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Date: 27/08/2019

**DH-DD(2019)898**

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

Reply from the authorities (26/08/2019) following a communication from a NGO in the case of D.H. and Others v. Czech Republic (Application No. 57325/00).

Information made available under Rules 9.2 and 9.6 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)

Réponse des autorités (26/08/2019) suite à une communication d'une ONG dans l'affaire D.H. et autres c. République tchèque (requête n° 57325/00) (**anglais uniquement**).

Informations mises à disposition en vertu des Règles 9.2 et 9.6 des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.

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DGI

26 AOUT 2019

SERVICE DE L'EXECUTION  
DES ARRETS DE LA CEDH

**The Czech Republic's observations on the submission of  
Amnesty International, Forum for Human Rights and Open Society Fund Prague  
on the execution of the *D.H. and Others v. the Czech Republic* judgment**

In response to the submission of Amnesty International, Forum for Human Rights and Open Society Fund Prague on the execution of the ECHR's judgment in *D.H. and Others v. the Czech Republic*, which was addressed to the Committee of Ministers of the Council of Europe on 2 August 2019, the Ministry of Education, Youth and Sports ('MEYS') considers it to be important to emphasise that all the proposed changes have been prepared based on the MEYS's broad-ranging and detailed debate with representatives of the expert circles and the non-profit sector so that the amended Regulation would maximally reflect the suggestions raised and the specificities of the various types of schools and pupils' special educational needs on the basis of an equal footing regardless of the pupils' ethnic and social background.

Under Article 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter 'the Convention'), taken together with Article 2 of Protocol No. 1, and also Article 46 of the Convention in relation to the judgment in *D.H. and Others v. the Czech Republic*, the Czech Republic has adopted measures intended to make sure that Roma children are not educated under different curricula in unjustified cases and at the same time are not educated separately from the majority population.

The above has been reflected in the Revised Action Plan for the Execution of the Judgment in the Case of *D.H. and Others v. the Czech Republic* of 2016 (hereinafter 'the Action Plan'), which the Czech Republic has submitted to the Committee of Ministers of the Council of Europe and in which it has set out primarily the following measures:

- Abandon the categorisation of pupils as those with a health disability/disadvantage and social disadvantage and introduce a category of pupils with special educational needs as those who need support measures for exercising their right to education on an equal footing with others;
- Lay down the right of pupils with special educational needs to the provision of the required support measures, paid for by the State, in mainstream primary schools;
- Prohibition to educate pupils without mental disabilities in classes and schools for pupils with mental disabilities;
- Abandon the diagnostic placements in classes for pupils with mild mental disabilities;
- Limit the validity of the recommendation to educate a pupil in a school or class for pupils mild mental disabilities to no more than one year, during which the recommendation will be assessed as to whether or not it continues to be warranted;
- Limit the validity of the follow-up recommendation to enrol a pupil in a school or class for pupils mild mental disabilities to no more than two years, during which the recommendation will be assessed as to whether or not it continues to be warranted;

- Gradually standardise and introduce into practice new diagnostic tools;
- Introduce the option of revisions of diagnoses;
- Enhance the Czech School Inspectorate’s inspection powers to include also counselling services besides checking any incorrect enrolment of pupils;
- Annual examination of the operation of school counselling facilities and evaluation thereof;
- Annual collection of data on the education of Roma pupils and evaluation thereof;
- Introduce a mandatory last year of preschool education;
- Repeal Framework Educational Programme for Primary Education governing the education of pupils with mild mental disabilities.

The amendment to the Regulation does not concern any of the above measures and guarantees for ensuring Roma children’s access to primary education on an equal footing with others. The MEYS will continue to carry out consistently all the obligations set out in the Action Plan. It should therefore be noted with respect to the proposed amendment that **the rule that pupils without mental disabilities shall not be educated in schools or classes set up for pupils with mental disabilities will continue to be in place**. The forthcoming legislation does not change anything in this principle. This, together with the other measures that are already being implemented under the Action Plan, very clearly continues to provide sufficient guarantees that pupils without mental disabilities shall not be educated under a curriculum that is ‘inferior’ in terms of content.

