



Andrej Babiš

Prime Minister of the Czech Republic

Prague, 11 January 2019

Ref. No. 641/2019-UVCR

Dear Commissioner,

Let me reply to your letter dated 19 December 2018 in which you have expressed your concerns about the proposed changes of the inclusive education in the Czech Republic.

On behalf of the Government of the Czech Republic, I would like to reassure you that both the commitments resulting from the case of D. H. and Others versus the Czech Republic and all public liabilities are being fulfilled. The Ministry of Education, Youth, and Sports has implemented the D. H. Action Plan and informs the government about the implementation on a regular basis. Further, I consider all the concerns expressed in your letter as a consequent of a deep misinterpretation of steps taken by the Ministry, which some stakeholders have spread to destabilize the fragile consensus on the inclusive education in the Czech Republic.

The legislation process has not been finished yet. Therefore, I have to reject your main concerns. Although the text of the amendment of the Decree No 27/2016 Coll. has not been finalized yet, I am stating the following:

In 2015 and 2016 the authorities adopted two significant amendments to the School Act, aimed at ensuring inclusive education. This reform, which came into force on 1 September 2016, set the rule that all children should be principally educated in mainstream primary education with unified curriculum. The Ministry of Education, Youth, and Sports of the Czech Republic has made proposals for partial changes to the inclusive education system based

on a continuous and comprehensive evaluation of its implementation in recent years. The Czech Republic has devoted considerable efforts and significant volumes of funding for the inclusion of children with special education needs. One of the priorities of the Ministry is to continue to implement inclusive education and move towards even better support for all children, including children with special education needs. However, the inclusive education system has not been set in the most appropriate and effective way.

Preventing segregation in education remains one of the policy priorities of the Ministry of Education, Youth and Sports. We are fully aware of the negative consequences of the segregation in education and consider it absolutely inadmissible. The Czech Republic devotes careful and multifaceted attention to the full implementation of the European Court of Human Rights' landmark judgment in the case of D. H. and Others v. the Czech Republic with regard to the education of Roma children and also of all other children without distinction (ethnicity, social affiliation and others). Following the United Nations Convention on the Rights of Persons with Disabilities, the Czech Republic consistently and fully accepts the right to education of all children with disabilities without any discrimination by applying equal opportunities and ensuring inclusive education at all levels of the education system. The 2012 Action Plan for implementation of the European Court of Human Rights' landmark judgment includes legislative commitments in the form of

- a) deletion of the diagnostic stay from the Decree on special education;
- b) deleting 25% tolerance of pupils with health disabilities in the "special" classes from the respective Decree;
- c) dropping the possibility to temporarily include a pupil with a health or social disadvantage into a "special" class.

These changes listed in the Action Plan have been consistently implemented within the legislation framework. The changes proposed in the § 19 of Decree 27/2016 do not interfere with the above-mentioned measures in any way, neither directly nor indirectly. Please let me stress that even according to the new legislation it will still not be possible to educate socially or healthily disadvantaged pupils in classes for pupils with mental disabilities.

As the Committee of Ministers of the Council of Europe stated, there has been a remarkable change in the Czech Republic concerning the education of Roma children¹. Fewer Roma children are entering the system under the reduced curriculum and the share of Roma

¹ Committee of Ministers welcomed the fact that the situation of Roma children and the implementation of the reform are closely monitored by a mechanism which can intervene whenever appropriate and adopt or suggest any necessary corrective measures.

children following the programme with reduced demands drops. Thus, it appears that the diagnosis of children's cognitive ability is becoming more valid.

At this point, please let me clarify other incomplete information in your letter. The deletion of the paragraph of the Decree which states that children with special education needs are to be primarily educated in mainstream schools is by no means intended to limit the rights of children with special needs. The opposite is true. The primary interest in the education of children with special education needs in mainstream schools is expressed, since the amendment took effect on 1 September 2016, explicitly in the School Act, a document of higher legal force. In this respective point the Decree merely paraphrases the School Act. The problems with its interpretation are caused by the existence of different expressions of the principle of inclusion. We are convinced that the Decree as an implementing document should not duplicate the School Act. For this reason we have offered to the participants of the public discussion on the forthcoming changes in the Decree an elimination of this duplicity. At the same time we are ready to introduce a more precise and unique description of the inclusion principle in the School Act. With regard to the regulation of the Decree, the deletion of the paragraph of the Decree is therefore a purely legal, technical step.

