry officials resigned their post in protest against the Government’s failure to prioritise equal education for Romani children: Viktor Hartos, Director of the Department of Special Education and Equal Opportunities and Klara Laurencikova, Ministerial Advisor, assisting the new Government during the transition period in this area. At the time of his resignation, Mr Hartoš announced:<sup>38</sup>
  1. The Minister unofficially froze the NAPIE.
  2. In October 2010, the Ministry reduced the staff of the Department of Special Education and Equal Opportunities by half (currently responsible for implementing the judgment).
  3. The total abolition of the Department of Special Education and Equal Opportunities is now reportedly being considered.
  4. The Ministry has not published the “methodological recommendations” for schools concerning socially disadvantaged pupils developed by the previous Ministry.
49. Mr Hartoš explained the reasons why he was no longer able to continue in his role, referring to the failure to introduce the amended Education Ministry Decrees 72 and 73:

I was supposed to develop a concept for special needs education, but I discovered that a plan for that area has been ready and waiting for approval since March. I informed the minister that the existing plan is comprehensive and in accordance with modern

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<sup>37</sup> “Together to School: Roma inclusion in regular schools will save the state billions”, ROMEA, 22 June 2010, available at [http://www.romea.cz/english/index.php?id=detail&detail=2007\\_1662](http://www.romea.cz/english/index.php?id=detail&detail=2007_1662), Accessed 16 October 2010

<sup>38</sup> “Czech official quits Education Ministry over failure to address special schools”, ROMEA, 2 November 2010, on file with the authors.

trends... The ministry has different objectives in mind, and given what I know as a child psychiatrist, I cannot defend its policy.<sup>39</sup>

50. The resignation letter of Mr Hartoš describes the current attitude of the government with regard to the implementation of the judgment of the Court in the *D.H.* case:

As the team leader I cannot identify, either professionally or personally, with the current approach of the Education Ministry toward fulfilling the obligations flowing from the condemnatory verdict of the European Court from 2007. No genuine effort is being made to contribute toward resolving this serious problem that affects society as a whole; rather, there is a tendency to be satisfied with mere formalities.<sup>40</sup>

## **B. SAMPANIS AND OTHERS V. GREECE**

51. On 5 June 2008 the Court issued its judgment in the case of *Sampanis and Others v. Greece*, on the State's failure to provide the children of 11 Romani applicants with schooling during the 2004-2005 school year and the subsequent placement of the children in segregated facilities. The Court found that the State had violated Article 14 (prohibition of discrimination) of the Convention in conjunction with Article 2 of Protocol 1 (right to education). The Court further found that the occurrence of certain "incidents of a racist character" had an impact on the authorities' decision to place the Romani children in segregated schooling. It also found that there was no effective remedy to secure redress for the above in violation of Article 13.
52. Two and a half years after the judgment against Greece, Romani children, including the applicants, remain in a segregated educational setting and no real efforts have been made to improve enrolment rates of Romani children or to ensure fully integrated education for Romani children.

### **Factual Background**

53. In August 2004, the Minister for Education of Greece issued a press release stressing the importance of integrating Romani children into the education system. Soon thereafter, on 10 September 2004, an official from the office of the State Secretary for the education of persons of Greek origin and intercultural education, accompanied by two Greek Helsinki Monitor representatives, visited the Romani camps in Psari near Aspropyrgos, for the purpose of encouraging parents to enrol their children in school.
54. In the wake of these events, on 21 September 2004 the applicants, 11 Greek nationals of Romani origin living in Psari, went to the primary school in Aspropyrgos with other Romani parents in order to enrol their children. The headmasters of two schools refused to enrol the children, arguing that they had not received any instructions to do so from the competent ministry, and told the applicants they could enrol when the necessary instructions had been received. However, the parents were never invited to enrol their children.
55. On 9 June 2005, 23 children of Romani origin, including the applicants' children, managed to enrol for the next school year 2005-2006. When they arrived at school for the first day of term in September 2005, non-Romani parents protested against the admission of Romani

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<sup>39</sup> See "Czech Official quits Education Ministry over failure to address special schools", ROMEA, 2 November 2010, available at [http://www.romea.cz/english/index.php?id=detail&detail=2007\\_199](http://www.romea.cz/english/index.php?id=detail&detail=2007_199)

<sup>40</sup> Available at <http://aktualne.centrum.cz/domaci/politika/clanek.phtml?id=681420>

children in the school, blocked the Romani children's entrance and demanded that they be transferred to another building. The demonstrations continued daily into October.

