EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITÉ EUROPÉEN DES DROITS SOCIAUX

29 January 2021

Case Document No. 4

European Roma Rights Centre (ERRC) v. Czech Republic
Complaint No. 190/2020

RESPONSE BY THE ERRC TO THE GOVERNMENT'S SUBMISSIONS ON THE MERITS

Registered at the Secretariat on 12 January 2021

European Committee of Social Rights
Directorate General Human Rights and Rule of Law
Council of Europe
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Number of pages:12

European Roma Rights Centre (ERRC) v. Czech Republic
(Complaint No. 190/2020)

WRITTEN OBSERVATIONS

of the Complainant organisation to the Government´s observations on the merits

Brussels, Prague

12 January 2021

I. Introduction

1. By its letter of 19 November 2020, the European Committee of Social Rights (*hereinafter* "the European Committee") provided the Complainant organisation (*hereinafter* also "ERRC"), which is supported in this collective complaint by the Czech non-governmental organisation Forum for Human Rights (*hereinafter* "FORUM"), with the Written Observations of the Czech Government (*hereinafter* also "Government's Observations") on the merits of Complaint no. 190/2020 (*hereinafter* also "the collective complaint"), and invited the Complainant to submit a written response in reply by 12 January 2021. The ERRC and FORUM have reviewed the Government's Observations and hereby respectfully submit their comments.

2. In the present observations, the ERRC addresses the merits only to the extent that they need to be clarified, refined, or expanded upon in light of the Government's Observations. The Complainant's allegations and arguments have otherwise been outlined in the collective complaint, and this response should be read in conjunction with the complaint itself. The ERRC reiterates all arguments raised in its initial complaint. The present submission addresses the specific issues raised by the Government in their Observations to ensure that the European Committee is provided with a clear and accurate understanding of the current situation in the field of ethnic data collection concerning institutionalised children in the Czech Republic. Hence, the ERRC asks the European Committee not to interpret their silence on any of the factual statements or legal arguments presented by the Government as an agreement with the Government's position.

II. Misinterpretation of the collective complaint by the Government

3. At the outset, the ERRC considers it important to point out that in their Observations, the Government misinterprets the content of the collective complaint, especially regarding the issue of ethnic data collection methodology.

4. On several parts of their Observations, the Government presents arguments against the collection of ethnic data on an individualised basis, enabling the identification of the concerned person. The Government invokes the tragic experience of abuse of such individualised data during the Holocaust (§ 34) and refers to the legal impossibility of such data collection given by the Regulation (EU) No. 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation; *hereinafter* "the GDPR") as well as by the national legislation (§§ 39-40).

5. These arguments from the Government are false and irrelevant to the subject matter of the collective complaint. Firstly, the collective complaint does not argue for a specific ethnic data collection methodology. Secondly, it does not ask for the collection of individualised personal data enabling one´s identity to be revealed. In any case, the

Complainants reiterate that the GDPR does not prevent collecting and processing data on ethnicity, providing there are special safeguards in place. The GDPR only applies if the data collected allows a natural person to be identified directly or indirectly; statistics about the ethnicity of children in care facilities or foster care, for example, can be collected in such a way to avoid any individual child's Romani identity being recorded. (§ 13 of the collective complaint).

6. At the same time, instead of arguing for a specific methodology, the collective complaint emphasises *qualitative* requirements on the ethnic data collection that the Government need to comply with. And that is something else. It does not ask for individualised data collection, but argues that the Government is obliged to collect ethnic data in such a way that would be (i) systematic, (ii) regular, and (iii) of certain quality; namely that would give the Government a complete and accurate picture of the situation of Romani children under the control of authorities. In other words, the collective complaint argues that the Government is obliged to collect ethnic data giving an up-to-date and accurate picture of the situation of Romani children under the control of authorities to appropriately form State policies, recommendations and laws, that are applicable in general, as well as in everyday practice. The choice of a concrete methodology falls then within the Government's margin of appreciation, provided that it meets the cited criteria of systematicity, regularity, accuracy, completeness, and appropriateness.[1] **However, as the ERRC argues, the current situation in the Czech Republic is actually one step behind and there has been no collection of ethnic data, and thus no methodology has been developed yet to either support or criticise.**

