



**EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITE EUROPEEN DES DROITS SOCIAUX**

8 February 2024

Case Document No. 3

European Roma Rights Centre (ERRC) v. Czechia
Complaint No. 220/2023

**SUBMISSIONS OF THE GOVERNMENT
ON THE MERITS**

Registered at the Secretariat on 15 January 2024



CZECH REPUBLIC

OBSERVATIONS OF THE GOVERNMENT
ON THE MERITS OF THE COLLECTIVE COMPLAINT

ERRC v. the Czech Republic
(no. 220/2023)

PRAGUE

15 JANUARY 2024

1. In its letter of 21 September 2023, the European Committee of Social Rights (“the Committee”) notified the Government of the Czech Republic (“the Government”) that, on 12 September 2023, the above collective complaint lodged by the European Roma Rights Centre (ERRC), a non-governmental organisation (“the complainant organisation”) against the Czech Republic, registered under number 220/2023, had been declared admissible. Concurrently, the Committee invited the Government to submit their observations on the merits of the collective complaint.

I. SUMMARY OF THE COMPLAINANT ORGANISATION’S CLAIMS

2. The complainant organisation claims, before the Committee, that there has been a violation of Article 16 of the European Social Charter (“the Charter”), which enshrines the right of the family to social, legal and economic protection, including access to care for children up to the age of six, either alone or in conjunction with the Preamble to the Charter. The complaint concerns the allegation of a violation of the obligation to ensure that preschool education is affordable for and accessible to Roma children, and socially disadvantaged children in general, from the age of three on the same footing as children from majority society.

3. The complainant organisation’s principal claims can be grouped under the following three headings:

- failure to ensure that preschool education is affordable for Roma and socially disadvantaged children;
- failure to ensure that preschool education is available to Roma and socially disadvantaged children;
- failure to ascertain that Roma and socially disadvantaged children are protected from arbitrariness and discrimination in the process of admission to preschool education.

4. First, the complainant organisation claims that fees associated with preschool education, whether direct or indirect, are an important reason why families facing poverty and social exclusion, including Roma families, do not enrol their children in preschool education. The complainant organisation submits that existing legislation and existing programmes are not sufficient to establish an effective system of financial support for children facing financial barriers to education. With respect to the compulsory preschool year, it argues that, while this is exempt from fees, the attendant costs, such as meals, transportation and voluntary activities such as trips, may stigmatise and effectively disadvantage such children. According to the complainant organisation, the fact that fees are charged for lower years of kindergarten may be all the more of a barrier to the attendance of children from the age of three. It argues that not even national strategy documents address how to increase attendance in the lower years of

kindergarten. It claims that, at most, they are aimed at increasing the proportion of children attending compulsory preschool education.

5. Secondly, the complainant organisation claims that preschool education is *de facto* unavailable to Roma and/or socially disadvantaged children because, although they are legally entitled to be admitted to a preschool facility from the age of three, admission is conditional on permanent residence in the kindergarten's catchment area. However, children from socially disadvantaged families often live somewhere other than their permanent residence. Other problematic aspects identified by the complainant organisation as affecting admission to preschool education are the insufficient capacity of kindergartens, late enrolment by Roma and/or socially disadvantaged children, and the substitution of homeschooling for compulsory preschool attendance as a result of insufficient capacity. It does note, however, that the necessary data is not available to determine how many Roma and/or socially disadvantaged children these criteria pose a problem for in practice.

6. In the context of the foregoing, the complainant organisation also claims that Roma and/or socially disadvantaged children may be subject to indirect discrimination in access to preschool education in that homeschooling is more likely to be recommended to them as an alternative to the compulsory preschool year. In this regard, the State allegedly fails to provide them with sufficient protection from arbitrariness and discrimination on the part of kindergarten directors in the admissions process. Specifically, the complainant organisation submits that directors are given a great deal of discretion in deciding whether to admit a child to kindergarten. Directors may refuse to admit children on the grounds of insufficient capacity, even if they live in the catchment area of the kindergarten. In these circumstances, it is the municipality's responsibility to arrange for them to be placed in another kindergarten, which may be far away. In practice, this may result in the substitution of homeschooling for in-person attendance of compulsory preschool education. Children are eligible for admission to their catchment kindergarten only if their parents submit an application in time, i.e. by the deadline set by the director within the time frame prescribed by decree for the following school year. However, families of Roma and/or socially disadvantaged children may not meet that deadline. Admission during the school year is entirely at the discretion of kindergarten directors. Lastly, the complainant organisation claims that children whose compulsory school attendance has been deferred are also required to attend kindergarten, and yet they are not guaranteed a place in kindergarten.

7. Below, the Government will share their observations on the complainant organisation's claims of a violation of Article 16 of the Charter. Before doing so, they will briefly describe the State's obligations under Article 16 of the Charter in this context and present the general legal framework for preschool education in the Czech Republic.

III. OBLIGATIONS ARISING FROM ARTICLE 16 OF THE CHARTER

8. Article 16 of the Charter reads as follows:

“With a view to ensuring the necessary conditions for the full development of the family, which is a fundamental unit of society, the Parties undertake to promote the economic, legal and social protection of family life by such means as social and family benefits, fiscal arrangements, provision of family housing, benefits for the newly married and other appropriate means.”

9. As the Committee has explained in its previous conclusions or decisions, under Article 16 of the Charter, States are required to ensure that childcare facilities are available, affordable and of good quality for families, with respect to the number of children aged 0-6, the ratio of staff to children, staff training, suitable premises, and the cost of childcare to parents (*Conclusions 2019, Azerbaijan*, Article 16, no. 2019/def/AZE/16/EN). Article 16 of the Charter requires that all families wishing to use early childhood education and care services should have access to affordable and high-quality services, regardless of their socio-economic status [*Central Union for Child Welfare (CUCW) v. Finland*, Complaint No. 139/2016, decision on the merits of 11 September 2019, § 110].

10. However, in the light of the Committee’s case law, Article 16 of the Charter does not impose on States an obligation of “results”, but only an obligation of means for the gradual fulfilment of that right using the means earmarked for that by and available to the State [*European Federation of National Organisations Working with the Homeless (FEANTSA) v. France*, Complaint No. 39/2006, decision on the merits of 5 December 2007, §§ 52–53]. When the achievement of one of the rights in question is exceptionally complex and particularly expensive to resolve, States should take the necessary measures within a reasonable time, with measurable progress and to an extent consistent with the maximum possible use of available resources (*Autism-Europe v. France*, Complaint No. 13/2002, decision on the merits of 4 November 2003, § 53).

11. However, the rights recognised in the Charter must take a practical and effective, rather than purely theoretical, form (*International Commission of Jurists v. Portugal*, Complaint No. 1/1998, decision on the merits of 9 September 1999, § 32). In this respect, States should be mindful of the impact that their decisions will have on groups of people experiencing heightened vulnerability, including Roma [*European Roma Right Centre (ERRC) v. Greece*, Complaint No. 15/2003, decision on the merits of 8 December 2004, §§ 19–21 and 25]. In the past, the Committee has determined that claims of discrimination may be considered in the light of the Preamble to the 1961 Charter, read in conjunction with the substantive rights of the 1961 Charter, including Article 16 [*European Roma and Travellers Forum (ERTF) v. Czech Republic*, Complaint No. 104/2014, decision on the merits of 17 May 2016, § 112].

