EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITE EUROPEEN DES DROITS SOCIAUX

12 May 2021

Case Document No. 5

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

FURTHER RESPONSE FROM THE GOVERNMENT

Registered at the Secretariat on 10 March 2021

THE CZECH REPUBLIC

ADDITIONAL OBSERVATIONS OF THE GOVERNMENT ON THE MERITS OF THE COLLECTIVE COMPLAINT

EUROPEAN ROMA RIGHTS CENTRE (ERRC)
v. the CZECH REPUBLIC
(no. 190/2020)

PRAGUE

10 MARCH 2021

1. In response to the letter of 26 January 2021 regarding the above mentioned collective complaint lodged with the European Committee of Social Rights ("the Committee") by the European Roma Rights Centre ("the complainant organisation"), in which the Committee transmitted to the Government of the Czech Republic the complainant organisation's written response to the observations of the Government on the merits of the collective complaint ("observations of the complainant organisation" or "its observations"), the Government, maintaining their position expressed in their observations of 16 November 2020 ("the Government's initial observations"), wish to submit the following additional comments.

2. The Government recall that the complainant organisation contends that the Czech Republic does not comply with Articles 16 and 17 of the 1961 European Social Charter ("Charter"), read in isolation or in conjunction with the prohibition of discrimination embodied in the Preamble to the Charter, on the ground that it has failed to comply with its obligations to collect statistical data on the number of Roma children in State institutional care.

ON THE MERITS

I. THE FACTS

3. The Government would refer to the current development on the national level. In December 2020, a draft new Roma Integration Strategy for 2021–2030 has been published by the Government, and relevant public bodies were invited to submit their comments on this material. The final version of the Strategy should be approved by the Government in the course of spring 2021. According to the draft, the State shall regularly collect and evaluate reliable data concerning Roma children, both in school facilities and in institutional care, with the aim a) to adjust the criteria for the personnel of the respective institutions, in terms of both their numbers and their professional capacities and specializations, b) to secure the coordination in this area among all the relevant public bodies, and c) ultimately to adopt fair, non-discriminatory and anti-segregation measures and policies, and in this way, to fight against the social exclusion of Roma population in Czech society. All institutions of public care should collect data concerning Roma children according to this Strategy (part C.3 of the Annex to the Strategy).

II. THE LAW

A) INSTITUTIONAL FRAMEWORK OF CHILDREN'S RIGHTS PROTECTION IN THE CZECH REPUBLIC

4. The complainant organisation criticizes the fact that in the Czech Republic, the agenda of children's rights protection is divided among several ministries of the Government, instead of being unified under one single ministry (see §§ 26–27 of its observations).

5. The Government point out that according to the consistent approach of the Committee in interpreting the Charter, the States are required to ensure an adequate and effective protection of Charter rights both in law and in practice, which however does not preclude that a particular agenda is organisationally shared by several State institutions, such as governmental ministries [see e.g. Conclusions XXI-1 (2016), Denmark, Article 15 § 2; Conclusions 2015, Slovenia, Article 16; Conclusions 2011, Portugal, Article 19 § 1]. In other words, the choice of a concrete methodology for the protection of Charter rights falls within the State's margin of appreciation, as the complainant organisation itself claims in another part of its comments (see § 6 of its observations). Therefore, the Government deem the above mentioned allegation as unsubstantiated.

B) REASONS FOR PLACEMENT OF CHILDREN IN INSTITUTIONAL CARE IN THE CZECH REPUBLIC

6. Furthermore, the complainant organisation refers to the statistics published on the website of the Czech Ministry of Labour and Social Affairs, which provide an overview of reasons for removal of a child from their family and placement in institutional care in 2016–2019. Within this time frame, the most frequent reason for removal of a child from family environment was "neglect of the child's upbringing", followed by "other obstacles in childcare on the part of the parents"; the third place belonged to "upbringing difficulties", and the last two places – which together constituted only slightly over 5% of all the removals – were represented by categories of "child maltreatment" and "child abuse". At the same time, the complainant organisation contends that solely these two last categories (child maltreatment and child abuse) should, under "the human rights framework (…) be the only legitimate reasons for the child's authoritative removal from their natural family" (see § 20 of its observations). On the basis of this statement, the complainant organisation further claims that "in such a vague legislative environment, when 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" (*ibid.*, § 22).