III. Misunderstanding of the extent of the Government's obligation to collect ethnic data

The subject-matter of the collective complaint

7. The Government's main argument presented in their Observations is built on the objection that the extent of their obligation to collect ethnic data is interpreted too broadly (especially §§ 14 - 21). The Government alleges that they cannot be obliged to collect statistical data "on all aspects of the social life" (§ 16), since such an obligation would impose on them an "impossible or disproportionate burden" (§ 15).

8. This Government's argumentation exceeds the subject matter of the collective complaint. The collective complaint does not deal with the State's obligation to collect ethnically disaggregated data in general, or in other words in relation to "all aspects of the social life". On the contrary, we have clearly formulated the area of interest as the situation of children who end up in institutional care (especially §§ 4, 21, 23-27 and 31 of the collective complaint). The reason is that especially these children in particular, as well as their families, have been subjected to the most invasive measure of the State's intervention –

[1] The European Commission has issued a thematic report on the issue of ethnic data collection that summerises the different methodologies that different authorities use in the European Union: *Data collection in the field of ethnity*, 2017, see the report here: https://ec.europa.eu/newsroom/just/document.cfm?action=display&doc_id=45791

and the Government themselves admit that (§ 5) – that is qualified as the deprivation of liberty.[2]

9. We can hardly think of a situation demonstrating more clearly the impact of the State's authoritative power on the life and well-being of a child and their family, other than the situation when a child is under state care. This situation requires a more intense commitment of the State towards securing the well-being and the healthy development of the child as well as targeted and intensive support of their family to be able to reunite them as soon as possible. These obligations are well detailed and stemming from, *inter alia*, several provisions of the UN Convention on the Rights of the Child (hereinafter "the CRC"), particularly by Articles 25 and 37. In order to have appropriate knowledge of *who* these children are, *what is their ethnic background*, what their particular needs are and for *what reasons* they end up in public care, and how to prevent that , the State is obliged to collect this information. Otherwise, the State would not be able to appropriately fulfil its obligations deriving from the Convention on the Rights of the Child, especially in those cases when the separation of the child from her family and her placement in public care is a result of the structural deficiencies in its policies, including policies in the field of ethnic minorities and their protection. In consequence, the State would not be able to fulfil its obligation to adopt positive measures to reunify the child with her family[3] and to ensure that family separation and placement into public care is actually used as a last resort measure and in a non-discriminatory way.

Illegitimacy and disproportionality of differentiating among types of institutions for children in public care

10. The Government further argues that the obligation to collect ethnically disaggregated data should cover only those situations "when it is generally acknowledged that in a very specific context, a particular group's rights guaranteed under the Charter are being violated." (§ 18). In the logic of their argumentation, the Government differentiates between different types of public care institutions. The Government admits that they are aware that in three different establishments: (i) children's homes for children up to 3 years of age (former infant homes; informally called "children centres"), (ii) children's homes, and so called (iii) children's homes with school, children of Roma origin may be overrepresented. In this way, the Government should be obliged to collect ethnically disaggregated data on children in these institutions (§§ 19 and 20). On the contrary, the Government strongly refuses that they could bear a similar obligation concerning children

[2]See the definition of deprivation of liberty in the UN Global Study on children deprived of liberty according to which deprivation of liberty „signifies any form of detention or imprisonment or the placement of a child in a public or private custodial setting which that child is not permitted to leave at will, either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence, as defined in article 4 (2) of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (General Assembly resolution 57/199), and article 11 (b) of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules) (General Assembly resolution 45/113)." – UN Global Study on children deprived of liberty, A/74/136, 2019, para. 6.

