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**DH-DD(2019)646**

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Meeting: 1355<sup>th</sup> meeting (September 2019) (DH)

Communication from a NHRI (23/05/2019) in the case of D.H. AND OTHERS v. Czech Republic (Application No. 57325/00)

Information made available under Rule 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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Réunion : 1355<sup>e</sup> réunion (septembre 2019) (DH)

Communication d'une INDH (23/05/2019) dans l'affaire D.H. ET AUTRES c. République tchèque (requête n° 57325/00) (**anglais uniquement**).

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

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**ombudsman**  
veřejný ochránce práv

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File No.: 49/2019/DIS/VB  
Ref. No.: KVOP-22620/2019  
Date 14 May 2019

DGI  
23 MAI 2019  
SERVICE DE L'EXECUTION  
DES ARRETS DE LA CEDH

Dear Madam/Sir,

Pursuant to Rule 9 of the Rules of the Committee of Ministers for the Supervision of the Execution of Judgments, I take the liberty to inform you about my opinion on the Communication from the Czech Authorities<sup>1</sup> concerning enforcement of the judgement of the European Court of Human Rights in the Case of D. H. and Others v. the Czech Republic.

As the Public Defender of Rights (the Czech equality body), I hereby perform my role in ensuring that available information relating to equal treatment is shared with European organisations.<sup>2</sup>

I appreciate that Czech authorities have adopted far-reaching steps to promote inclusive education. The reformed system of supporting measures has the potential to benefit all children with special educational needs on account of their medical condition, cultural background or other living conditions. Nevertheless, I draw attention to certain outstanding issues in my Opinion attached to this letter.

If you have any questions concerning the attached Opinion, I would be happy to answer them.

Thank you for your co-operation.

Sincerely,

Mgr. Anna Šabatová, Ph.D., signed  
Public Defender of Rights  
(this letter bears electronic signature)

### Attachment

Opinion of the Public Defender of Rights

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1 Document of 9 April 2019, File No. DH-DD(2019)391, available at:  
[https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectId=090000168093de28](https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=090000168093de28).

2 Section 21b (d) of Act No. 349/1999 Coll., on the Public Defender of Rights, as amended.



## **Opinion of the Public Defender of Rights on the Communication from the Czech authorities concerning enforcement of the judgement of the European Court of Human Rights in the Case of D. H. and Others v. the Czech Republic**

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I present this opinion in response to the Communication from the Czech authorities in the Case of D. H. and Others v. the Czech Republic.<sup>1</sup> The Communication makes it clear that Czech authorities have made significant progress in the area of inclusive education. I appreciate their effort and activity in this regard. However, I wish to draw the attention<sup>2</sup> of the Committee of Ministers to certain aspects that might affect the implementation of the judgment in the Case of D. H. and Others v. the Czech Republic.<sup>3</sup>

### **A. Estimated number of Roma pupils in primary schools**

Since the first inquiry conducted in the school year of 2015/2016 until the current school year of 2018/2019, the estimated share of Roma children in the total number of children educated in programmes for pupils with mild mental disabilities (hereinafter also as “MMD”) has decreased only negligibly, from 30.6% to 29.1% (Chart 1). Should this rate of decrease be maintained, it would take many decades for the share of Roma pupils in MMD educational programmes to reach levels comparable to the Roma share in the general primary school population (3.7%). For this reason, I cannot be satisfied with this rate of decrease. On the contrary, I am concerned that the situation of Roma pupils seems to be stagnating despite the steps taken by the Ministry of Education, Youth and Sports (hereinafter “MEYS” or the “Ministry”) and other stakeholders.

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1 Communication from the authorities (“Comprehensive Evaluation of the Reform of Inclusive Education in Relation to Roma Pupils”) (05/04/2019) in the case of D.H. AND OTHERS v. Czech Republic (Application No. 57325/00), 9 April 2019, DH-DD(2019)391, available at: [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectId=090000168093de28](https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=090000168093de28).

2 Pursuant to Section 21b (d) of Act No. 349/1999 Coll., on the Public Defender of Rights, as amended.

3 Judgement of the Grand Chamber of the European Court of Human Rights in Case of D.H. and Others v. the Czech Republic of 13 November 2007, No. 57325/00.