12. The Government do not accept the complainant organisation’s contention that Article 16 of the Charter encompasses the right to education within the meaning of Article 17§2 of the Revised Charter, nor that the right to

preschool education and care enjoys the same level of protection as the right to education within the meaning of Article 17§2 of the Revised Charter. Article 17§2 of the Revised Charter enshrines the right of children to free primary and secondary education. The provision in question does not, however, extend to preschool education and care, which, in the light of the Committee's case law, may fall under Articles 16 and 17§1 of the Revised Charter or Article 27 thereof [cf. *Central Union for Child Welfare (CUCW) v. Finland*, cited above, §§ 64, 91 and 110]. The right to preschool education may thus be fee-based, although it should remain affordable. In this regard, the Government point out that the Czech Republic has yet to ratify the Revised Charter and is therefore not bound by Article 17 on the right to education.

III. DOMESTIC LAW

(i) Act no. 561/2004 on preschool, primary, secondary, post-secondary vocational and other education, as amended ("Education Act")

(a) A municipality's obligation to provide conditions for preschool education

13. Section 179 of the Education Act entitles, and by extension obligates, municipalities to establish kindergartens within the scope of their autonomous jurisdiction. Kindergartens may also be established by a union of municipalities.

14. A municipality is required to ensure that conditions are in place for the preschool education of children enjoying preferential admission to their catchment kindergarten; these are children who are at least three years of age before the start of the school year if their place of permanent residence, or, in the case of foreign nationals their place of residence, is in the given school district, or if they are accommodated in a children's home in that district.

15. Section 34(4) of the Education Act provides that the municipal authority of a municipality in whose territory a kindergarten is located furnishes that school with a list of children eligible for admission well in advance of the enrolment deadline.

16. School districts are established in accordance with section 179(3), read in conjunction with section 178(2) to (4), of the Education Act, by a general municipal ordinance (unless there is only one kindergarten in the municipality and it is not a situation where a common school district is established for more than one municipality). If a municipality fails to act, the school district is defined by the regional authority by means of a general measure that remains in force for a maximum of 24 months.

17. If a municipality is unable to provide preschool education in any of its own kindergartens, section 179(2)(b) of the Education Act requires it to arrange for children to receive preschool education in a kindergarten established by another municipality or a union of municipalities.

18. A school district is not prescribed for a school established in accordance with section 16(9) of the Education Act or for schools established by founders other than a municipality or a union of municipalities.

19. Section 179(4) of the Education Act requires the region to provide transport to and from a catchment kindergarten if the distance between the school and the child's place of permanent residence is more than 4 km.

(b) Organisation of preschool education

20. Section 34 of the Education Act provides that preschool education is organised for children from the ages of two until, as a rule, six. Children under the age of three have no legal claim to be admitted to kindergarten. Preschool education is compulsory from the beginning of the school year following the day a child reaches the age of five until the child starts compulsory school attendance.

21. Children are enrolled for preschool education from the next school year in the period from 2 to 16 May. The date and place of enrolment is a matter for the kindergarten director to decide.

(c) Admission to preschool education

22. Decisions on the admission of a child to a kindergarten or on the establishment of the trial attendance of a child, the length of which may not exceed three months, are taken by the director of the kindergarten. Children who have reached at least three years of age before the beginning of the school year are preferentially admitted to a kindergarten established by a municipality or a union of municipalities if they are permanently resident, or, in the case of foreign nationals, have their place of residence, in the given school district (section 179(3)), or if they are accommodated in a children's home in that district, insofar as capacity – the number of children specified in the schools register – allows.

23. Decisions on whether or not to admit children to preschool education are issued in application procedure under section 165(2)(b) of the Education Act, read in conjunction with section 34 of the Education Act and Act no. 500/2004, the Code of Administrative Procedure.

24. Children may be admitted to preschool education during the school year.

(d) Compulsory preschool education

25. Section 34(1) of the Education Act provides that, under the conditions set out in section 34a of the Education Act, preschool education is compulsory from the beginning of the school year following the day on which a child reaches the age of five until the child begins compulsory school attendance.

26. A child's legal guardian is obliged to enrol them for preschool education in the calendar year in which the child's compulsory preschool

education begins. Compulsory preschool education is provided in a child's catchment kindergarten or other kindergarten.

27. Compulsory preschool education may also take other forms, including education according to an individual plan (under which a child does not attend kindergarten on a regular daily basis), or education in a preparatory class at primary school.

28. In cases where a child is to be educated according to an individual plan for the majority of the school year, section 34b(1) and (2) of the Education Act requires the child's legal guardian to notify this to the director of the kindergarten to which the child has been admitted no later than three months before the start of the school year. The kindergarten director advises the legal guardian of a child who is to be educated according to an individual plan about the areas in which the child should be educated. The legal guardian is obliged to ensure that the child attends tests to verify that they have learnt the expected outcomes, which take place between the third and fourth month from the beginning of the school year, otherwise the child's individualised education is terminated.

29. Failure to register for compulsory preschool education or neglecting to care for a child's compulsory preschool education is deemed to be a minor offence under section 182a(1)(a) of the Education Act, for which the legal guardian may be fined up to CZK 5,000.

(e) Status of children whose compulsory school attendance has been deferred

30. Section 37(1) of the Education Act provides that a decision may be taken to defer compulsory school attendance. If a child is not sufficiently mature physically or mentally and if the child's legal guardian so requests in writing at the time of the child's enrolment for compulsory school attendance in accordance with section 36(4), the head of the school defers the start of compulsory school attendance for one school year, provided that the request is supported by an assessment recommending this from the competent school counselling facility and a specialist doctor or clinical psychologist. The start of compulsory school attendance may be deferred until the beginning of the school year in which the child reaches the age of eight. Section 37(3) provides that, with the legal guardian's consent, a decision on deferment may also be taken retrospectively after school attendance has commenced, i.e. during the first semester of the school year.

31. Section 165(2)(c) of the Education Act provides that a decision is issued in administrative proceedings only if a request for school attendance to be deferred is rejected. In all cases, the head is required to inform the legal guardian of the obligation for the child to attend preschool education and of the ways in which this obligation can be met. A child whose compulsory school attendance is deferred continues their compulsory preschool attendance.

32. Children granted a deferment of compulsory school attendance are preferentially admitted to primary schools' preparatory classes established under section 47(1) of the Education Act.

(f) Preschool education support measures

33. Children in preschool education are provided with support measures under section 16 of the Education Act to the extent prescribed by Decree no. 27/2016 on the education of pupils with special educational needs and gifted pupils, as amended. This might include, for example, a teaching assistant. Support measures at higher levels are provided on the basis of a recommendation from a school counselling facility.

(g) Fees for preschool education and school services

34. Fees for education and school services at the schools and school facilities of public founders are generally governed by section 123(2) to (5) of the Education Act. Compulsory preschool education (in kindergarten, a primary school preparatory class, or the preparatory stage of a special primary school) is free of charge; otherwise, a fee is payable for preschool education.

35. As of 1 January 2024, section 123(4) of the Education Act lays down that fees for the provision of preschool education are set by the founder of the kindergarten.