As regards the other areas that the amendment to the Regulation will cover, the MEYS’s key plans and principles have not been correctly understood, as can be inferred from the letter of Amnesty International, Forum for Human Rights and Open Society Fund Prague. The omission of the provision laying down preferential education in mainstream schools was only a formal amendment to the text of the Regulation, because **this rule stems from the very wording of the Schools Act**, which prevails over the text of the Regulation at all times. This rule therefore continues to be part of the legal system at the level of a law. Thus, education outside the mainstream will continue to be an *ultima ratio* means. The wording of the law makes it clear that such education is only possible where a school counselling facility finds – in the light of the nature of the pupil’s educational needs or the progress and results of the provision of support measures so far – that the support measures under the Schools Act (applied in mainstream schools) alone would not suffice to develop the pupil’s educational capabilities and to the exercise of the pupil’s right to education.

The purpose of modifying the organisation of education in classrooms by reducing the number of pedagogical staff is to improve the provided education and the teachers’ professional standard. The proposed legislation envisages no more than three pedagogical staff members per mainstream classroom. The excessively large number of pedagogical staff per classroom has been evaluated as complicating the education of pupils, and the number of pedagogical staff has been determined taking into account the practical experience in the various schools/classes. Inclusive education has not only an individual but also a social dimension. The latter consists in promoting the community resources of the school’s social space, the dynamics of which influences all pupils’ competences for dealing with challenging situations in life. Involving pupils with special educational needs in these networks and supporting their active participation in the school’s life are therefore equally important support measures.

The purpose of inclusive education is to make pupils with special educational needs as independent of individual support as possible and also their active participation in both formal and informal processes of learning and teaching and in the school's life as such. The purpose of the proposed changes is, on the one hand, to provide individual support to pupils with special educational needs, but also to reduce the risk to the dynamics of the social processes in the classroom's educational space, such risk resulting from the presence of more than three pedagogical staff members in the classroom. Effective from 1 January 2020, the reform of the financing of regional schools will make it possible for schools to reduce the number of pupils in classrooms and to allocate them to groups, and to use tandem teaching, all of which will ultimately result in improved and individualised instruction. Furthermore, schools and school facilities can also tap into the finances earmarked for the personal support provided by a teaching assistant or the school's social pedagogue through the calls for proposals under the Operational Programme Research, Development and Education.

It is appropriate to modify the consistent establishment of schools for only one type of disadvantage, because the need exists to tackle situations where the accessibility of an adequate method of education is impaired for a particular pupil due to the local conditions. Given the poor accessibility of schools set up under Article 16 (9) of the Schools Act, the enrolment of a pupil in such a school may result in the necessity of their living in a boarding school, which can only rarely be in accordance with the best interest of pupils (in particular those of a younger school age). It is appropriate to recall that the Regulation makes inclusive education of pupils with various disadvantages possible already today, albeit to a limited extent.

**The MEYS's priority continues to be promoting high-quality inclusive education embracing all pupils, including Roma pupils.** Every year, the MEYS monitors Roma pupils' situation in education and makes qualified estimates and publicly shares this data. Among European countries, this is a unique monitoring scheme that helps to implement further educational policies.

**The MEYS also devotes systematic attention to the issue of racial bullying.** A Methodological Guideline has been put in place to address bullying as such; it works with the generally applicable principles characterising bullying, placing emphasis on primary prevention at schools and school facilities. The incidence of risky phenomena is being monitored at the level of the Regions and measures are subsequently adopted. The National Continuing Education Institute, the country's methodology centre that coordinates methodological support at schools and school facilities, is also preparing, as part of the range of educational programmes it offers, continuing education for pedagogical staff geared towards building and maintaining a healthy climate in schools/classes, combating prejudices and stereotypes, working with pupils from different socio-cultural environments and from dysfunctional families, conflict resolution, and tackling racial bullying, the content of which will enhance pedagogical competence for effectively designing preventive, corrective or other intervention measures concerning conflicts, aggression and bullying. In this respect, the Ministry's activities are being systematically evaluated and updated.

In respect of the education of pupils with a mild mental disability it should be recalled **that from 1 September 2020, there will no longer be any education under the Annex to the Framework Educational Programme for Primary Education governing the education of pupils with mild mental disabilities** (hereinafter 'FEP PE MMD'). The number of Roma pupils being educated under the Framework Educational Programme for primary education with adjusted learning outcomes (hereinafter 'FEP PE AO') is rising, but this reflects a support measure that ensures differentiated educational support

tailored exactly to the individually identified needs of all pupils with special educational needs regardless of their ethnic or social background. While the repealed FEP PE MMD set out the same lowered level in all educational areas for all pupils with mild mental disabilities without differentiating between the needs of the individual pupils, FEP PE AO allows pupils with mild mental disabilities to use the adjusted outcomes only in those areas where this is necessary for the pupil based on recommendations from the school counselling facility. Education under FEP PE AO has the same level of quality. It helps to individualise education by the pupil's needs so that everybody has a chance to excel and experience success. The individualised approach and, more broadly, the use of formative assessment are conducive to this.