[3]This is an obligation clearly defined in the constant case-law of the European Court of Human Rights. See, *inter alia*, *K. and T. v. Finland*, judgment of 12. 1. 2001, complaint no. 25702/94, § 178; *Kutzner v. Germany,* judgment of 26/2/2002, complaint no. 46544/99, § 61; *Strand Lobben and others v. Norway,* judgment of the Grand Chamber of 10/9/2019, § 205.

placed in "facilities such as educational institutions, institutions for diagnostic assessment, separate facilities for protective treatment or security detention facilities", since "the complainant organisation does not provide anything specific in relation" to these facilities, "nor does it document in any other manner that there is a problem consisting in the excessive placement of Roma children in these institutions" (§ 21). The Government concludes that to this extent the collective complaint is incompatible *ratione materiae* with Articles 16 and 17 of the European Social Charter (*hereinafter "*the Charter*"*; § 21).

11. It appears that the Government understands their obligation to collect ethnically disaggregated data on children in public care to avoid "States wasting resources and funds to map purely theoretical problems (…)" (§ 18). The ERRC welcomes this acknowledgment of the obligation. Unfortunately, however, the Government overlooks an important aspect of their obligation to collect disaggregated data – that is that this obligation is an inherent part of the obligation to progressively adopt and enhance supportive measures that would ensure that the child has a practical and effective opportunity to grow up in a family environment (preferably in her natural family) and that these measures have to be accessible to all children on an equal basis. As such, all measures adopted must have a necessarily proactive rather than a reactive nature. It is surely more acceptable that the State proactively spends some of its resources to map a problem that in the end can be shown to be "purely theoretical" problem, than if the State does ignoring the disproportionate overrepresentation of children belonging to an ethnic minority among children deprived of their liberty and, therefore, of their childhood.[4]

12. According to international and European human rights law, in cases of discrimination the burden of proof shifts on the defendant. In this case it is on the Czech authorities to provide statistical evidence proving that Romani children are not overrepresented in state care in Czech Republic (See: *E.B. v France*, 2008, § 74).

13. In order to avoid the perpetuation of discrimination, especially against Roma, who have been historically discriminated in all spheres of life (See: for example, the case of D.H. and Others v the Czech Republic), the proactive nature of the obligation to collect disaggregated data of the State is fully in line with the anti-discrimination law standards. States must collect data disaggregated by ethnicity in order to adopt adequate measures to avoid the discrimination of certain vulnerable groups, such as for example Romani children in the Czech Republic. In particular according to international and European human rights law, in cases of discrimination the burden of proof shifts to the State; I.e. the State cannot exempt itself from being found in violation of the equal treatment of a Romani children because of its own failure of collecting data disaggregated by ethnicity.[5] This necessarily requires the State not to be entitled to legitimately justify its failure to ensure effective protection of children against discrimination in public care on the ground of their ethnicity by its unawareness. The State has to be able to prove that such

[4]See the UN Global Study on children deprived of liberty, A/74/136, 2019, para. 3: „Deprivation of liberty means deprivation of rights, agency, visibility, opportunities and love. Depriving children of liberty is depriving them of their childhood."

[5]See the Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, Article 8 § 1.

discrimination does not take place and the only way it can do that is by demonstrating the targeted measures it has adopted in line with the particular needs of Romani children and by providing statistical evidence refuting the overrepresentation of Romani children in public care. The State therefore has to proactively monitor the situation in public care, including the ethnic compilation of children.

14. The importance of the collection of ethnic data in the domain where the child is under the control of authorities can also be well-demonstrated also in relation to typically disability rights categories, that is "accessibility" and "reasonable accommodation". The evidence of a disproportionate or undue burden on the duty bearer is a legitimate liberation from the obligation, but only concerning the obligation to adopt reasonable accommodation.[6] Nevertheless, this is an *ex nunc* obligation, applying always to a concrete rights holder, assuming the mutual dialog between the rights holder and the duty bearer on the matter of the reasonable accommodation.[7] Therefore, the obligation to collect disaggregated data can hardly be qualified as part of the obligation to adopt reasonable accommodation, and the Government's reference to "an impossible or disproportionate burden" is not appropriate. The obligation to collect disaggregated data should rather be considered to be a part of the obligation to ensure accessibility (of the environment, services, and support), which is however an *ex ante* obligation, tackling systems and processes[8] and not enabling the duty bearer to liberate oneself solely by the argument of a disproportionate or undue burden.[9] The ERRC argues that all these concepts represent universal human rights, and are particularly related to anti-discrimination law categories and are, therefore, universally applicable to any vulnerable groups, including ethnic minorities.