36. Rules governing the determination of fees and exemptions from fees for preschool education are laid down in section 6 of Decree no. 14/2005. Section 6(6) of Decree no. 14/2005 provides that fees are waived for: (a) a child's legal guardian who receives a recurrent material distress benefit; (b) the legal guardian of a dependent child if that child is entitled to an increased care allowance and, with effect from 1 September 2024, also if the legal guardian of a dependent child is entitled to child benefit; (c) a parent who is entitled to an increased care allowance on account of caring for a dependent child; or (d) a natural person who personally cares for a child and receives foster care benefits as a result of caring for that child, provided that they prove this fact to the director of the kindergarten. Exemption from fees is non-discretionary.

37. In principle, all children in preschool education are subject to fees for school meals. The amount is set in accordance with section 5(1) and (2) of Decree no. 107/2005 on school meals, as amended. Decisions to reduce or waive fees are taken by the director of the school catering facility or the school head in accordance with the final sentence of section 123(4) of the Education Act. These fee reductions or waivers are discretionary.

(h) Funding for direct expenditure on preschool education and school services

38. For kindergartens, the funding of public founders' direct expenditure on education and school services pursuant to section 160(1)(c) of the Education Act

generally takes into account the number of children being educated,¹ both indirectly (number of classes) – for expenditure on non-teaching staff [section 161(1)(a)(3) and (3)(d) of the Education Act], and directly – for other non-capital expenditure covered by the State budget [section 161(1)(e) and (3)(d) of the Education Act]. In the funding of teaching work in kindergartens, the “unit of output” is the teacher; however, it is the structure of the school (in particular, the workplace and classes) that determines the maximum numbers of hours of direct teaching activity funded from the State budget [section 161c(2)(c) of the Education Act and section 1d of Decree no. 14/2005 on preschool education, as amended]. The maximum numbers of hours of teaching funded from the State budget for primary school preparatory classes are set in two bands, depending on the number of children in the class (section 7a of Decree no. 48/2005 on primary education and certain requirements for compulsory school attendance).

(ii) Act no. 243/2000 on the budgetary determination of taxes, as amended (“Act on the Budgetary Determination of Taxes”)

Funding for kindergartens

39. Within the scope of basic calculations, section 4 of the Act on the Budgetary Determination of Taxes ties the calculation of a municipality’s share of the prescribed portion (25.84%) of the national gross revenue from value added tax and designated direct taxes (including revenue from taxpayer advances in the flat-rate regime for personal income tax) to, among other things, the ratio of the number of children and pupils attending a municipality-established school (kindergarten or primary school) to the number of such children and pupils for all municipalities, expressed as a percentage and multiplied by a coefficient of 0.09. According to the 2023 tax forecast, the amount of appropriations based on this criterion was expected to be approximately CZK 18,400 per pupil.²

40. Sections 4(2) and 4(5) of the Act on the Budgetary Determination of Taxes, as amended with effect as of 1 January 2024 (Act no. 349/2023 amending certain acts in connection with the consolidation of public budgets) provide that the number of children attending a school and participating in preschool education does not include children educated on the basis of individual plans.

¹ For more information on the funding of regional education (public founders), see: [Principy rozpisu rozpočtu přímých výdajů regionálního školství územních samosprávných celků na rok 2023, MŠMT ČR \(msmt.cz\)](#) [title in translation: Principles for the Budget Breakdown of Local Government Units Direct Regional Education Expenditure for 2023, Ministry of Education, Youth and Sports of the Czech Republic].

² [Informace o výši prostředků, které obce získávají z RUD na základě počtu dětí a žáků MŠ/ZŠ \(§ 4 zákona č. 243/2000 Sb.\) - rok 2023 | Ministerstvo financí ČR \(mfc.cz\)](#) [title in translation: Information on the Amount of Funds Received by Municipalities from the Budgetary Determination of Taxes Based on the Number of Children and Pupils of Kindergartens and Primary Schools (Section 4 of Act no. 243/2000) – Year 2023 | Ministry of Finance of the Czech Republic].

(iii) Act no. 133/2000 on population records, as amended ("Population Records Act")

Permanent residence

41. Places of permanent residence and their registration are governed by section 10 *et seq.* of the Population Records Act. "Place of permanent residence" means the address where a citizen of the Czech Republic resides, as chosen by that citizen. A citizen may have only one place of permanent residence, which must be in a building that is marked with a conscription number, a registration number, and/or a house number under special legislation and that is intended for housing, accommodation or private recreation.

42. Citizens wishing to notify a change in their place of permanent residence must provide proof of ownership of the unit or house, proof of the right to occupy the unit, or officially certified written confirmation from an authorised person consenting to the notification of a change in the place of permanent residence. An authorised person is understood to be a person who is authorised to occupy the building or is the operator of the accommodation facility where a citizen is registering for permanent residence. Such confirmation is not required if the authorised person confirms their consent on the permanent residence registration form in front of a registration officer.

43. Sections 10(5) and 12 of the Population Records Act provide that a citizen may register their permanent residence at the address of a municipal authority, i.e. at the registration office, only in cases prescribed by law, which include the preceding revocation of their place of permanent residence, for example due to the cessation of the citizen's right of occupancy of such building. The registration office decides whether to remove information on a place of permanent residence at the request of the owner or other authorised person.

(iv) Act no. 117/1995 on State social support, as amended ("State Social Support Act")

Child benefit

44. Sections 17 to 19 of the State Social Support Act provide that a family is entitled to child benefit if its income does not exceed 3.4 times the family's subsistence level. The monthly amount of child benefit is CZK 830 for a child aged up to 6 years and CZK 970 for a child aged 6 to 15 years. Child benefit is increased by CZK 500 if any of the jointly assessed persons has income from gainful employment or certain social benefits, including unemployment benefit and a retraining allowance.

(v) Act no. 111/2006 on assistance for those in material distress, as amended ("Assistance in Material Distress Act")

45. Section 2 provides that a person is in material distress if they or their family do not have sufficient income and their overall social and financial

circumstances do not enable them to meet their basic living needs at a level that remains acceptable to society under the conditions laid down in this Act. A person who does not demonstrably make an effort to increase their income through their own efforts is not deemed to be in material distress.

(a) Subsistence allowance

46. Section 21 *et seq.* provides that a subsistence allowance is a basic form of assistance in material distress that helps a person or family with insufficient income. That person or family is entitled to this allowance if, after the deduction of reasonable living expenses, their income is below the subsistence threshold. The subsistence threshold is set for each person individually, based on an assessment of their efforts and opportunities. In particular, the opportunity to increase income through their own work, through the proper exercise of entitlements and claims, or through the sale or other use of their assets is assessed. The individual subsistence thresholds of a family's members are aggregated to determine its subsistence. The subsistence threshold is derived from the minimum standard of living and subsistence levels.

(b) Housing supplement

47. Section 33 *et seq.* provides that a housing supplement is a material distress benefit intended to address a lack of income to cover housing costs where a person or family's own income, including the housing allowance from the State social support system, is insufficient. The amount of a housing supplement is calculated in such a way that, after paying justified housing costs (i.e. rent, housing-related services, and energy supply), the person or family is left with their subsistence threshold.

(c) Emergency assistance

48. Emergency assistance is a one-off benefit granted under section 36 *et seq.* to persons who find themselves in situations that need to be addressed immediately. One of these situations is a lack of funds to cover justified costs incurred in connection with the education or recreational pursuits of dependent children and to cover essential activities related to the social and legal protection of children. This benefit may be granted repeatedly during a calendar year up to a maximum of 10 times the individual's subsistence level.