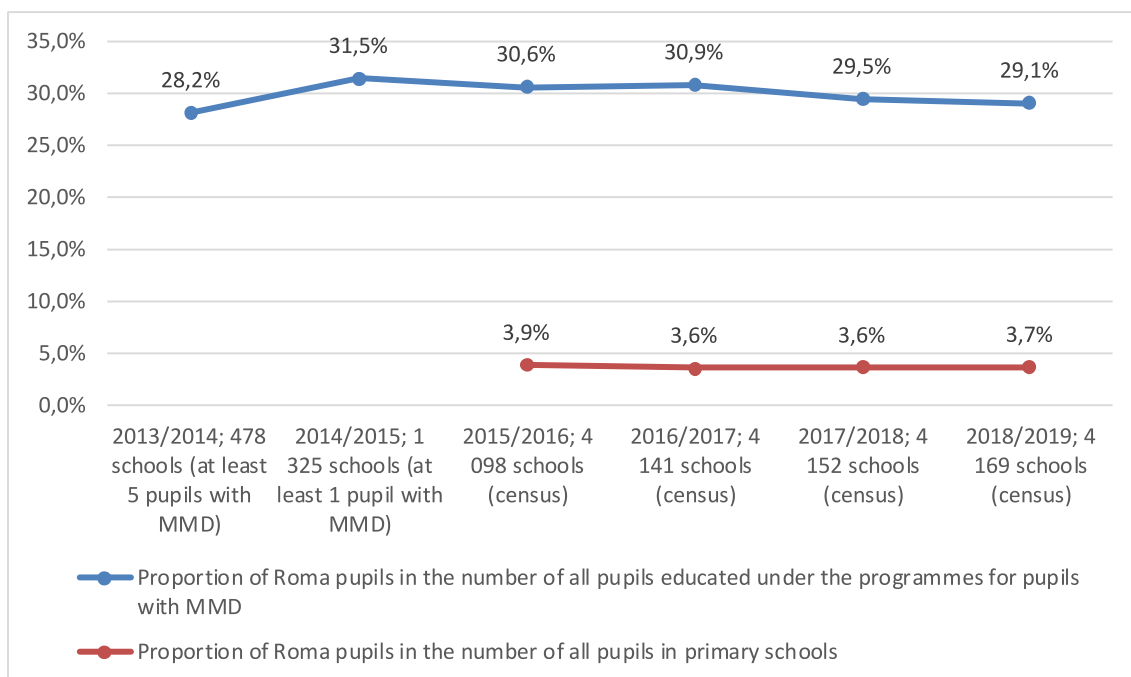


Chart 1 – The share of Roma children educated in programmes for pupils with mild mental disabilities as compared to their share in the general primary school population.

In other words, Roma children are still almost twelve times as likely to be educated in MMD programmes compared to non-Roma pupils (Chart 2). While only 1.1% of non-Roma children are educated in MMD programmes (the share has been constant in the past three years), almost twelve times as many Roma children end up being educated in such programmes (12.7% in the school years of 2017/2018 and 2018/2019; 13.2% in 2016/2017).