56. On 25 October 2005 applicants were pressured into signing a statement drafted by primary school teachers, which stated that they wanted their children to be transferred to a building separate from the school. On the basis of this document, from 31 October 2005, the applicants' children were segregated into separate classes in an annex to the main Aspropyrgos primary school building, and the blockade of the school was lifted. The annex, located five kilometres from the primary school, consisted of prefabricated classrooms on land belonging to the municipality of Aspropyrgos.

### **Judgment of the European Court of Human Rights**

57. In its judgment, the Court made the following findings:
- that there was a violation in placing the children in segregated schooling facilities;
  - that there was a violation in the denial of access to primary school in 2004-2005;
  - that there were violations despite domestic legislation providing the possibility of enrolling pupils at primary school simply by means of a declaration signed by someone with parental authority, provided birth certificates are produced in due course;<sup>41</sup>
  - that Roma are in a vulnerable position in Greece and that, as such they may require special measures to ensure the full enjoyment of their rights and specifically that the prohibition of discrimination under Article 14 requires in certain circumstances a difference of treatment in order to correct inequality;<sup>42</sup>
  - that it is important to set up an appropriate system of assessment of the capacities of children with learning needs, to monitor their progress, especially in the case of children from ethnic minorities, and to provide for possible placement in preparatory classes on the basis of non-discriminatory criteria.<sup>43</sup>
  - that the applicant parents, as members of an underprivileged and often uneducated community, had been unable to assess all the aspects of the situation and the consequences of their consent to the transfer of their children to a separate building. Reiterating its findings in the *D.H. and Others* judgment regarding the fundamental importance of the prohibition of racial discrimination, the Court considered that the possibility that someone could waive their right to be free of such discrimination was unacceptable and incompatible with an important public interest.
58. Each of the 11 applicants was awarded €6,000 in non-pecuniary damages. These damages have been paid; but all of the children involved in the case remain in a segregated educational setting. Those still in school *still* attend the Roma only segregated 12<sup>th</sup> primary school (previously annexed to 10<sup>th</sup> primary school) in Psari, Aspropyrgos, despite Government assurances to the Committee of Ministers in its session on 3 December 2009 that this would be remedied.

### **Response to the Judgment**

59. Greek Helsinki Monitor (GHM) has filed a series of responses with the Committee of Ministers and, together with the ERRC and Minority Rights Group-Greece (MRG-G), has

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<sup>41</sup> Paragraph 86 of the *Sampanis* judgment.

<sup>42</sup> *Ibid.*

<sup>43</sup> Paragraph 92 of the *Sampanis* judgment.

taken a number of steps with the Greek authorities to try to ensure compliance with the Court's judgment.

#### **Prior submissions to the Committee of Ministers**

60. GHM submitted observations to the Committee of Ministers on 4, 9 and 16 December 2009 in the aftermath of the Committee of Ministers' review of *DH and Others* on 3 December 2009, in which it noted information provided by Greek authorities on individual and general measures in *Sampanis*. The Committee of Ministers decided to resume consideration of the execution of the judgment for their 1086th meeting in June 2010. At that meeting, the Committee of Ministers postponed consideration of the issue until this 1100th meeting, in light of further information concerning general and individual measures submitted by the Greek authorities in January and March 2010. All information is therefore currently under examination.<sup>44</sup>