IV. RESPONSE TO THE COMPLAINANT ORGANISATION'S CLAIMS

(A) INTRODUCTORY REMARKS

49. The Government point out, first of all, that Article 16 of the Charter does not commit a Party to any specific results, but obliges it to adopt such means as will ensure sustained progress towards achieving the objectives set out in the Charter.

50. In light of the above obligations arising from Article 16 of the Charter, the Government will submit, below, that the Czech Republic is taking the steps necessary to ensure access, within a reasonable time frame, to affordable and high-quality preschool education for all children, irrespective of their socio-economic status. They will demonstrate that they are attentive to needs specific to Roma and socially disadvantaged children and that they are seeking to identify and remove barriers that impede their access to preschool education. In their arguments, the Government will focus on children between the ages of three and six, i.e. the age range to which the complainant organisation's collective complaint relates.

(B) PARTICIPATION OF CHILDREN IN PRESCHOOL EDUCATION

51. As can also be inferred from the foregoing overview of national legislation (see §§ 13–38 above), preschool education is organised for children aged from two to (as a rule) six years (see § 20 above). Preschool education is compulsory for children from the age of five (see § 25 above). From the age of three, children have a legal right to be admitted to kindergarten (see § 25 above). A municipality, as a founder of kindergartens, is obliged to ensure that conditions are in place to provide preschool education to children in its territory who reach at least three years of age before the start of the school year, insofar as their place of permanent residence is in the given school district (see 14 above).

(i) Compulsory preschool year

52. Information from the Ministry of Education, Youth and Sports ("MEYS") shows that 113,389 children attended compulsory preschool education in the 2022/2023 school year, a figure equivalent to 98.27% of all five-year-olds in that year (see Enclosure 1 to these Observations).

53. Compulsory preschool attendance was introduced from the 2017/2018 school year in response to the judgment rendered in *D.H. and Others v. the Czech Republic* (no. 57325/00, judgment of the Grand Chamber of the European Court of Human Rights of 13 November 2007) with a view to increasing the participation of Roma and, more generally, socially disadvantaged children in preschool education in a bid to support them in coping with subsequent levels of education.

54. In order to chart and describe the specific impacts of, and obstacles to the introduction of, compulsory preschool education, the MEYS commissioned research entitled "*Evaluation of the impacts of introducing a compulsory final year of preschool education*",³ which was conducted between 1 December 2018 and 30 November 2021. Contrary to the complainant organisation's allegations

³ Závěrečná zpráva výzkumu „Ověření dopadů zavedení povinného posledního ročníku předškolního vzdělávání“ [title in translation: Final Report on the Evaluation of the Impacts of Introducing a Compulsory Final Year of Preschool Education] is available at <https://www.edu.cz/vysledky-vyzkumu-overeni-dopadu-zavedeni-povinneho-posledniho-rocniku-predskolniho-vzdelavani/>.

(see § 88 of the collective complaint), the findings of the research are publicly available. The research explored stakeholders' views on the impact of the introduction of compulsory preschool education on children in socially excluded communities. Although this research was blind to the ethnicity of the children and pupils, its findings can be regarded as generally relevant to Roma children and pupils. The study targeted children living in socially excluded communities, which generally have a distinct Roma profile.

55. According to the *Final Report on the Evaluation of the Impacts of Introducing a Compulsory Final Year of Preschool Education* ("the Final Report"), in a questionnaire survey conducted among directors of kindergartens educating children from socially excluded communities, more than a quarter of the directors (28%) reported that the introduction of compulsory preschool education had improved the attendance of socially disadvantaged children. Of the directors of the 35 kindergartens that teach a large proportion of children from socially excluded communities, a majority (57%) believe that attendance among socially disadvantaged children has improved.

56. Kindergarten directors say that the greatest benefit of making the final year of preschool education compulsory is that children are more prepared for the start of compulsory school attendance, noting that such improved preparedness is particularly evident among children who attend kindergarten regularly. Their preparedness is improved because of better psychomotor development and the acquisition of basic habits important for successful school attendance. It is also important to acquire social skills, forge relationships, get into the habit of communicating with peers, and cultivate a pattern of respect for the teacher's authority.

57. According to the Final Report, there was a significant increase in the proportion of children enrolled in compulsory preschool education in structurally disadvantaged regions. In the Karlovy Vary Region, the share of five-year-old children in compulsory preschool education in kindergartens rose from 82.6% in the 2016/2017 school year to 92.3% in the 2017/2018 school year, an almost 10% increase. In the Ústí nad Labem Region, the proportion of five-year-old children in kindergartens went up from 86.4% in the 2016/2017 school year to 91.5% in the 2017/2018 school year. Considering the differences in the composition of the population in these regions, the Final Report suggests that the measure has brought children from socially disadvantaged backgrounds into kindergartens, a fact confirmed by respondents in both the quantitative and qualitative surveys.

58. The effect that the introduction of compulsory final-year preschool education has had on participation in preschool education is also evident from MEYS estimates of the number of children in preschool education (see Enclosure 1 to these Observations), which show that the proportion of children engaged in compulsory preschool education has been steadily increasing in recent years. As noted above, 98.27% of children are currently enrolled in compulsory preschool education, an increase of 4.5% since 2016.

59. Based on the above, 1.73% of five-year-old children, i.e. approximately 2,041 children, did not attend compulsory preschool education in the 2022/2023 school year (see Enclosure 1 to these Observations). However, as these figures do not factor in the ethnicity or socio-economic status of the children, it is not possible to determine conclusively the exact proportion of socially disadvantaged children or Roma children who are not receiving compulsory preschool education. Nevertheless, information from the Czech School Inspectorate (“the CSI”) relating to preschool attendance in the 2017/2018 school year suggests that these may indeed be children from socially and economically disadvantaged backgrounds.⁴ Other groups of lower-participating children included children whose parents preferred a different method of preschool preparation, for example: independently, with the help of grandparents, in cases where the mother was also on maternity or parental leave, or via inclusion in alternative groups (playgroups and other types of establishments not included in the register of schools and school facilities).

(ii) Lower years

60. Although there are fewer children in the lower years of kindergartens, the proportion of children in each age group is still high. MEYS information (see Enclosure 1 to these Observations) shows that, in the 2022/2023 school year, there were 107,031 four-year-olds attending kindergarten, i.e. 90.93% of the population of four-year-olds. In the same school year, the number of three-year-olds in kindergartens stood at 93,361, accounting for 83.73% of three-year-olds in the population.

(iii) Share of Roma in preschool education

61. To determine the participation rate of Roma children in preschool education, kindergarten directors’ qualified estimates of their representation in kindergartens are used. According to qualified estimates for the 2022/2023 school year (see Enclosure 2 to these Observations), the proportion of Roma children in compulsory preschool education, relative to all pupils in that year, was 2.8%, or 3,085 children. By comparison, in primary schools the proportion of pupils who are Roma is around 3.5%.