7. In this connection, the Government find it appropriate to invoke the relevant case law of the European Court of Human Rights ("the Court") which undoubtedly can be classified as a part of "human rights framework" referred to by the complainant organisation. All of the judgments mentioned bellow concern the interpretation of the right to respect for private and family life according to Article 8 of the European Convention on Human Rights ("the Convention").

8. In the case of *T. v. the Czech Republic* (no. 19315/11, judgment of 17 July 2014), the Court has found no violation of Article 8 on account of the fact that the applicant's daughter was placed in institutional care since the national authorities came to the conclusion that the applicant "didn't present the educational and emotional guaranties necessary to enable him to take care of his daughter" (see § 118 of the judgment); in this connection, the Court also emphasized the child's interest "to be placed in the environment offering the best conditions for her development" (ibid., § 121).

9. In the case of *Achim v. Romania* (no. 45959/11, judgment of 24 October 2017), the Court concluded that the temporary placement of the applicants' children in institutional care had not breached their rights under Article 8. The Court pointed out that the domestic courts' decisions "[had not been] based exclusively on the findings of material deprivation on the applicants' part"; the social services, which monitored the family on a regular basis, had drawn attention in their reports to the slightly delayed development and speech issues in all the children, which had allegedly been caused by a lack of cognitive stimulation and by limited contact with others. The Court stated: "having regard to these conclusions, reached by specialists following a close examination of the children, the Court acknowledges that in the present case the authorities could have had legitimate fears about the children's lack of adequate developmental and educational progress, as observed by the social services" (see §§ 101–103 of the judgment).

10. In the case of *Wunderlich v. Germany* (no. 18925/15, judgment of 10 January 2019), the Court found no violation of Article 8 with respect to the applicants whose children had been placed in institutional care as a result of the applicants' persistent refusal to send their children to school. The Court stated *inter alia* (§ 54 of the judgment): "The domestic courts gave detailed reasons why less severe measures than taking the children into care were not available. They held, in particular, that the prior conduct of the applicants and their persistent resistance to measures had shown that merely issuing instructions would be ineffective. The Court notes that not even prior administrative fines had changed the applicants' refusal to send their children to school. It therefore finds, in the circumstances of the present case, the conclusion by the domestic courts acceptable."

11. Finally, in the case of *K.O. and V.M. v. Norway* (no. 64808/16, judgment of 19 November 2019), the Court found no violation of Article 8 on account of the placement of the applicants' daughter in public care; the national courts had established that both applicants had had a history of drug abuse and had been suffering from various psychological problems; on top, the treatment of the father was expected to take a considerable amount of time and he had also been convicted of serious criminal offences. The domestic authorities considered whether less intrusive measures could have been used, but they concluded that this would have been impractical since previous attempts to help the applicants overcome their problems concerning drug dependency and mental health had been unsuccessful, and because of the applicants' difficulties in cooperating with the child-welfare services (see §§ 63–64 of the judgment). Having regard to this reasoning by national authorities, the Court found that "relevant and sufficient reasons [had been] adduced for taking [the child] into public care and that the interference with the applicants' right to family life was not in that regard disproportionate" (*ibid.*, § 65).

12. To summarize the above-mentioned case law, in all these cases the Court found no violation of the Convention even though the children in question were placed in institutional care for reasons which cannot be classified as either "child maltreatment" or "child abuse". In the *Wunderlich* case cited above, the Court reiterated: "the authorities enjoy a wide margin of appreciation when assessing the necessity of taking a child into care (…). In addition, the Court will have regard to the fact that perceptions as to the appropriateness of intervention by public authorities

in the care of children vary from one Contracting State to another, depending on such factors as traditions relating to the role of the family and to State intervention in family affairs and the availability of resources for public measures in this particular area. However, consideration of what is in the best interest of the child is in any event of crucial importance" (see § 47 of the judgment).