#### **Developments from December 2009 to November 2010**

61. On 27 August 2009, the GHM and MRG-G sent an urgent complaint to the Greek Ombudsman. The complaint followed two unanswered letters<sup>45</sup> sent to the Ministry of Education's Special Secretary for Cross-Cultural Education and the Minister of Education concerning the lack of access to non-segregated education of Romani children in Psari, Aspropyrgos, including the applicants in *Sampanis and Others* and three other communities. These letters called on the Ministry of Education to ensure that the Romani pupils attend the 10<sup>th</sup> school. On 12 March 2010, the Ombudsman's Office responded, without giving reasons, that it had decided not to act upon the merits of the complaint.<sup>46</sup>
62. Segregation of Romani pupils continued in Psari, Aspropyrgos during the school year 2009-2010 despite assurances from Greek authorities to the Committee of Ministers at its December 2009 meeting. This matter is now the subject of a further application to the European Court of Human Rights on behalf of 140 Roma in Psari, Aspropyrgos (98 children of mandatory school age and 42 parents or legal guardians).<sup>47</sup> An additional application on behalf of 23 Roma in Sofades, Thessaly (15 children of mandatory school age and 8 parents) challenging school segregation was filed.<sup>48</sup>
63. In March 2010, the Ministry of Education, through Special Secretary Ms. Thalia Dragona, issued a call for a project on a new programme for Roma education, spanning three years with financing from the European Social Fund (ESF). This call yielded no responses. Another call was issued in June 2010 which was broken down into four regional programs. In September 2010, the Ministry of Education awarded the Aristotle University of Thessaloniki with the regional programme for Northern Greece,<sup>49</sup> the remaining three regional programs being awarded to the University of Athens.<sup>50</sup> The project has yet to show any progress.

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<sup>44</sup> See Committee of Ministers conclusion available at: [http://www.coe.int/t/DGHL/MONITORING/EXECUTION/Reports/Default\\_EN.asp?dv=1&StateCode=GRC](http://www.coe.int/t/DGHL/MONITORING/EXECUTION/Reports/Default_EN.asp?dv=1&StateCode=GRC), accessed 3 November 2010.

<sup>45</sup> Letters available at: [http://cm.greekhelsinki.gr/uploads/2009\\_files/ghm1184\\_roma\\_education\\_letters\\_english.doc](http://cm.greekhelsinki.gr/uploads/2009_files/ghm1184_roma_education_letters_english.doc), accessed 3 November 2010.

<sup>46</sup> Greek Ombudsman, *Letter to GHM and MRG-G*, Reference, no. 15965/20094: 12 March 2010, on file with the authors.

<sup>47</sup> Filed on 7 October 2009, Application Number 59608/09.

<sup>48</sup> Filed on 29 December 2009, Application Number 7973/10.

<sup>49</sup> See announcement by Ministry of Education available at: <http://www.edulll.gr/?p=3069>, accessed 3 November 2010.

<sup>50</sup> Ibidem..