62. However, in addition to regular kindergarten classes, Roma children over the age of five may also receive their compulsory preschool education in a preparatory class at primary school. In 2022/2023, these classes were attended by 1,115 Roma children. Because Roma children are not recorded by age in the reporting of preparatory classes, it cannot be determined exactly how many of

⁴ *Tematická zpráva České školní inspekce: „Dopady povinného předškolního vzdělávání na organizační a personální zajištění a výchovně-vzdělávací činnost mateřských škol za období 1. pololetí školního roku 2017/2018“* [title in translation: Thematic Report of the Czech School Inspectorate: The Impact of Compulsory Preschool Education on the Organisation, Staffing and Educational Activities of Kindergartens in the First Semester of the 2017/2018 School Year] is available at: <https://www.csicr.cz/cz/Aktuality/Tematicka-zprava-Dopady-povinneho-predskolniho-vzd>.

them are five-year-olds and how many are six-year-olds whose compulsory school attendance has been deferred. A certain number of Roma children attending preparatory classes instead of kindergartens in order to complete their compulsory preschool year may thus have been omitted from the above-mentioned proportion of five-year-old Roma children attending kindergartens as part of their compulsory preschool attendance. The overall proportion of five-year-old Roma children engaging in compulsory preschool attendance may therefore be higher and closer to their percentage in primary schools.

63. The proportion of Roma children in the lower years in the 2022/2023 school year was 1.4%. The total number of Roma children in kindergartens during that school year was 6,972, or 1.9% of all pupils in kindergartens.

(iv) Potential barriers in access to preschool education for Roma and socially disadvantaged pupils

64. The Government recognise that the proportion of Roma children in preschool education is lower than that of children from the majority population, especially in the lower years of kindergarten. CSI reports that children with social disadvantages may face similar obstacles. However, the Government are not sitting idle in this matter. On the contrary, they are taking active steps to identify barriers that may, in practice, prevent certain Roma children or socially disadvantaged children from accessing preschool education, and to take measures that will improve their preschool preparation.

65. This goal is consistent with one of the key objectives of the Czech Republic's Education Policy Strategy up to 2030+ ("*the Education Policy Strategy 2030+*"),⁵ which is to achieve equal access to education. It identifies, *inter alia*, a focus on measures designed to enhance the preschool preparation of children from socio-economically disadvantaged backgrounds as essential to achieving this objective. It considers the preschool preparation of children an essential prerequisite if they are to cope successfully with subsequent stages of education.⁶

66. It was within the scope of implementing the Education Policy Strategy 2030+ that the MEYS commissioned the aforementioned *Evaluation of the Impacts of Introducing a Compulsory Final Year of Preschool Education* (cf. § 54 *et seq.* above). Besides examining the impact of introducing a compulsory preschool year, one of the primary objectives of this research was to analyse the real reasons why some children did not attend preschool education.

⁵ The Education Policy Strategy of the Czech Republic up to 2030+ is one of the core strategy documents drawn up by the MEYS. It sets the path to be followed by education policy in the education system of the Czech Republic in the long term on the basis of strategic objectives to address the problems identified. The full text of the Education Policy Strategy 2030+ is available here: <https://www.edu.cz/strategie-msmt/s2030/implementacni-karta-podpora-predskolniho-vzdelavani/>.

⁶ *Ibid.*, p. 44.

67. According to the Final Report, the following reasons were among those identified as possible obstacles preventing access to preschool education:⁷

- (i) *awareness* – many parents who live in socially excluded communities are not properly informed that it is compulsory to attend a year of preschool education; some do not know that kindergarten is also intended for Roma children, or that the children of unemployed parents may attend; since they did not attend kindergarten themselves, they have no idea about the normal regime and running of preschool education; further, many parents do not even realise that a new obligation has been imposed on them; even if they have heard about the obligation of compulsory preschool attendance, it does not mean that they have information about the time frames associated with the obligation, e.g. they do not know that they have to go through enrolment procedure, are not familiar with the concept of catchment areas, do not know their rights, such as the right to enrol their child in a kindergarten in the catchment area for their place of permanent residence, or do not know the enrolment dates;
- (ii) *physical accessibility to kindergartens* – in some locations, there are no kindergartens within a reasonable walking distance;
- (iii) *kindergarten capacities* – lack of kindergarten capacity in some places can make it particularly difficult to admit children who move during the school year; after the enrolment procedure has ended, kindergartens accept younger children to fill any vacant places, but their enrolment in kindergarten cannot be cancelled in order to accommodate a newly arriving five-year-old, so places may not be available for new arrivals; lack of capacity may also result in an offer of education according to an individual plan;
- (iv) *discriminatory criteria for admission to kindergarten* – it has been observed that some kindergartens, in their admission procedures for lower years, take decisions that are based on discriminatory criteria, such as the requirement of full-day attendance at kindergarten, which may make it difficult to start preschool education earlier than in the compulsory preschool year and may hinder the process of ingraining attendance habits among socially disadvantaged families;
- (v) *payments for meals and other fees* – compulsory preschool education may be exempt from tuition fees, but meals still have to be paid for; some kindergartens are not familiar with schemes enabling socially disadvantaged children to have free meals.

(C) *SUPPORT FOR ROMA AND SOCIALLY DISADVANTAGED PUPILS IN THEIR ACCESS TO PRESCHOOL EDUCATION*

68. Relevant strategy papers devoted to education and social policy respond to the problems outlined above. In line with the Education Policy Strategy 2030+ and building on the above-mentioned research, further measures designed to encourage the greater participation of children of all ages in preschool education are to be proposed and implemented. The Czech Republic is already taking action and committing substantial funds to support the participation of Roma and socially disadvantaged children in preschool education. The support currently being provided to these children and their families will be described below.

⁷ Final Report on the Evaluation of the Impacts of Introducing a Compulsory Final Year of Preschool Education, pp. 141–152.

Contrary to the complainant organisation's claims (see § 85 of the collective complaint), this support is aimed not only at increasing attendance within the framework of the compulsory preschool year, but also at increasing attendance in the lower years.

(i) Education Policy Strategy 2030+

69. The Education Policy Strategy 2030+, approved by a Government resolution on 19 October 2020, is a fundamental MEYS document that defines the work, objectives and instruments of education policy for the next ten years (2020–2030+).

70. One of the main objectives of the Education Policy Strategy 2030+ is to reduce inequality in access to quality education and to make it possible to maximise the potential of children, pupils and students. For the Educational Policy Strategy 2030+'s initial implementation period, running from 2020 to 2023, two of the five implementation cards relate to preschool education and are aimed at delivering on individual strategic objectives.

71. The goal of the *Support for Preschool Education* implementation card is to improve the quality of preschool education and to engage ever more children in it. Factors singled out as important are the motivation of legal guardians who have not included their children in preschool education over the long term and the strengthening of cooperation between the family and the school. The increase in children's participation in preschool education from the age of three is justified by the fact that it will maximise their potential and significantly affect their academic success later on.

72. One of the components under this objective is an analysis of the reasons why certain children do not enter preschool education. The initial analysis was carried out as part of the research mentioned above – *Evaluation of the Impacts of Introducing a Compulsory Final Year of Preschool Education*.