With a view to rendering the diagnostics of pupils with special educational needs more accurate, the MEYS repeatedly opens the Equipping SCF with Diagnostic Tools development programme, for which CZK 10 million has been allocated in 2019. Through the programme, the MEYS provides school counselling facilities with funds to procure diagnostic tools for the diagnostics of children, pupils and students, which are usable for determining adequate support measures, for specifying pupils' educational needs, and for designing the best support in education. The purpose of saturating school counselling facilities through this development programme on a nationwide scale is to facilitate the best possible and the most accurate diagnostics of pupils' special educational needs.

In the Czech Republic, schools established under Article 16(9) of the Schools Act are intended for pupils with a disability (mental disability, bodily disability, visual impairment, hearing impairment, language disorder, combined disabilities, autism, and developmental learning and/or behavioural disorders). Roma pupils account for 10.7% of the total number of 22,170 pupils at these schools. In the 2018/2019 school year, primary schools were educating a total of 34,767 Roma pupils. Considering only Roma pupils with a diagnosed MMD (Roma pupils being educated under the FEP PE MMD and FEP PE AO programmes), they account for 29.1% of the total number of 15,132 pupils with diagnosed MMD.

Another category includes primary school pupils being educated under the framework educational programme for special primary schools (FEP SPS). These schools are intended only for pupils with moderate and severe mental disabilities, pupils with combined disabilities, and pupils with autism. Special primary schools differ from mainstream primary schools in terms of the organisation of education and in terms of the content of the curriculum. The submission of Amnesty International, Forum for Human Rights and Open Society Fund Prague notes that the proportion of Roma pupils there is 10.3%. A total of 6,824 pupils are being educated under the FEP SPS, of whom 705 are Roma pupils. However, it is to be noted on the above statistical data that **the enrolment of pupils in these schools is sufficiently catered to in the legislation**, including repeated high-quality diagnostics, informed consent granted by the legal guardians, the activities of the revision centres, and checks and handling of complaints and suggestions by the Czech School Inspectorate ('CSI').

Revision centres are some of the safeguards of the fair approach in the system. Their function is deciding disputes over the expert assessment of pupils' educational needs, the recommendation issued, the report, and the design of specific support measures or the school's procedure in the application of such measures. The pupil, the pupil's legal guardians, the school, the school facility, a public authority and the CSI can apply for revision.

It has been proved that **the success of desegregation depends on inter-departmental and multi-disciplinary cooperation between the MEYS, the Ministry of Labour and Social Affairs and**

**other state administration authorities, the Regions, schools and school facilities, etc.** The regular review of the meeting of the set objectives, the related social services and the activities at the local level also play a role in this respect. Segregation in education should be prevented right up front, i.e. at the stage of preschool education. The MEYS has been systematically following this direction since 2016 through, in particular, **legislating on the mandatory preschool education** in the last school year preceding the start of mandatory school attendance. Thanks to the MEYS's work with a highly diversified target group, the percentage of children enrolled in preschool education is gradually rising. Thanks to the MEYS's systematic work, at the inter-departmental level a common position has been reached with the Ministry of Labour and Social Affairs on the course of action to be followed by the authorities of departments for the social and legal protection of children in cases where the legal guardians fail to perform their obligation to sign up their child for enrolment in mandatory preschool education. The MEYS regards widely accessible preschool education as a key measure conducive to the reinforcement of the elements of inclusive education.

Finally, it must be pointed out that the MEYS is monitoring the education of Roma pupils in detail and additional measures are being planned in the Czech Republic's educational policy to reinforce the elements of inclusive education. These have been reflected in the draft *Long-term Plan of Education and Development of the Educational Policy in the Czech Republic for 2019–2023*. The top priority objectives of this document include, among other things, achieving a higher efficiency of school counselling facilities through implementing standardised procedures in the provision of counselling services, in particular when identifying special educational needs and unusually gifted children and when recommending support measures. An equally important objective is promoting equality in access to education at all tiers of the educational system, which will enable every child, pupil and student to fully develop their capabilities in the company of their peers. At the same time, the issue of inclusion is one of the priority axes of the *Czech Republic's Educational Policy Strategy until 2030*. In the context of the above it is therefore evident that **in no case is there a risk to the implementation of the ECHR's judgment in the case of *D.H. and Others v. the Czech Republic*.**

Prague, 26 August 2019.