64. Two previous large-scale ESF-funded projects awarded to Greek universities to increase school enrolment and decrease drop-outs among Romani children have been evaluated as producing exceedingly poor results.<sup>51</sup> It is not clear whether the Ministry of Education has sufficiently adjusted its criteria for the current projects to ensure that the failings of the previous projects do not recur. The practical implementation and outcome of the project must be continuously monitored.
65. Joint research by the ERRC, GHM and MRG-G from May 2010 in 28 Romani communities throughout Greece reveals that Romani children across Greece are still not being enrolled in school and where they do attend they are often segregated.
66. Based on the information gathered, the ERRC, GHM and MRG-G on 10 June 2010 sent a request to the Ministry of Education to secure non-discriminatory access to education in September 2010 of Romani pupils in the listed localities.<sup>52</sup>
67. Since the Ministry of Education failed to respond to the 10 June 2010 letter within the 50 days required by Greek law, the ERRC, GHM and MRG-G, sent another letter on 2 August 2010 stating that the non-response constitutes an implied repudiation by Greek authorities.
68. On 24 August 2010, the Ministry of Education issued a Circular setting out some of the problems and difficulties of enrolment of Romani children into schools. The Ministry also recalled the obligation of headmasters to secure enrolment of all Romani children within their respective school districts. Despite this Circular and a formal request by ERRC, GHM and MRG-G to the Supreme Court Prosecutor to instruct local prosecutors to ensure compliance with the constitutional guarantee of equal access of Romani children to primary education, there have been no effective comprehensive enrolment procedures for Romani children in the 28 specified communities.
69. The failure to execute the judgment promptly has meant that since the decision of the Court, the children of the applicants, along with many other Romani children in Greece, are still educated in segregated settings, if they are educated at all.
70. To fulfill its legal obligation under the judgment, the Greek Government must adopt the following measures:
- 1. Implement an immediate prohibition on the placement of Romani children in segregated schools and classes.
  - 2. Immediately integrate the applicants' children in the nearest adequate school, the 10th Primary School.
  - 3. Develop a comprehensive plan to ensure the full enrolment of all Romani children of mandatory school age into integrated pre-school and primary education in the respective regions and communities as attached to this submission in particular, and generally throughout Greece. This plan should include: baseline data of the number of Romani children out of school, concrete enrolment targets, concrete activities to ensure enrolment, named responsible authorities, identified sources of financing, specific monitoring mechanisms and sanctions for authorities found to not meet their obligations.

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<sup>51</sup> Ministry of Education, "*Final Report of the evaluation of intercultural education Programmes*" carried out by REMACO consulting company, April 2005, available at: [http://www.epeaek.gr/epeaek/jsp/el/search\\_details.jsp?id=635](http://www.epeaek.gr/epeaek/jsp/el/search_details.jsp?id=635), accessed 3 November 2010.

<sup>52</sup> Letter on file with the authors.

- 4. Provide social workers and school mediators in Romani communities to facilitate contacts between schools and communities to ensure regular school attendance;
- 5. Provide additional teaching support to Romani children where and when needed through supplementary hours and summer schools.
- 6. Train educators in Greece in anti-racism, non-discrimination and multicultural education.

### **C. ORŠUŠ AND OTHERS V. CROATIA**

71. On 16 March 2010 the Grand Chamber of the European Court of Human Rights issued its judgment in the case of *Oršuš and Others v. Croatia*, finding that the segregation in 2002 of Romani school children into separate classes amounted to discrimination on the basis of ethnicity. The Court ruled that, because the state had failed to justify placement of the applicants in separate classes, the segregation amounted to differential treatment on the basis of ethnicity, in violation of Article 14 (prohibition of discrimination) taken together with Article 2 of Protocol 1 (right to education) of the Convention. The Court also found that the excessive length of proceedings before the Croatian Constitutional Court amounted to a violation of the applicants' right to a fair trial within a reasonable time under Article 6(1) of the Convention.
72. Eight months after the Court's judgment and six years after the first domestic complaints were filed, the government has yet to make any changes that will end segregated classes.

#### **Factual Background**

73. The case concerns 14 applicants, originally part of a larger group, born between 1988 and 1994, who were placed in segregated Roma-only classes in otherwise mainstream primary schools in the Croatian villages of Macinec, Podturen and Orehovica in Medimurje County.
74. In April 2002, the applicants filed claims against their primary schools, asserting that the curriculum in their Roma-only classes had 30% less content than the official national curriculum. They argued that placement in such classes amounted to racial discrimination and a violation of their right to education. In support of their claims, the applicants offered a psychological study of Romani children who attended Roma-only classes in the region, which concluded that segregated education lead to emotional and psychological harm in Romani children, both in terms of self-esteem and development of their identity.
75. When the case came before the Court in 2004, the applicants argued that their placement in Roma-only classes stemmed from a practice of discrimination based on their ethnicity, motivated in part by the anti-Romani sentiments of the local majority population. The government sought to justify the children's segregation on their lack of proficiency in the Croatian language.