73. Another activity is interdepartmental cooperation to support communication with legal guardians. This responds primarily to the need for parents to be better informed about their rights, options and obligations when involving their children in preschool education. The work of school assistants, social workers and communication mediators is intended to be one of the main tools. The experience of stakeholders who have been successful in involving families and children at risk of social exclusion in education is to be harnessed in order to increase the proportion of children attending kindergarten through an integrated approach. Plans are in place to provide methodical guidance and systematic training for teaching staff on the subject of cooperation with parents and other external partners of schools using contact-based and online forms of educational activities. The educational and socialising role of kindergartens and the importance of involving children in preschool education in order to develop the basics of the skills needed for a successful civic, professional and personal life

later on are to be publicised and reinforced. Methodology on how to communicate with children's legal guardians has already been drawn up as part of this activity.⁸

74. One of the activities intended to support preschool education is the securing of the necessary capacities. The aim of this activity is to assist founders in meeting their legal obligation to ensure that the necessary preschool education capacity is in place, in particular by properly defining the criteria and conditions of subsidy schemes and calls under the Integrated Regional Operational Programme 2021–2027. Information on the set-up and uptake of these subsidy schemes aimed at increasing the capacity of kindergartens is presented in Enclosure 3 to these Observations.

75. Another relevant card focusing on preschool education is *Disparities*, which aims to improve the quality of education in structurally disadvantaged regions, with an emphasis on increasing the participation of children in preschool education, and methodological support for schools educating a high proportion of socially disadvantaged pupils, and for their founders. This need is justified by a persistent problem – the high dependence of a child's educational outcomes on the socio-economic cultural status of the child's family and the dependence of educational trajectories on parental aspirations. According to the card, preschool education plays an important role in ironing out inequalities in education, which, according to foreign studies, significantly influences the building of foundations for the successful integration of children from disadvantaged backgrounds into primary schools and their future success in life. One of the measures under this implementation card is *Increasing the preschool attendance of children in the Karlovy Vary and Ústí nad Labem Regions*, where educational outcomes diverge from other regions in a negative way and where families with low socio-economic status can be found. However, since there is a small problem with kindergarten capacities here, other ways of involving a large number of children, often from disadvantaged backgrounds, in preschool education must be considered. The measures undertaken in the first implementation period are intended to break down the objective financial barrier impeding access to education and to promote cooperation between families and schools.

76. When it comes to removing financial barriers, the coverage of meals is identified as a key factor that can help to increase children's involvement in preschool education. Kindergarten directors in particular have observed how free lunches for children from poor families have had a positive impact, with 70% of them reporting an improvement in attendance and 60% an improvement in their results. The number of poorer children in kindergartens has also increased (37%). Therefore, some children do not attend kindergarten regularly due to financial constraints.

77. In this activity, the subsidy scheme *Support for school meals for primary school pupils in the Karlovy Vary and Ústí and Labem regions* was

⁸ Methodology on how to communicate with legal guardians of children at risk of academic failure, including examples of good practice, is available at: https://www.edu.cz/wp-content/uploads/2023/07/Metodika-pro-MS-komunikace_20.4.2023.pdf.

implemented. This scheme was extended in 2022 in scope, to include general support for increasing children's participation in preschool education, and further extended regionally in 2023 to all other regions.

78. Another key measure is cooperation between families and schools in the field of preschool education. In this context, there is a need to raise parents' awareness of the benefits of preschool education for their children and their active involvement in education. As these activities tend to be arranged by non-governmental organisations, close cooperation with local NGOs is deemed to be necessary in order to motivate parents of children who do not attend preschool education and to make them aware of that it is possible to cover the costs of meals, and that field social work is available. Support is also to be channelled into the coordination of activities with local stakeholders (school, founder, child protection agency, NGOs) in areas such as case management, work with families, and social mobilisation services.

79. These activities are currently supported in relation to the integration of the Roma minority through the MEYS subsidy scheme *Support for the Integration of the Roma Minority*. In the pursuit of the above-mentioned implementation card, the objective of the call is to be extended to include the integration of children, pupils and young people from socio-economically disadvantaged families through NGO projects, support for children's education, preparation for successful school attendance, support for cooperation between families and schools, and action to prevent pupils from dropping out of education.

80. All of the above objectives and measures are pursued according to a set timetable.⁹ Further details on the set-up and uptake of the subsidy schemes run on the basis of the above strategy are presented in the "Subsidy schemes" subsection below (see §§ 86–92).

(ii) Roma Integration Strategy 2021–2030

81. The Roma Integration Strategy 2021–2030 is another effort to boost preschool attendance. One of the specific goals of the education section is to *Increase the participation of Roma children in preschool education*. The actual measure reads as follows: (i) in cooperation with other relevant departments and NGOs, establish a systemic solution for the education and care of Roma children from the ages of two to four; (ii) provide backing for the participation of Roma children in preschool education via a range of mechanisms that are responsive to community work, family conditions and the educational needs of Roma preschool children; (iii) define and organise coordinated cooperation to support the participation of Roma children in preschool education as part of the agenda of child protection units, the agenda of entities providing preschool education in accordance with the Education Act, the agenda of non-profit sector organisations,

⁹ The pursuit of the preschool education implementation card is explained here: <https://www.edu.cz/strategie-msmt/s2030/implementacni-karta-podpora-predskolniho-vzdelavani/>.

and the agenda of other entities providing field social services to families of preschool-age children.

82. The most recently available report on the follow-through of individual measures under the Roma Integration Strategy, covering 2022, indicates that all of the above measures have been gradually implemented or have been scheduled for implementation in 2023 (for more information on the pursuit of the Roma Integration Strategy, see Enclosure 4 to these Observations).

(iii) Social Inclusion Strategy 2021–2030

83. The Social Inclusion Strategy 2021–2030 also seeks to increase access to preschool education by providing comprehensive, interdisciplinary early pedagogical care for children up to three years of age from families that are excluded, at risk of exclusion, or lacking stimulation, and by supporting preschool education, nurture and care. Relevant performance indicators include: (i) the organisation of sufficient capacity in kindergartens to improve the accessibility of educational care services for preschool children from socially excluded communities; and (ii) the creation of incentives to foster interest among parents from socially excluded communities in involving their children in preschool education in the lower years.

84. The latest report on the implementation of the Social Inclusion Strategy 2021–2030, covering 2021, observes that all these measures are being carried out. The MEYS stated that, to ensure kindergartens have sufficient capacity, the number of kindergartens increased year on year from 5,314 to 5,344. The number of children in kindergartens also rose year on year, climbing by 2,886. The Integrated Regional Operational Programme covers the development of kindergartens, with a total of CZK 3,544,943,140 approved for the 2021–2027 period.

85. To increase the interest of parents from socially excluded localities in involving their children in preschool education the MEYS implemented a call for subsidies *Support for School Meals for Kindergarten Children in the Karlovy Vary and Ústí nad Labem Regions*, as one of the tools targeting an increase in the proportion of children in preschool education based on the priorities of the Education Policy Strategy 2030+ (see § 87 below). Besides support for school meals, this latest call for applications has also been expanded in the following years to include activities supporting the all-round personal development of socially disadvantaged children and children whose families are experiencing chronic or temporary financial hardship. Additionally, initiatives aimed at establishing cooperation with the family and removing other financial barriers (e.g. transportation to kindergartens, the necessary supplies) are to be supported. Once it has assessed the implementation of this call in 2023, the MEYS decided on extending the call to other regions (see § 87 below). A comprehensive training module focusing on factors specific to Roma children was also created as part of the system of further teacher training. It consisted of three 16-hour training

programmes for kindergarten and primary school teachers, and had 48 participants.