15. Following all these arguments, the Government's position, based on differentiating between different types of facilities, seems to be unsubstantiated. The logic remains the same: children who end up in those facilities are taken away from their families by a decision of a court and placed under the control of State institutions. Furthermore, the Government are wrong when arguing that these facilities have "completely different purposes" (§ 19). The legal measure on the basis of which children end up in these institutions is still the same. The Civil Code[10] does not define different types of institutional care or different reasons to impose institutional care depending on the type of facility where the child should be placed. It differentiates only between short-term (6-

[6]See Article 2 of the UN Convention on the Rights of Persons with Disabilities: ""Reasonable accommodation" means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with other of all human rights and fundamental freedoms."
[7]CRPD/C/GC/6, 2018, para. 24 (b).
[8]Ibid., para. 24 (a).
[9]See, *inter alia*, the General Comment of the UN Committee on Economic, Social and Cultural Rights which lists the monitoring obligation as part of obligations of immediate effect, clearly stating that „the obligations to monitor the extent of the realization, or more especially of the non-realization of economic, social and cultural rights, and to devise strategies and programmes for their promotion, are not in any way eliminated as a result of source of constraints." – See the General Comment of the UN Committee on Economic, Social and Cultural Rights no. 3 (1990): The nature of State parties' obligations, para. 11.
[10]Act no. 89/2012 Coll., the Civil Code.

month) institutional care[11]and long-term (up to 3-year) institutional care,[12] but reasons for this measure remain in both cases the same.[13]

16. The only criterion of the differentiation we could think of - is a differentiation between civil measures and criminal sanctions. Nevertheless, even this criterion seems to lose any meaning when dealing with children who are taken away from their families and deprived of their liberty in public institutions. The reasons why these children end up under the State control may be exactly the same – structural discrimination taking the form of inadequate social, and economical protection of families resulting in their poverty, poor living conditions, and social exclusion. This argument seems to be even more relevant in a juvenile justice system that is, as is the case of the Czech Republic, built on the risk assessment and evaluation of different "risk factors", including of an economic and social nature.[14]

17. The ERRC, therefore, concludes in this part of their response that the State's obligation to collect data disaggregated by ethnicity should cover an entire group of children who are prevented (even temporarily) to grow up in their families and who are placed in different types of public institutions. Furthermore, this obligation should be a proactive one, not enabling the State any to make any exception by referring to the disproportionality of a burden that is has imposed.

IV. Importance of the ethnic data collection

18. In their Observations, the Government further claims that the national legislation clearly defines the conditions under which a child may be removed from their family and placed in the institutional care (§ 5, especially footnote no. 1). Unfortunately, the Government are wrong on this point since the situation is rather the opposite. The Czech legislation enabling the public authorities to decide on the removal of a child from their family and their placement in a public care is formulated in rather vague terms. The Government implicitly admits this when they argue that different types of institutional facilities serve "completely different purposes" (§ 19) even though two of the facilities they cite are still facilities ensuring also civil measures imposing institutional care (so-called institutional upbringing, eventually civil interim measure).