Moreover I would like to point out that the Decree does not seek to broaden the categories of children who can be educated together in special schools. The current legislative set-up determines that if any facility for special-pedagogical care for children with a certain type of disadvantage is set up, then departments, study groups, classes and entire schools can be set up for children with only one certain type of disadvantage. This, of course, makes the special-pedagogical support very inaccessible for those children who need it. And this completely one-sided regulation creates, in many cases, the necessity for children to commute to distant schools for the required adequate care. In addition, there is still a shortage of special education pedagogues on the labour market in the Czech Republic. The amendment is by no means intended to enable children with different types of disabilities to be educated together (in one class, group or department). The amendment is only intended to make it possible within a single school which is established for a particular type of disability or disadvantage to establish a separate class for other types of disadvantage or disability. This would make the best use of the advantage of the staff capacities of the school and make the special-pedagogical care more accessible. Therefore, the purpose of amending legislation is to ensure that pupils with certain types of disabilities have access to adequate education in places where a regular school, using support measures, can't fulfil their best interest and potential.

In your letter you have also referred to one of the Council of Europe's important position papers which states: "States must ... balance the principle of school choice with the need to consider and meet all education needs." I would like to assure you that we fully agree with this principle. Accordingly, we would like to further adjust our care settings, in a partial way. The proposed change will not have any negative impact on the right of the children, including Roma children and disadvantaged children, to inclusive education. Each measure in relation to each individual child is applied only on the basis of a professional diagnostic evaluation of the child's needs in a school counselling facility. Each parent can choose which of the school counselling facilities to use. The Ministry guarantees the evaluation and diagnostic tools used by these facilities. Any conclusion and every recommendation for the education of a child must be provided with the informed consent of the parent or a legal guardian. The application of recommended supportive measures is done in an agreement with the school where the child is educated. Both parents and pupils have the opportunity, if necessary, to request a review of recommendations or supportive measures in the newly established revision centre² within the National Institute of Education. Schools and school counselling institutions are being continuously evaluated by the Czech School Inspection in cooperation with the Ministry. In such a securely set system based on a number of safeguards set to respect the rights of all concerned, an inappropriate education procedure or even discriminatory placement of the child to a particular school, class or education program is impossible.

You further state that the amendment will lead to a reduction of the number of pedagogical assistants in the mainstream education classes. However, the basis of this proposal is pedagogical. The existing approach of tying individual assistant to a particular supported child has not always fulfilled the need of the supported child to be truly and fully integrated into the classroom and it's collective. From the situation where the fixation of single children onto individual assistants predominates, we would like to shift to a situation where each assistant will be a teacher assistant so that he or she will work with the entire class group to ensure the true inclusion of the child into the collective and to create the prerequisites for his/her later social engagement. In addition, the case when a larger group of adult assistants is in the classroom is also challenging for the educator because he or she has to manage the whole process of education. At the same time a higher number of assistants significantly disturb all other pupils in the classroom. For this reason it is not an appropriate solution for ensuring the quality of inclusive education.

² Committee of Ministers welcomed the fact that the reform also introduced new review and monitoring bodies which oversee, in particular, school counselling centers responsible for diagnosing cognitive ability and assessing whether a child requires support measures. Reports and recommendations of the counselling centers will from now on be subject to review by the National Institute of Education at the request of the pupil concerned or their statutory representative, the school, the relevant public authority and the Czech School Inspectorate.