13. Thus, the Government conclude that it can hardly be maintained, as the complainant organisation does in its observations, that "the only legitimate reasons for the child's authoritative removal from their natural family" under "the human rights framework" is either "child maltreatment" or "child abuse". As the Court has made it very clear in its case law, the decisive importance should be always attached to the best interest of the child in question, what can in various specific contexts result also in other legitimate reasons for a child's removal.

C) EXTENT OF THE STATE'S OBLIGATION TO COLLECT DATA ON THE NUMBER OF ROMA CHILDREN IN PUBLIC INSTITUTIONAL CARE

14. Finally, the complainant organisation challenges the argument of the Government according to which Articles 16 and 17 of the Charter do not imply an obligation to collect data on the numbers of Roma children in all types of facilities that can be subsumed under the wide term of institutional care; rather, this obligation can be derived only with respect to those facilities where there have been justifiable concerns about indirect discrimination or other violations of Roma children's rights under the Charter. In this sense, the Government admitted in their initial observations that as regards children's centres, and also children's homes and children's homes with a school, the domestic authorities cannot claim that they are unaware of the existence of the overrepresentation of Roma children. However, with respect to other facilities – such as educational institutions, institutions for diagnostic assessment, separate facilities for protective therapy, security detention facilities, or juvenile wards in prisons – the Government consider that in the current situation, the Czech authorities' positive obligation to collect and analyse statistical data on the ethnicity of the children placed in such facilities cannot be deduced from Articles 16 and 17 of the Charter. To this extent, therefore, the Government consider the complaint to be incompatible *ratione materiae* with those provisions (see §§ 16–21 of the Government's initial observations).

15. According to the complainant organisation, the Government's position, based on differentiating between types of facilities, seems to be unsubstantiated, since 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 (see § 15 of its observations). Furthermore, it claims that "[t]he 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" (*ibid*., § 16). Therefore, it concludes 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" (*ibid*., § 17).

16. The Government recall that according to § 172 of the Committee's decision in the case of *European Roma Rights Centre (ERRC) & Mental Disability Advocacy Centre (MDAC) v. the Czech Republic* (No. 157/2017, decision of 17 June 2020):

> "when it is generally acknowledged that a particular group of children is or could be faced with disproportionate care risks in comparison with the majority of population, as is the case for both Roma children and children with disabilities, States have an obligation to collect data on the extent of the problem. The collection and analysis of such data (with due safeguards for privacy and against other abuses) is indispensable to the formulation of an adequate policy and the adoption of appropriate measures to ensure the social and economic protection the children in question respectively need."

17. Since the case of *ERRC & MDAC v. the Czech Republic* concerned solely children under 3 years of age – and, consequently, only the public institutions for children in this age range – it was not necessary for the Committee to specify in its decision whether the State's obligation to collect data on the extent of disproportionate care risks applied also to older children or other institutions of children care.

18. However, the present case triggers this question, since the complainant organisation claims that the State's obligation to collect data disaggregated by ethnicity should cover *all* facilities of institutional children care (see § 14 above).

19. Therefore, the Government invite the Committee to clarify its statement from the case of *ERRC & MDAC v. the Czech Republic*, according to which there exists a State's obligation to collect data on the extent of the problem of disproportionate care risks for Roma children – in particular, to specify whether this obligation applies to all existing public institutions of children care or only to some of them – or, alternatively, only to some children, such as the group of children affected by the above-mentioned Committee's decision, i.e. children under the age of 3.

GENERAL CONCLUSION

20. As to the merits of the collective complaint at hand, the Government refer to their initial observations of 16 November 2020, supplemented by the above comments.

Vít Alexander Schorm

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Vít A. Schorm
Agent of the Government
(*signed electronically*)