[11]Act no. 89/2012 Coll., the Civil Code, section 971 § 2.
[12]Ibid., section 971 § 1.
[13] These reasons are formulated in section 971 § 1: "If the upbringing of a child or the child's physical, intellectual or mental condition or his proper development are seriously threatened or disrupted to an extent contrary to the interests of the child, or if there are serious reasons for which the child's parents are unable to provide for his upbringing, a court may, as a necessary measure, also order institutional care. It will do so in particular where previously taken measures have not led to remedy. In doing so, a court shall always consider whether it would not be appropriate to prefer entrusting the child to the care of a natural person."
[14]See the legal conditions to impose the so-called "protective upbringing" under which children in conflict with the law are placed in the same institutions as children under civil institutional care (children's homes with schools; educational institutions and institutions for diagnostic assessment), provided for in section 22 § 1 of the Act no. 218/2003 Coll., the Juvenile Justice Act: "The Court for Youth can impose protective on the juvenile, if a) the upbringing of the juvenile is not properly care for and lacking proper upbringing cannot be remedied within his/her family or in the family where he/she lives; b) the previous upbringing of the juvenile has been neglected; or c) the environment where the juvenile lives does not provide a guarantee for his/her proper upbringing, and imposing educational measures is not sufficient."

19. This legislation dates back to the 1960s, i. e. to the era of the authoritative political regime which based its family law on the idea that the State should have a strong position in the child's upbringing, enabling the State to authoritatively enforce its idea of a "proper upbringing". For instance, the Act no. 94/1963 Coll., on Family, which was explicitly built, according to its explanatory memorandum, on the principle of the responsibility of parents to the State for the child's upbringing in accordance with the State's idea of "the new man", provided that the institutional care would be imposed in those cases, when the upbringing of the child was "seriously disturbed or endangered". Even though slightly amended (but not as regards its substance), this provision had been in force until the end of 2013 and, remarkably, still remains the core of the current legal regulation of civil institutional care in the new Civil Code, that is the Act no. 89/2012 Coll. With the transformation of the political regime in1989, it has lost its political connotations but has never ceased to serve the disciplining purpose. In other words, it has never ceased to be used as an instrument to enforce the prevailing view of the appropriate way of bringing up a child– the prevailing view of "proper care" to which the Government itself refers in its Observations (footnote no. 1).

20. The disciplining application of the legal provisions enabling the removal of a child from their family and placement in institutional care may be well documented by the official statistics on reasons for such removals. Statistics from the Ministry of Labour and Social Affairs show that the most common reason for the removal of the child from her family is the vague category of "neglect of the child's upbringing". This category stands next to the categories of "child maltreatment" and "child abuse" and in 2019 covered 8,2 times more cases than these two categories combined (see table no. 1). The total proportion of this category of reasons for the child's removal represented in 2019 approximately 45 % of all the removals in 2019 (1 608 cases out of 3 579 removals). The second most common category of reasons for the child's removal is the category of "other obstacles in the care of the child on the part of the parents" and the third one is the category of "upbringing difficulties in the child's behaviour". The aforementioned categories of "child maltreatment" and "child abuse" turn out to be the least common. In 2019 together they constituted together approximately 5,5 % of all the removals, even though should the human rights framework be respected, these should be the only legitimate reasons for the child's authoritative removal from their natural family.

Table no. 1: Reasons for removals of children in the Czech Republic from their families (2016 - 2019)

	Child maltreatment	Child abuse	Neglect of the child's upbringing	Upbringing difficulties in the child's behaviour	Other obstacles in the care of the child on the part of the parents
2016	158	42	1 665	937	1 010
2017	141	24	1 640	871	1 070
2018	122	43	1 541	862	1 071
2019	167	29	1 608	843	932

Source: *Ministry of Labour and Social Affairs*[15]

Table no. 2: The total number of removed children and the proportion of those who were removed due to maltreatment or abuse

	Total number of removals	Proportion of cases of child maltreatment and child abuse in the total number of removals (%)
2016	**3 812**	5,2
2017	**3 746**	4,4
2018	**3 639**	4,5
2019	**3 579**	5,5

Source: *Ministry of Labour and Social Affairs*

21. Furthermore, the cited statistical data on the reasons for removals of children from their families also shows that the system operates on the basis of very broad categories that fail to provide children and their families with appropriate legal safeguards against arbitrariness and against illegitimate or disproportionate interventions by public authorities in their family lives. This is closely connected with the high risk that the system disproportionately affects families from minorities, should these minorities be defined ethnically, culturally, or socially, whose way of life and care for their children differs from the prevailing social expectations.

