

Comments of the Czech Republic on the Report by the Commissioner for Human Rights of the Council of Europe, following his visit to the Czech Republic from 12 to 15 November 2012

A. Education of Roma children

Paragraph 44

Teaching standards are uniform for all schools. Therefore it cannot be said that schools with predominantly Roma pupils have “*de facto* lower” teaching standards.

Paragraph 45

The key measures proposed in the National Action Plan for Inclusive Education are to be included in the upcoming Education Policy Strategy of the Czech Republic for the period ending in 2020 (see comments on para 117).

Paragraphs 48 and 58

Information relevant to parental choice, including information on all aspects of education at the school in question and about the education programme, is provided to parents beforehand. Moreover, no child is enrolled in a programme for children with lower educational targets without first undergoing an educational and psychological assessment. The parents are informed about the results of the assessment. This means that there can be no “confusion among parents as to the nature of the programmes in which their children are enrolled”.

Paragraphs 50 and 51

An upcoming amendment to the Education Act will lay down new principles for educational assessment and counselling, taking into account the goals set out e.g. in the Strategy for Fighting Social Exclusion.

Paragraph 61

The Consolidated Action Plan adopted in November 2012 was prepared by the Ministry of Education, Youth and Sports in a close cooperation with all relevant Government partners. It reflects their comments and recommendations including, in particular, the recent reports from the Ombudsman and the Czech School Inspectorate.

The Consolidated Action Plan includes some short-term measures, such as an amendment to Decree No. 73/2005 that should effectively prevent the placement of pupils without disabilities in classes for disabled pupils.

Additional measures include:

- a review of the assessment tools that are used to identify pupils with slight mental disabilities;

- stricter supervision of the assessment and counselling centres that identify pupils with slight mental disabilities and assist them throughout their school career);
- regular monitoring of the implementation of the proposed measures; continuous interaction with civil society.

The aim is to ensure that the decision to take a child out of the mainstream education system is objective, free of discrimination on the grounds of ethnic or social origin, and consistent with the child's best interests.

Czech authorities remain strongly committed to executing the D.H. judgment. To this end, they will monitor the implementation of the proposed measures and adopt such additional measures as may prove necessary.

The implementation of the Consolidated Action Plan will be evaluated by the Committee of Ministers as part of its duty to supervise the execution of judgments of the European Court of Human Rights.

B. Violent hate crimes against Roma

Paragraph 35

The report cites three arson attacks as examples of cases that “have remained unresolved to date”.

In fact, only two of the cited cases are still pending. The perpetrators of the Opava attack (June 2008) have been sentenced in the Vítkov arson case (April 2009). The Opava case was discontinued in accordance with the Code of Criminal Procedure. Its continued prosecution was deemed inexpedient since the sentences would be negligible in comparison with the sentences in the Vítkov case (three of the perpetrators were each sentenced to 22 years' and the fourth to 20 years' imprisonment).

The Kozolupy and Zdiby-Brnky attacks were duly investigated by the police. However, despite all efforts, the evidence was not strong enough to justify the prosecution of specific individuals. Therefore, the cases were discontinued in accordance with Section 159a of the Code of Criminal Procedure.

It should be noted that discontinuance under Section 159a does not relieve the police of their duty to continue making inquiries with the aim to identify the perpetrator. In case the grounds for discontinuance no longer exist, the police must reopen the case. In each of the above cases, the legality of discontinuance was examined by the supervising public prosecutor and reviewed by the Supreme Public Prosecutor's Office. In both cases the decision was found justified, with regard to the limitations of the available evidence.

Regarding the requirement that more care should be taken to identify the racial element in hate crime cases (see also para 40 of the Report), it is to be noted that in 2009 the Prosecutor General has instructed all public prosecutors to see to it that the motive is always carefully examined and proved, both in obvious hate crime cases and in criminal

cases not obviously motivated by racial, national, religious or other hostility (Prosecutor General's Instruction No. 8/2009, Article 73). This is one of the priority tasks for public prosecutors.

However, one cannot completely disregard crime-fighting experience which shows that crimes committed against persons who classify themselves as belonging to a Roma or any other ethnic group are not always motivated by ethnic or racial hostility, although some victims may tend to present them as such.

Paragraph 38

The statement that "research by NGOs also reveals that prosecutors are not aware of, or do not use, the available manual published by the Office of the Prosecutor General on investigating and prosecuting hate crimes" does not reflect reality. The research in question was carried out in the course of 2009 and its results were published in December 2009. However, the Prosecutor General's Office did not finalize the manual until October 2009. At that time, the manual was distributed electronically to public prosecutors and posted on the website of the Prosecutor General's Office. Currently it is available on the extranet for public prosecutors, operated by the Prosecutor General's Office. Reference to the manual is made during training seminars for public prosecutors. So far, there have been no indications of any problems regarding the practical application of the rules set out in the manual.

Paragraph 39

Comparison of the data on the number of prosecutions instituted and charges brought shows that the success rate in bringing perpetrators to court is high (95.9% in 2011, 94.7% in 2010, 94.3% in 2009).