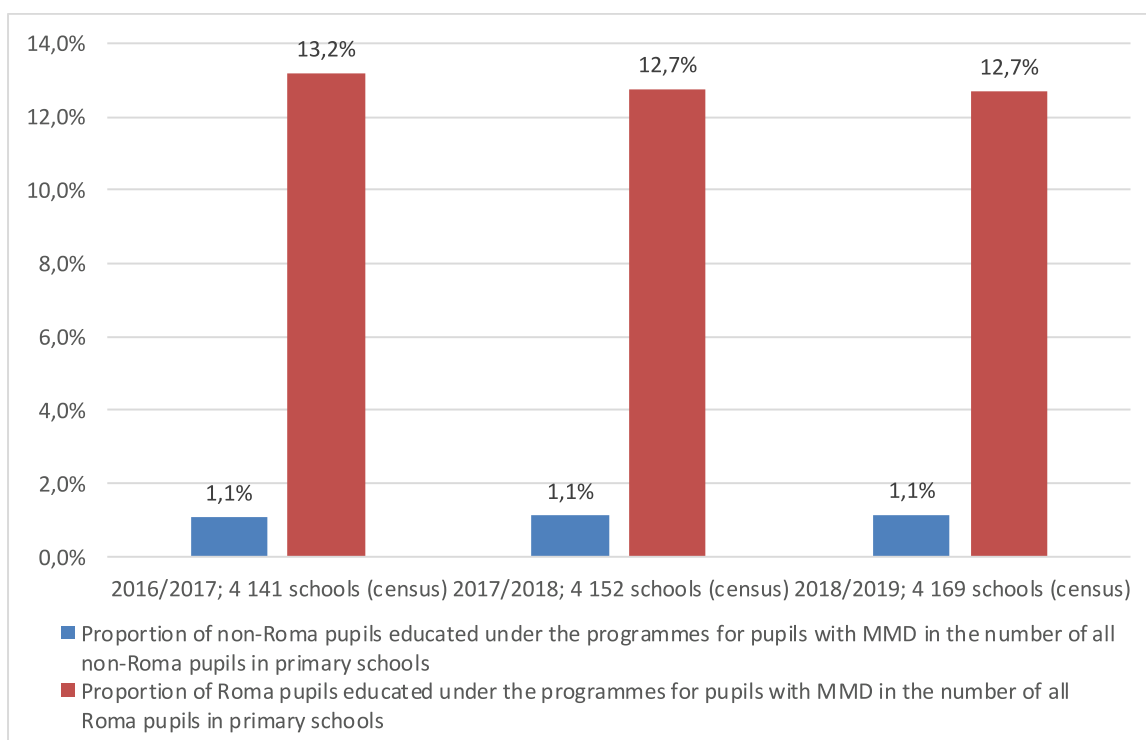


Chart 2 – Comparison of the shares of Roma and non-Roma pupils educated in programmes for pupils with mild mental disabilities in the total number of Roma and non-Roma pupils



Therefore, the latest results can only be welcomed as a sign that the situation of Roma children is not deteriorating any further. At the same time, however, these numbers do not indicate that we have reached a turning point marking the beginning of rapid improvement of the situation according to our expectations. For this reason, I recommend to keep developments in this area under close observation.

## **B. Amendment to the decree on education of pupils with special educational needs**

In 2018, the Ministry again<sup>4</sup> proposed certain changes to the decree on education of pupils with special educational needs.<sup>5</sup> The Ministry is thus trying to optimise the system of inclusive education and reduce the schools' administrative burden. However, I am of the opinion that some of the proposed changes are not suitable in terms of implementing the judgement. I have first brought this to MEYS' attention within the commentary procedure.<sup>6</sup>

For instance, the Ministry plans to decrease the maximum number of pedagogical staff per classroom. It also suggests to omit from the Decree provisions stipulating that disabled pupils should preferably be educated in standard schools, and further proposes the possibility to establish special schools for pupils with various kinds of disabilities.

According to the latest information, MEYS has withdrawn its proposal to also place in special schools for pupils with MMD pupils with other kinds of disabilities. I welcome this step because I was concerned that this would lead to an even greater concentration of Roma children (e.g. children with developmental, learning and behavioural disorders) in these schools.

I understand that as of the date of this Opinion, the Minister is yet to decide on the final version of the Decree.

## **C. Ethnic segregation in education**

Estimates of the numbers of Roma children in primary education suggest that pupils are sometimes educated in a segregated environment despite not having been diagnosed with MMD. As of the school year 2018/2019, there were 70 primary schools (standard as well as special schools, hereinafter "primary schools") where Roma children made up over 50% of pupils. In thirteen schools, the share of Roma children even exceeded 90%. Below, I provide an overview of the situation in the past three years:<sup>7</sup>

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4 The Ministry originally planned to change the decree in summer 2017; for more information, see the comments of the Public Defender of Rights of 21 July 2017, File No. 16934/2017/PDCJ, available in Czech at: <https://eso.ochrance.cz/Nalezene/Edit/5390>. The Ministry then proposed changes in autumn 2017; for more information, see the comments of the Public Defender of Rights of 9 November 2017, File No. 33893/2017/PDCJ, available in Czech at: <https://eso.ochrance.cz/Nalezene/Edit/5714>.

5 Decree No. 27/2016 Coll., on education of pupils and students with special educational needs and exceptionally gifted pupils and students, as amended.

6 Comments of the Public Defender of Rights of 6 December 2018, File No. 52583/2018/S, available in Czech at: <https://eso.ochrance.cz/Nalezene/Edit/6466>.

7 Report on qualified estimates of the numbers of Roma pupils in primary schools in the school year of 2018/19, Prague: MEYS, November 2019



	2016	2017	2018
Primary schools with less than a 5% share of Roma pupils	3,358	3,334	3,347
Primary schools with a 5% to 34% share of Roma pupils	641	682	675
Primary schools with a 35% to 49% share of Roma pupils	67	59	77
Primary schools with a 50% to 74% share of Roma pupils	47	47	39
Primary schools with a 75% to 89% share of Roma pupils	16	18	18
Primary schools with over 90% share of Roma pupils	12	12	13

The situation persists even though segregation in education carries a number of adverse social, pedagogical and economic implications. The approximately 8,700 children in schools with over 50% share of Roma children are thus currently denied the same educational opportunities as their peers going to non-segregated schools.