#### **Judgment of the European Court of Human Rights**

76. In its judgment, the Court reinforced many of the principles of its earlier judgments concerning discrimination against Romani children placed in segregated education. In particular, the Court made the following findings:
  - *Language cannot be a pretext for segregation.* The Court for the first time held that separation due to language is not allowed unless such measures can be objectively justified by a legitimate aim:

- the Court’s assessment revealed that the Croatian laws at the time provided no legal basis for separate classes for children lacking proficiency in the Croatian language;
- the assessment tests given to Romani students to determine placement did not assess the children’s command of the Croatian language, but merely their general psycho-physical condition;
- any learning difficulties the children might have had were not adequately addressed by placing them in Roma-only classes;
- as regards the curriculum, the Roma-only classes were not specifically designed to address the children’s alleged linguistic deficiency;
- the government failed to show that it had adequately monitored the students’ progress in learning Croatian;
- *The State has an obligation to take positive measures.* The Court stressed the obligation of the State to undertake appropriate positive measures to assist pupils in attaining necessary language skills and reduce high drop out rates in the shortest time possible and to raise the awareness of the importance of education among the Romani population.
- *Education should be integrated.* If and when appropriate, special language lessons should be a means to fast-track pupils into fully integrated mainstream education.<sup>53</sup>

#### **Developments since the judgment**

77. Each of the 14 applicants was awarded €4,500 in non-pecuniary damages, which has been paid. None of the applicants are any longer in school. No changes have been made to the school system to ensure desegregation and Romani children in the region continue to study in segregated classes. For example, according to official information from the elementary school “Ivan Novak Macinec” (Glavna 22, 42306 Macinec) there are some Roma-only classes.<sup>54</sup>
78. In order to achieve the Court’s objective of integrating the school system and in other ways promoting the education of Romani children, the Government of Croatia should enact legislation or regulations related to: placement and testing, curriculum, monitoring, high drop-out rates.

#### **Placement and testing**

79. Where the state authorities opt to treat children differently on the ground that the children lack an adequate command of Croatian language, “the testing of such children should be specifically designed to assess their knowledge of the language”<sup>55</sup>. This still does not happen.

#### **The Curriculum**

80. The Croatian Government – to the authors’ knowledge – has not to date designed and implemented relevant specific guidelines for teaching children who are lacking Croatian language knowledge. Recently adopted amendments from July 2010 to the Law on

<sup>53</sup> *Oršuš v. Croatia* judgment of 16 March 2010, at paragraph 145.

<sup>54</sup> According to the information provided by the Headmistress of the school Božena Dogska, on file with the authors.

<sup>55</sup> *Ibid*, at paragraph 159.

Education in Primary and Secondary Schools<sup>56</sup> in Article 43 paragraph 1 stipulate that the schools are obliged to provide to all children with right to education in Croatia with special assistance if they do not know or have insufficient knowledge of the Croatian language. However the current National Curriculum<sup>57</sup> and the Curriculum plan and programme for elementary education<sup>58</sup> do still not provide any guidelines that would lead school authorities in their work with the children who lack enough knowledge of Croatian language.

### **Monitoring and evaluation**

81. No programme has been established for addressing the special needs of Romani children lacking in language skills that included a time-frame for the various phases of acquisition of the necessary language skills. The Action Plan in the Decade of Roma Inclusion<sup>59</sup> enumerates different activities aimed at resolving this issue, but there are no implementation guidelines as to how these activities should be practically realised.

### **High drop-out rates**

82. The Court in the *Oršuš* case stressed that “while the Croatian authorities cannot be held to be the only ones responsible for the fact that so many pupils failed to complete primary education or to attain an adequate level of language proficiency, such a high drop-out rate of Roma pupils (as evidenced by statistics) called for the implementation of positive measures, inter alia, to raise awareness of the importance of education among the Roma population and to assist the applicants with any difficulties they encountered in following the school curriculum. Therefore, some additional steps were needed in order to address these problems, such as active and structured involvement on the part of relevant social services”<sup>60</sup>. The National Program for Roma<sup>61</sup> notes that inclusion of Romani children in the pre-school and primary education as well as encouraging Romani children to enroll in secondary schools and universities as primary goals of this program. However, there are no transparent and clear guidelines as to implement these activities in practice or to monitor results.