You have also expressed concerns about the changes to the frequency of re-diagnosis of children with special educational needs due to the amendment. Please let me reassure you that the draft amendment does not generally aim for that. Changes in the periods of further re-diagnosis of pupils will always be tailored to the needs of each particular individual and to his/her specific education needs. Frequent diagnostics may not always be the best interest of all children with special education needs. Re-diagnosis is only needed if it can help with the desirable revision of the child's educational support. Practice has shown that there is no need to limit the validity of the recommendation to two years uniformly for all types of disability, but rather according to the nature of the pupil's special education needs. After the first year, the diagnosis will be confirmed or refined and other periods will be determined in accordance with the education needs of each individual. At the same time, the possibility of a school, legal guardian or adult pupil to request a new diagnosis for any change in education needs will of course not be affected by the amendment. For pupils with mild mental disabilities, diagnosis is guaranteed every two years. The aim of this change is to provide each child with an adequate support and open the opportunity to experience success for each child.

I would also like to use this occasion to disprove your statement that the proposed changes are motivated by the effort to save money. In 2018, inclusive education accounted a significant part of the total budget³ for regional education in the Czech Republic, and for 2019 inclusion funding had been even increased by another CZK 2,165 million (EUR 83 million). It proves that the inclusive education remains a visible priority of the Ministry. On the other hand, reducing administrative burdens is for sure one of the motives for the process of updating the legislation and aims to enable schools and other entities burdened by the administration to focus even more on their own practice of supporting children with special education needs.

Furthermore, in your letter it remains unspecified where does the idea that the proposed changes can seriously endanger one's right to inclusive education stem from. The Government of the Czech Republic does not aim to change the direction of the education policy of support for each child within the inclusive education system. We support the trend of increasing inclusion of children with special education needs in mainstream schools. The share of children with special education needs involved in education in mainstream schools is increasing steadily by 1-2% per year. In addition,

³ The Committee of Ministers wrote that a wide range of measures continues to ensure the implementation of the education reform in practice and the authorities appear to pay close attention to providing the stakeholders with appropriate tools, methodology and training opportunities and that the budgetary allocations alone indicate that an increasing number of children with special education needs receive support measures allowing them to integrate into mainstream schools or classes.

the proportion of children with special education needs educated in special schools has been steadily decreasing. None of the proposed changes is against this trend. The aim of the amendment is to increase the quality of inclusive education and to use the support more consistently to develop the autonomy of the children included for their social integration and autonomy in their later education and life.

I am glad to inform you that the Ministry of Education, Youth and Sports has been successful in explaining the benefits of inclusive education within the Czech Republic. There have been a number of communication activities towards the professional as well as the general public going on continuously from 2016 and the Ministry will continue in these activities also in the future. One of the most important communication target groups are teachers and school principals. Many of the conceptual and project communication activities and professional-development activities are covered by the state budget and European Structural and Investment Funds.

The process of the amendment of the Decree was conducted in the most open and transparent way, based on very careful evaluation of data on the implementation of inclusive education in the Czech Republic. During 2018 all important social partners and expert groups including a number of non-profit organizations, professional organizations, professional associations, schools and school counselling facilities and representatives of Roma were involved in the discussions. Such a broad professional platform naturally included very diverse views and approaches to the inclusive education. It can be said that how many involved subjects there were, that many views on each element of the inclusive education system we obtained. The Ministry's role was to manage the process of this fundamental amendment in the most transparent way and to seek balance and responsibility for the resulting draft amendment.

I would like to point out again that the proposed changes cannot have any detrimental effect on children's rights, even Roma children or disadvantaged children, to be included in mainstream education, as you fear. The proposed amendment does not change any of the principles or conditions of inclusion, it only adjusts partial support settings on the basis of continuous monitoring and evaluation in order to ensure the quality of the education provided in accordance with the best interest of each child. Without any exception, the Czech Republic remains on the path to an inclusive education system in all education policies for the benefit of all children and society as a whole.

Therefore, I call upon you to perceive the inclusive education in the Czech Republic in broader context, not only by one particular group of stakeholders. I am ready to welcome

you in Prague and to facilitate discussion in this regard. The inclusive education is of the highest sensitivity and my aim is to fulfil all commitments the Czech Republic has made. However, it has to be done in a very susceptible way, since too hard or pressure approach might damage the whole idea of inclusive education, which happened under previous governments.

Yours faithfully,

A handwritten signature in blue ink, appearing to read 'Dunja Mijatović', written in a cursive style.

Ms Dunja Mijatović
Commissioner for Human Rights
Council of Europe

STRASBOURG