For this reason, I conducted a survey in 2018 where I studied ethnic segregation in education and made recommendations to public authorities, municipalities and schools on how to prevent or reverse segregation.<sup>8</sup>

I am fully aware that the judgment concerns excessive placement of Roma children in special schools as a result of having been diagnosed with MMD. However, I believe that being educated in ordinary schools where Roma children represent the majority of pupils can lead to similarly negative outcomes as in the aforementioned case decided by the European Court of Human Rights. The phenomenon of educational segregation must, therefore, be closely monitored.

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8 Ombudsman – Public Defender of Rights. Annual Report on Protection against Discrimination 2018. Brno: Office of the Public Defender of Rights, 2019. ISBN 978-80-87949-97-9, p. 33. Available in English at: [https://www.ochrance.cz/fileadmin/user\\_upload/DISKRIMINACE/Vyrocní\\_zpravy/2018-DIS-annual-report.pdf](https://www.ochrance.cz/fileadmin/user_upload/DISKRIMINACE/Vyrocní_zpravy/2018-DIS-annual-report.pdf).



#### **D. Growth in the number of pupils with developmental learning and behavioural disorders**

The “inclusive” amendment to the Schools Act of September 2016 brought a dramatic increase in the number of pupils diagnosed with developmental learning and behavioural disorders:<sup>9</sup>

	<b>Autumn 2015</b>	<b>Autumn 2016</b>	<b>Spring 2017</b>
Number of primary school pupils with developmental learning disorders	35,881	36,638	45,910
Number of primary school pupils with developmental behavioural disorders	7,974	9,225	11,763

MEYS attributes the increase in the number of pupils with learning disorders reported in the first analysis of inclusive education (2017) to the split of this diagnostic category into several levels based on disorder severity and points out that the category now includes children who were previously only classified as “disadvantaged”. The growth in the number of children with behavioural disorders is attributed to the inclusion of children with ADHD in this category.<sup>10</sup> The final part of the Ministry’s analysis states the following, without further details:

“All administrative regions of the Czech Republic that reported a decrease in the proportion of children in the mental disability diagnosis category also reported an increase in the proportion of children with learning or behavioural disorders.”<sup>11</sup>

The Ministry believes that the increase in the number of pupils with developmental learning and behavioural disorders reported in the second analysis of inclusive education (2018) results from the categorisation of support according to the pupils’ degree of difficulties.<sup>12</sup> After the recent changes, even pupils with a lower degree of disadvantage are entitled to receive supporting measures. MEYS also notes that these categories can likewise include pupils with borderline intellectual abilities:

“The data confirm that this category of pupils [*NB: with developmental learning and behavioural disorders*] also includes pupils with borderline intellectual abilities who were previously not classified under a special disadvantage indicator. Therefore, it is highly likely

9 Analysis of the 1<sup>st</sup> Year of Implementation of Inclusive Education I. Prague: MEYS, 2017, p. 3-5. Available in Czech at: <http://www.msmt.cz/ministerstvo/novinar/prvni-rok-spolecneho-vzdelavani-v-reci-faktu-a-neb-skutecnost>.

10 Ibid, p. 17.

11 Ibid, p. 25.

12 Main conclusions of the Analysis of Implementation of Inclusive Education from 1 September 2016 to 31 October 2017. Prague: MEYS, 9 February 2018, p. 11. Available in Czech at: <http://www.msmt.cz/file/46497/>.



that it was this group of pupils that contributed to the growth in this disadvantage category.”<sup>13</sup>

The Ministry also reached the same conclusion as in the first analysis of inclusive education, i.e. that administrative regions that had reported a decrease in the proportion of children with mental disabilities also reported a complementary increase in the proportion of children with learning or behavioural disorders.

This potentially leads to a concern that some pupils who (thanks to quality diagnostics) correctly avoided the mild mental disability diagnosis were merely transferred into another category of pupils with special educational needs, i.e. pupils with developmental learning or behavioural disorders.

On the other hand, the data for the period under review (autumn 2015, autumn 2016 and spring 2017) indicate that the number of children classified in the categories of pupils with developmental learning or behavioural disorders who are placed outside the standard educational track, i.e. in special schools, remains constant (approx. 1,100 pupils). Therefore, it appears that the number of children with learning or behavioural disorders in special schools is not increasing. However, current data for 2018 and 2019 are not yet available.

Similarly, it is not known how many of the children diagnosed with developmental learning and behavioural disorders are of Roma background. It appears that the Ministry of Education does not collect this information. This aspect thus warrants increased attention as well.

In Brno, on 14 May 2019

Mgr. Anna Šabatová, Ph.D., signed  
Public Defender of Rights  
(the document bears electronic signature)

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13 Ibid.