22. In such a vague legislative environment, where only approximately 5 % of authoritative removals of children from their families take place for reasons that may be assumed legitimate in the human rights framework, the systemic collection of complete and appropriate disaggregated data on the basis of ethnicity seems even more urgent. Moreover, the ERRC notes that even if the national legislation governing the removal of children was tailored in racially or ethnically neutral terms, its implementation might still have disproportionate impact on certain groups. As the European Court of Human Rights held e.g. in D.H. and Others v the Czech Republic (2007, § 175): "*a general policy or measure that has disproportionately prejudicial effects on a particular group may be considered discriminatory notwithstanding that it is not specifically aimed at that group*." It would be very difficult to find out about those prejudicial effects without relevant data.

IV. Factual inaccuracies in the Government's Observations

23. Finally, the ERRC would like to clarify certain factual inaccuracies contained in the Government's Observations.

24. The Government mention, *inter alia,* the current research activity of the Ministry of Labour and Social Affairs and the Research Institute for Labour and Social Affairs (§§ 65-70). The Government emphasises that even though the research focuses on the area of alternative family care and the process of its mediation, it will still bring "summary information on the number of Roma children in institutional care" (§ 67). This research is

[15] Data are available in Czech at: https://www.mpsv.cz/web/cz/statistiky-1 [accessed 8/1/2021].

however significantly limited. The main limitation is not the subject matter, but the fact that it is dependent on the voluntary participation of the relevant authorities (municipal authorities and regional authorities). Neither the Ministry of Labour and Social Affairs, nor the Research Institute for Labour and Social Affairs, have legal instrument to enforce the participation. **It should not be therefore be confused with the requirement of the systemic and regular collection of complete, up-to-date, and accurate data since it is not eligible to comply with these criteria.**

25. Furthermore, in two places in their Observations the Government mentions the reform of the institutional care for children (§§ 61 and 65), as if this were a currently running process in the Czech Republic. Elsewhere, the Government also argues that they are systematically undertaking activities to reduce the number of institutionalised Romani children even though they do not necessarily collect ethnically disaggregated data (§ 72). To prove their statement, the Government provide information on the individual projects that have been carried out by the Ministry of Labour and Social Affairs, either recently or currently (§§ 75-78), and on current legislative efforts, that have been either initiated by the Government or by individual deputies (§ 79).

26. It should be noted that none of these recent or current activities or efforts should be confused with the reform of the system of public care for children. **The process of the reform that was initiated originally sometimes in 2008,[16] has stopped.** The National Strategy to Protect Children Rights 2012-2018,[17] adopted by the Government on 4 January 2012 following the adoption of the Concluding Observations of the UN Committee on the Rights of the Child on the Czech Republic in 2011,[18] already formulated the necessary steps that need to be taken to transform the system of institutional care for children. The following measures were identified among the most important: unification of the system of institutional care under the administration of one ministry (instead of three),[19] adoption of new legislation in the form of the Act on the Support to Families, on Alternative Family Care, and on the System to Protect Children's Rights[20] and enactment of the minimum age limit below which children cannot be placed in institutional care (3 years of age and subsequently 7 years of age).[21] The analytical document called the Proposal for optimizing the management of the system of protection of children's rights and care for vulnerable children and prepared in 2015 as part of another individual project of the Ministry of Labour and Social Affairs, then explained that

[16]In 2008 the Government had processed the Analysis of the current state of institutional provision of childcare, that emphasised the need to unify the whole system of institutional care. The Analysis is available in Czech at:https://docplayer.cz/27481132-Analyza-soucasneho-stavu-institucionalniho-zajisteni-pece-o-ohrozene-deti.html [accessed 8/1/2021].
[17]The Strategy is available in Czech at: https://www.mpsv.cz/documents/625317/625903/strategy.pdf/16525ab3-48d2-cae2-a057-f1ab8be379c2 [accessed 8/1/2021].
[18] CRC/C/CO/CZE/3-4.
[19]Objective 12.
[20]*Ibid*.
[21]Objective 10.