(iv) Subsidy schemes

86. As the above-mentioned strategy documents also show, the Government view the dismantling of financial barriers as one of the key factors that can help to increase children's participation in preschool education. A number of subsidy schemes are designed to cover meals and other costs associated with preschool attendance for children aged three and over.

87. For several years, the MEYS has been providing support by means of subsidy schemes. Their impact is continuously assessed and adjustments are made in response to evaluations and feedback from beneficiaries and experts in the regions (e.g. regional Roma affairs coordinators). One of these schemes is *Support for the Integration of the Roma Minority*, aimed at support for the preschool preparation of Roma children, cooperation between families and schools, support for leisure activities, and activities encouraging cooperation between Roma and representatives of the majority population (for specific allocations, see Enclosure 5 to these Observations).¹⁰ Another is *Support for School Meals for Kindergarten Pupils in the Karlovy Vary and Ústí nad Labem Regions in 2021*, which targeted support for the proper nutrition of children (eligible applicants were NGOs). This was then expanded in scope and eligible applicants (*Support to Increase the Participation of Children in Preschool Education in the Karlovy Vary and Ústí nad Labem Regions in 2022*) and in the year of 2023 was further extended to other regions (*Support to Increase the Participation of Children in Preschool Education in 2023*).¹¹ For 2023, the subsidy scheme *Support for the Participation of Children in Preschool Education* has been announced with an allocation of CZK 20 million. For 2024, the annual allocation is reduced to CZK 10 million. The subsidy covers the support of participation in preschool education for socially disadvantaged children and children whose families are experiencing chronic or temporary financial hardship. The purpose of the subsidy is to provide preschool meals for children, with support also channelled into activities encouraging the participation of socially disadvantaged children and children whose families are experiencing chronic or temporary financial hardship (for information on the uptake in 2022 and 2023, see Enclosure 5 to these Observations).

88. Measured by the volume of funds provided, the most significant source of support in the field of preschool education is the Operational Programme Johannes Amos Comenius (OP JAC). Kindergartens most often use simplified reporting projects – “templates” – to provide support for socially disadvantaged or

¹⁰ The individual calls can be found at: <https://www.msmt.cz/vzdelavani/zakladni-vzdelavani/integrace-romske-komunity?highlightWords=Podpora+integrace+romsk%C3%A9+men%C5%A1iny>.

¹¹ The individual calls can be found at: <https://www.msmt.cz/vzdelavani/predskolni-vzdelavani/dotace-a-granty>.

Roma pupils. On the basis of a pre-defined algorithm for calculating the allocation per school, schools can draw on funds to cover, for example, staffing support in the form of a school assistant, a school remedial teacher or psychologist, a social pedagogue, or the training of kindergarten teaching staff. Up to February 2023, approximately CZK 1.1 billion had been claimed by kindergartens in the relevant areas.

89. Under the National Recovery Programme (NRP, Component 3.2.2), schools can draw on funds to support the early adaptation of socially disadvantaged pupils to the school environment. Children attending kindergartens that are included among selected schools with an above-average proportion of socially disadvantaged pupils may also be supported under this programme.

90. In addition, a total of 9,749 children attending 1,204 school facilities received assistance intended to cover the cost of their lunches in the 2022/2023 school year on the basis of a call under the Operational Programme Employment+ (OPE+) (figures from August 2023). OPZ+ Call 26, *Food aid for children in social need (1)*, announced on 28 March 2023 with an allocation of CZK 300 million, was intended to cover school meals for kindergarten children, primary and secondary school pupils, and students in school care and residential facilities such as youth homes and boarding schools, or at school catering facilities, whose families are at risk of poverty and material or food deprivation or are experiencing financial hardship. To date, 14 applications for free school lunches have been approved or are already being executed (all 14 regions have applied for funding) and more than CZK 285 million has been distributed for the next two school years. The applications submitted indicate that the support is intended for an estimated 19,623 children. A second (follow-up) call, *Food aid for children in social need (2)*, is planned for announcement by January 2025, with an allocation of CZK 500 million. The project *Food and Material Assistance to the Most Deprived III*, funded by the OPZ+ and implemented by the MLSA, aims to provide needy families not only with food aid, but also with basic school supplies.

91. Finally, two calls were announced for kindergartens under the Integrated Regional Operational Programme to ensure that kindergartens have the capacity to place children up to three years of age and older children (see § 74 above).

(D) AFFORDABILITY

92. The Government believe that legislation and programmes available to provide financial support to children facing financial barriers, taken together, ensure that they have effective access to preschool education. Current programmes are regularly evaluated and their set-up improved in response to individual objectives set out in strategy papers.

(i) Fees for preschool education

93. In terms of fees for actually attending kindergarten, compulsory preschool education in schools of public founders is free. Attendance in the lower

years of kindergarten is subject to a fee (§ 34 *et seq.* above). The impact that fees have on the accessibility of preschool education depends, firstly, on the overall setting of the amount of the fee and, secondly, on the possibility of fee exemptions, to which there is a legal claim if the conditions set out below are met.

94. As of 1 January 2024, the amount of the fee for preschool education is set by the founder, typically the municipality. Rules governing the setting of fees and exemptions from fees are laid down in section 6 of Decree no. 14/2005. There is now a cap on the monthly amount of the fee, which must not exceed 8% of the monthly basic minimum wage rate.

95. Section 6(6) of the above Decree provides that the following persons are exempt from the fee for preschool education: (i) a child's legal guardian who receives a recurrent material distress benefit (see §§ 45–47); (ii) the legal guardian of a dependent child if that child is entitled to an increased care allowance (see § 44 above); (iii) a parent who is entitled to an increased care allowance on account of caring for a dependent child; or (iv) a natural person who receives foster care benefits for caring for a child. As of 1 September 2024, the legal guardian of a dependent child who is entitled to child benefit (see § 44 above) will also be exempt from fees. This extension means that exemptions from preschool fees will now depend solely on the family's total income, and will not be conditional on the parents' efforts to increase their income through their own efforts, either through gainful employment or through the receipt of certain social benefits such as unemployment benefit or a retraining allowance.

96. The Government thus dispute the complainant organisation's claim (see §§ 75–79 of the collective complaint) that the fee exemption is inadequately addressed in relation to children attending lower years. Furthermore, fees are not exempted at the discretion of the kindergarten director. There is a legal entitlement to exemptions if the conditions mentioned above are met. A kindergarten director has the discretion to waive the fee even if the legal conditions stated above are not met.

(ii) Financial support for meals and other incidental expenses

97. Government policies also aim to cover incidental expenses related to preschool attendance, such as the provision of preschool meals for children. Activities to support the participation of socially disadvantaged children and children whose families are experiencing financial hardship are also promoted. Support is intended not only to increase participation in the compulsory preschool year, but also to increase attendance in the lower years. The Government refer to §§ 68–91 above for a more detailed description of the Government's policies, subsidy schemes and other measures to encourage increased participation in preschool education by Roma and socially disadvantaged children.