### **Recommendations**

83. In order to comply with the judgment of the Court, the Croatian government must take the following steps:
- 1. Issue an immediate prohibition on the placement of all children, including Romani children, into separate classes on the basis of alleged language deficiencies.
  - 2. Immediately integrate all children separated on the basis of language deficiency into mainstream classes.
  - 3. Adopt a special curriculum for children with insufficient knowledge of Croatian language focusing on fast acquisition of language skills in an integrated classroom setting.

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<sup>56</sup> As amended in July 2010.

<sup>57</sup> “Nacionalni okvirni kurikulum za predškolski odgoj i obrazovanje te opće obvezno i srednjoškolsko obrazovanje” Available through: <http://public.mzos.hr/Default.aspx?sec=2428>, accessed 3 November 2010.

<sup>58</sup> “Nastavni plan I program za osnovnu školu”. Available through: <http://public.mzos.hr/Default.aspx?sec=2197>

<sup>59</sup> “Akcijski plan Desetljeća za uključivanje Roma 2005-2015”. Available at: <http://public.mzos.hr/Default.aspx?art=9684&sec=3156>, accessed 3 November 2010.

<sup>60</sup> *Oršuš v Croatia* judgment of 16 March 2010, paragraph 177.

<sup>61</sup> “Nacionalni program za Rome” Available at: [www.umrh.hr/Nacionalni%20program%20za%20Rome.pdf](http://www.umrh.hr/Nacionalni%20program%20za%20Rome.pdf), accessed 3 November 2010.

- 4. Provide teacher anti-racism, anti-discrimination and multi-cultural training to enable them to effectively work with Romani children.
- 5. Establish free-of-charge, mandatory pre-school education for all children to address language gaps at the earliest stage possible.
- 6. Establish a comprehensive plan for reducing high drop-out rates of Romani children (including through school outreach, increasing the involvement of Romani parents in their children's education, improving teacher-parent communication, after school activities, after school mentoring, school mediators, etc.).

8 November 2010

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REPRESENTATION PERMANENTE DE LA GRECE  
AUPRES DU CONSEIL DE L'EUROPE

no: F. 6702/177/AS 1207

Mme Geneviève Mayer  
Chef du Service de  
l'exécution  
des arrêts de la Cour Européenne  
des Droits de l'Homme  
DGII, Conseil de l'Europe  
F-67075 Strasbourg Cedex

Strasbourg, le 17 novembre 2010

**Re : Affaire Sampanis et autres c. Grèce (requête n° 33977/06).**

Madame,

Je vous remercie pour votre courrier du 9 novembre dernier par lequel vous avez bien voulu nous transmettre une communication de European Roma Rights Center, Open Society Justice Initiative et Greek Helsinki Monitor concernant l'affaire mentionnée ci-dessus.

En premier lieu il semble important de souligner que le suivi de l'exécution des arrêts de la CourEDH appelle à une lecture objective et intégrale de ces arrêts afin d'en tirer les conclusions juridiques qui vont par la suite tracer le cadre dans lequel l'exécution et son suivi se dérouleront.

A cet égard, je tiens à noter que certaines des observations contenues dans la communication en question et concernant l'affaire Sampanis semblent prôner une lecture sélective et inexacte de l'arrêt sous examen, alors que certaines autres semblent concerner en réalité des questions étrangères aux suites à donner à ce même arrêt.

Les auteurs de cette communication reprochent en effet aux autorités nationales de continuer à maintenir un système d'éducation ségrégatif pour les enfants d'origine Rom et de ne pas avoir fait de vrais efforts pour augmenter le nombre des enfants Rom inscrits à l'école ni pour assurer la pleine intégration de ces enfants au système de l'éducation nationale (para 52 de la communication).