"without the unification of the management and organisational structure it is not possible to redirect [financial] resources within the system".[22]

27. As of today, neither the unification has been achieved, nor other measures have been adopted. The reality in the Czech Republic is, simply put, quite different from the picture the Government has tried to show. For example, in 2016 the Government failed to approve the second action plan to fulfil the National Strategy and in August 2017 the Government did not approve a strategic material prepared by the Ministry of Labour and Social Affairs which described the necessary legislative steps that need to be taken to unify the system of institutional care and enact the minimum age below which the child cannot be placed in institutional care. The new National Strategy to Protect Children's Rights 2021-2029, adopted in December 2020,[23] shows that despite all the analytical materials defining the necessity of the unification of the system of institutional care under the administration of one ministry, the Government has given up on this step. The new National Strategy aims only to harmonize the way the institutions operate under different ministries, not the management of the whole system, by creating one centre for their management and funding.

28. Furthermore, the Government should be able to prove that the alleged decrease in the numbers of institutionalised children (§§ 80 – 83) concerns Roma children as well and that this decrease is proportionate to: i) the decrease of children belonging to the ethnic majority and ii) the proportion of Roma children in the total population of children. In other words, the overrepresentation of Roma children in institutional care would require an accelerated decrease in their numbers. Unfortunately, it is impossible for the Government to prove these facts without complete, up-to-date and accurate data on children in institutional care disaggregated on the basis of ethnicity.

29. Finally, the inappropriateness of the Government's argument that they systematically reduce the number of institutionalised children is well documented by the official statistical numbers cited in tables no. 1 and 2 above. These statistical data show that the number of children that are removed from their families remains constantly high in the Czech Republic, exceeding 3.500 children per year. Moreover, also the proportion of children who are removed from their families due to child maltreatment and child abuse also remains constant. Maybe a brave man could call it a reform, however more humble assessment would rather label it as a lack of appropriate effort.

VI. Conclusion

30. To conclude, the ERRC, together with FORUM, would like to summarize that the Government's arguments remain in their significant part irrelevant since they misunderstood the subject matter of the collective complaint. The collective complaint does not deal with the collection of ethnically disaggregated data as a positive obligation

[22] Proposalforoptimizingthe management ofthe systém ofprotection and children'srights and care forvulnerablechildren, p. 224. TheProposalisavailable in Czech at: http://www.pravonadetstvi.cz/files/files/optimalizace_rizeni(1).pdf [accessed 8/1/2021].
[23] TheNationalStrategyisavailable in Czech at: https://www.mpsv.cz/narodni-strategie-ochrany-prav-deti-a-akcni-plan-k-naplneni-narodni-strategie [accessed 8/1/2021].

in all social areas nor does it advocate for a concrete data collection method. It only focuses on the obligation to collect disaggregated data as part of the right of the child to family life and: i) emphasises: i) the obligation to collect disaggregated data as an inherent part of the rights of the child to family life and personal liberty; ii) the need to ensure that all children, including children from ethnic minorities, have a practical and effective opportunity to enjoy these rights on an equal basis with others; and iii) the qualitative requirements that the data collection has to comply with.

31. Unfortunately, the Government fails to provide any responses in their Observations to these core questions of the collective complaint and instead, provide irrelevant information that does not directly relate to the merits of the case. Having missed the subject matter of the collective complaint, the Government also draw deficient conclusions, including the conclusion that the obligation to collect ethnically disaggregated data should be reactive rather than proactive. The ERRC argues that as a clear systemic duty, the obligation to collect disaggregated data has to be considered as part of the monitoring obligation of the State and as such it must necessarily be proactive and include all children who live under direct supervision of the State in institutional care.

32. The ERRC, together with FORUM, submit that the failure of the State to collect ethnically disaggregated data on children who end up in the institutional care understood in the broadest sense to cover all children living outside their families in public institutions under direct supervision of the State, violates Articles 16 and 17 of the European Social Charter, both read alone as well as in conjunction with the principle of non-discrimination as enshrined in the Preamble to the Charter.

The European Roma Rights Centre
12 January 2021