C. The protection of the human rights of persons with disabilities

Paragraph 79

In this and the following paragraphs, the Report refers to the United Nations Convention on the Rights of Persons with Disabilities. Measures taken by the Czech Republic to implement the Convention are currently subject to dialogue with the Committee on the Rights of Persons with Disabilities, the body which monitors the implementation of the Convention. In this context, it should be noted that some of the commitments arising from the Convention do not fall within the scope of the human rights instruments of the Council of Europe.

Paragraphs 83 and 86

Section 42 of the Criminal Code (aggravating circumstances) includes only an indicative (not exhaustive) list of aggravating circumstances. This enables the court to consider any attendant circumstances that, in its opinion, aggravate the crime. The Criminal Code provides only examples of what may be regarded as aggravating circumstances:

the perpetrator acted with deliberation and premeditation;

the perpetrator was motivated by acquisitiveness, revenge, or by national, racial, ethnic, religious and class hostility or *any similar hostility*, or by *other particularly condemnable motives*,

the perpetrator caused harm to a child, a close person, a pregnant woman, or a person who was ill, *disabled*, aged or powerless.

Paragraph 92

The Report states that according to civil society organizations, the Health Ministry's new working group in charge of the transformation of Czech psychiatric care does not include representatives of patients and carers. However, the working group comprises the representatives of all stakeholders, including the Ministry of Health and the Ministry of Labour and Social Affairs, health insurance companies, associations of healthcare professionals, psychiatric hospitals, outpatient care facilities, and NGOs. Patients and carers should therefore make full use of the opportunity to contribute to planned reforms through their respective NGOs and associations.

Paragraph 94

As regards the Commissioner's concern about the "lack of coordination between the initiatives adopted by the Ministry of Health and the Ministry of Labour and Social Affairs" and the "need for an integrated approach to de-institutionalization", it should be noted that the two ministries have excellent cooperation at the working level. Moreover, the Ministry of Labour and Social Affairs is represented on the Health Ministry's working group in charge of the transformation of psychiatric care. Both ministries make a sustained effort to ensure that de-institutionalization is addressed in a concerted and consistent way.

Paragraph 97

The Commissioner underlines that persons with disabilities should have access to "in-home, residential and other community-based arrangements including the personal assistance necessary to support independent living". The Ministry of Labour and Social Affairs supports, as a matter of priority, fieldwork, outpatient care and community-based services. The support includes subsidies, system-wide projects, as well as guidance for regional authorities.

Paragraph 98

The Commissioner stresses "the importance of ensuring that disability is not treated as a ground for arbitrary deprivation of liberty". The Ministry of Labour and Social Affairs is working on an amendment to the Social Services Act that will specifically address deprivation of liberty. Already now, the Social Services Act restricts the use of force: Section 89 explicitly provides that force can only be used as a measure of last resort after less severe methods of restraint have failed, and only in cases where the life of health of the person concerned, or of other persons, is at risk.

Paragraph 100

The introduction of a comprehensive plan for transition from institutional to community-based care is one of the main tasks of the psychiatric care reform. The first strategy document is to be finalized by 30 June 2013, and the individual implementation plans for the psychiatric care reform are to be presented by the end of 2013.

The report states that “pending the transition to community-based alternatives, the Czech authorities are urged to adopt a no-admissions policy to prevent new placements of persons with disabilities in institutions”. However, full compliance with this recommendation will not be possible until the institutions are fully replaced by an extensive system of in-home, residential and other community-based services. In the meantime, new placements of such persons in institutions cannot be entirely ruled out.

As regards the Commissioner’s concern about the “large number of persons with disabilities living in institutions” (page 3 of the Report), it is to be noted that the transition from institutional to community-based care did not get underway until the introduction of the Social Services Act in 2007, when the social services sector opened up to new trends. Since 2009, the Ministry of Labour and Social Affairs has implemented system-wide projects to support the de-institutionalization effort. Over the past six years, the number of persons living in institutions has decreased by a few percent. However, the economic downturn has slowed down the pace of the reform. Counting in this factor, the progress is comparable with the pace of reform in countries where the reform process stretched over more than twenty years.

Paragraph 106

The Ministry of Labour and Social Affairs plans to raise awareness of the new Civil Code among care providers, carers and local governments. It welcomes, in particular, the provisions on supported decision-making that will help persons with mental disabilities attain a greater degree of independence.

Paragraph 117

A number of specific measures have been taken in order to increase the capacity of mainstream schools and to prepare them for working with children who require a special approach. Assistant teachers and other teachers involved in inclusive education receive funding from the national budget on an annual basis. ESF funding is used to finance projects that promote the inclusion of children with disabilities in mainstream schools and provide the parents and children with a broader range of choices.

Statistics show that significant improvement has been achieved on the ground. Over the past five years, the number of pupils with mild mental disabilities educated in special classes has decreased by 20% (from 17,755 in 2008 to 14,240 in 2012) and the number of pupils integrated in mainstream classes has risen by 50% (from 782 in 2008 to 1,191 in 2012).

The Ministry of Education, Youth and Sports is working on the Czech Republic’s Education Policy Strategy for the period ending in 2020. The aim is to determine the way forward for the entire education system and to clarify specific pathways for its

development in the light of the current needs. Integrated in the Strategy will be the key measures from the National Action Plan for Inclusive Education. The Strategy is to be presented to the Government for approval by the end of 2013.