Or, la CourEDH n'a jamais stigmatisé le système de l'éducation nationale comme ségrégatif, voire discriminatoire envers les enfants Rom ni d'ailleurs les conditions particulières de l'inscription de ces enfants à l'école. Tout au contraire, elle a pris soin de bien préciser que de tels problèmes n'existent pas et que le droit grec reconnaît les particularités du mode de vie de la communauté Rom et facilite dès lors l'inscription de leurs enfants à l'école (para 32 et 86 de l'arrêt).

S'agissant des faits de l'affaire Sampanis, la communication en question opte pour une version abrégée (points 53 à 56) par rapport à la partie respective de l'arrêt de la CourEDH, omettant ainsi les passages de l'arrêt où il est démontré que les autorités nationales, scolaires et policières, avaient déployé tous les efforts possibles pour apaiser le conflit entre les diverses communautés locales dans la région de Aspropyrgos et assurer ainsi l'accès des enfants des requérants aussi bien que d'autres enfants Rom à la 10<sup>ème</sup> école primaire de cette région (para 20 et 82 de l'arrêt).

De même, la communication omet de faire référence aux motifs pour lesquels les autorités scolaires n'avaient pas procédé à l'inscription des enfants des requérants à l'école en 2004-2005 alors qu'elles encouragèrent les parents d'inscrire leurs enfants à l'école, notamment le manque des justificatifs nécessaires, comme elle omet de faire référence aux motifs de la création des cours de rattrapage au sein de l'école précitée, en eux-mêmes n'ayant pas été discriminatoires ainsi que la CourEDH le reconnaît (para 7,8, 9, 89 et 91 de l'arrêt).

Quant à la partie de la communication intitulée « constats de la Cour EDH », le seul point qui est exact et sur lequel on peut se mettre d'accord, est celui qui fait allusion à un système adéquat d'évaluation des capacités scolaires des enfants d'origine Rom avant qu'ils ne soient placés dans des classes préparatoires faute de quoi d'ailleurs la CourEDH a conclu à la violation de l'article 2 du 1<sup>er</sup> Protocole combiné avec l'article 14 de la Convention en l'espèce (point 57.5 de la communication et 92 de l'arrêt).

Cependant, eu égard au fait que les classes préparatoires ont existé uniquement au sein de la 10<sup>ème</sup> école primaire de Aspropyrgos en sorte de solution individualisée pour remédier à une situation tout à fait particulière, comme cela est décrit dans l'arrêt de la CourEDH, les autorités nationales ont préféré de mettre terme au fonctionnement de ces classes immédiatement après l'arrêt, étudiant pour autant la mise en place d'un tel système d'évaluation dans le cadre des mesures générales, en relation avec l'éventuel fonctionnement des classes de soutien scolaire en complément des classes ordinaires pour les élèves en difficulté.

Finalement, pour ce qui est des développements après décembre 2009 à ce jour, concernant en effet les diverses initiatives entreprises par le ministère de l'éducation dans ce domaine et notamment la mise en place d'un programme opérationnel intitulé « l'adhésion active des enfants Rom dans le système de l'éducation nationale »,



je me limiterai à faire référence à mon courrier vers votre Service en date du 27 octobre dernier.

Les informations y comprises seront également présentées et analysées lors de la prochaine réunion CM-DH, vu que l'affaire Sampanis est prévue avec débat.

Concluant, je voudrais attirer l'attention sur un point qui nous paraît fondamental et sur lequel les avis des uns comme des autres concordent. Le but commun et ultime des efforts dans ce domaine est d'assurer aux enfants Rom une scolarisation régulière sans entraves et sur une base d'égalité (point 70.3 de la communication). Pour y parvenir faut il encore que toutes les parties au processus soient coopérantes et prennent conscience du fait que les droits impliquent aussi des devoirs.

Je vous prie, Madame, de bien vouloir faire circuler cette lettre conjointement avec la communication en question, demeurant à votre disposition comme à la disposition de toute délégation pour des éventuelles clarifications.

Veillez agréer, Madame, mes salutations les plus sincères.

Vasileia Pelekou

Conseillère juridique  
Adjointe au Représentant Permanent  
de la Grèce auprès du Conseil De l'Europe