98. Families with children in defined social situations are also financially supported by the general system of non-insurance social and family benefits. Roma and disadvantaged children, as well as all children living in families whose income is less than 3.4 times the family's subsistence minimum, are entitled to

child benefit from the State social support system (see § 44 above). The amount of monthly child benefit is scaled according to the age of the child and stands at CZK 830 for a child under 6, CZK 970 for a child aged 6 to 15, and CZK 1080 for a dependent child aged 15 to 26. Families with income from gainful employment or certain social benefits receive CZK 500 extra in child benefit. Child benefit can be used to pay for fees, meals and voluntary activities as a way of ensuring that disadvantaged children have access to preschool care. Under the system of assistance in material distress, persons and households whose incomes and social and financial circumstances do not allow them to meet their basic living needs at a socially acceptable level may apply for recurrent benefits such as the subsistence allowance and the housing supplement and the one-off benefit of emergency assistance (see §§ 45–48 above). One of the grounds on which one-off emergency assistance may be granted is a lack of funds to cover justified costs incurred in connection with the education or recreational pursuits of dependent children and to cover essential activities related to the social and legal protection of children. The benefit, ensuring that preschool care is accessible, can be granted up to the amount of these costs, repeatedly during the calendar year up to a maximum of 10 times the amount of the individual's subsistence level, i.e. up to CZK 48,600.

99. Social work geared towards preventing poverty and social exclusion is an integral aspect of the system of assistance in material distress. Social work, including social counselling, is carried out by social workers from the Labour Office, and especially by social workers in municipalities, with the aim of fostering conditions for the best possible use of resources in addressing the distressing social situation of disadvantaged families.

(E) ACCESSIBILITY

100. The Education Act requires municipalities to create conditions for the preschool education of children preferentially admitted to kindergartens within their catchment areas (see §§ 14–17 above). Such “preferentially admitted” children are those who will be at least three years of age before the start of the school year, provided that their place of permanent residence is in the given school district. Preschool education is compulsory for children who will be five years old by the start of the school year. A municipality that cannot provide preschool education in its own kindergarten is obliged to arrange for the preschool education of a child in a kindergarten established by another municipality or a union of municipalities (see § 17 above).

(i) Capacity

101. As at 30 September 2022, there were 5,374 kindergartens established in the Czech Republic, educating 369,205 children. From the aspect of founders of kindergartens, municipalities accounted for the largest number with 4,785 kindergartens, followed by the private sector with 841 kindergartens, regions with 84 kindergartens, churches with 50 kindergartens, the MEYS with 7 kindergartens, and another government department with 1 kindergarten.

102. The total capacity of places in kindergartens is currently 424,482. As at 30 September 2023, 364,491 children attended kindergarten. There were 59,991 vacancies. Vacancies are recorded across the country, with the average occupancy rate of kindergartens in individual municipalities with extended powers standing at 86.6% (see Enclosure 6 to these Observations). There is no district of a municipality with extended powers where capacity has been filled to more than 95%. A more detailed MEYS 2022 analysis of the capacity of kindergartens in the Czech Republic shows that 19% of kindergartens were 100% full as at 30 September 2022. The overall summary reports that 34% of kindergartens are between 90% and 99% full and 19% of kindergartens are at full capacity, i.e. 100%.

103. The capacity of kindergartens appears to be sufficient. Since preschool education is organised for children aged from two to (as a rule) six years, full capacity in kindergartens does not mean that there was insufficient capacity for children who had a right to be admitted. In the 2022/2023 school year, the proportion of under-three-year-olds in kindergartens was 8.7%. However, a problem may arise with respect to kindergartens that are at full capacity if there is a need for later enrolment in kindergarten during the course of the year.

104. Increased preschool education capacity is therefore one of the initiatives pursued as part of the Education Policy Strategy 2030+. The necessary capacities are organised mainly via subsidy schemes and calls for proposals under the Integrated Regional Operational Programme 2021-2027 that are intended to increase the capacity of kindergartens in localities where this is needed (see § 74 above).

(ii) Process of preschool admission and safeguards against arbitrariness

105. Decisions on whether or not to admit a child to preschool education are issued by a kindergarten director in admissions procedure pursuant to Section 165(2)(b), read in conjunction with Section 34, of the Education Act. It also sets the criteria for admission. Applications must be submitted by the kindergarten enrolment deadline, which takes place between 2 and 16 May each year. The specific date and place of enrolment is announced by the kindergarten director in consultation with the founder, which must be published well in advance, in a manner that is usual in the local area, usually on the building or the fence of the kindergarten premises, on the founder's notice board and the website of the kindergarten and the founder. Obligations and recommended procedures regarding enrolment in preschool education are summarized in the MEYS's methodological material *Administrative Procedure Step by Step – Enrolment in Preschool Education*, which is intended primarily for directors of kindergartens.¹² As a recommendation, the methodological material adds that information on all

¹² The MEYS's methodological material „*Administrative Procedure Step by Step – Enrolment in Preschool Education*“ is available at: <https://www.edu.cz/methodology/spravni-rizeni-krok-zakrokem-zapis-k-predskolnimu-vzdelavani/>.

the possible ways of applying and on the admission criteria should be published in the same way. The publication of this information serves to ensure the transparency and objectivity of the admission process. Further, children may also be admitted to the kindergarten during school year. The MEYS is also working to increase the awareness of legal representatives of the enrolment process into preschool education, especially in localities at risk of social exclusion. To this end, it has, among other things, prepared information leaflets containing basic information on preschool education and enrolment for use by social service workers and other people involved in supporting socially disadvantaged families.¹³

106. The kindergarten director must proceed in accordance with the statutory criteria in the admissions procedure. By law, they must give priority to admitting children who are legally entitled to admission, i.e. children from the age of three with the condition of permanent residence in the catchment area of the kindergarten up to the permitted capacity of the school as indicated in the school register. Moreover, preschool education is compulsory for children from the age of five. In the event that these children cannot be admitted for capacity reasons, the municipality in which the child has a permanent residence is obliged to provide a place for the child in another kindergarten established by the municipality or a union of municipalities. A child from the age of two may be admitted, but children under the age of three have no legal right to be admitted.

107. According to the MEYS, additional subsidiary criteria cannot be set for cases where the number of “catchment” children is greater than the school’s capacity, as all these children have the same right to admission. Criteria may be applied to out-of-catchment children, but even in this case objective non-discriminatory conditions must be adopted. For example, an age criterion can be set for out-of-catchment children (with older children being admitted before younger ones). These criteria are in the hands of kindergarten directors and are not directly regulated by law. For the sake of completeness, for applicants who are not yet required by law to attend preschool education, the application must be accompanied by proof that the child has received the prescribed regular vaccinations.

108. From a procedural point of view, one safeguard against arbitrariness on the part of the director is decision-making in administrative proceedings. The only party to the proceedings is the child, who is represented by their legal guardian. In cases where a child is not admitted to kindergarten, an individual decision to that effect is issued. An appeal may be lodged against the decision within 15 days of service; appeals are heard by the regional authority, after which judicial review is possible. Admissions procedure is generally subject to audit by the CSI, which also carries out inspections in response to complaints and petitions. Monitoring of the kindergarten director’s observance of legislation is also a matter for the founder.

¹³ Available at: <https://www.edu.cz/methodology/letaky-k-informovani-zakonnych-zastupcu-o-zapisech-deti-do-ms/>.

(iii) Requirement of permanent residence and enrolment

109. The place of permanent residence and the age of the child as eligibility criteria for admission to kindergarten and their connection with enrolment in kindergarten are designed to make it possible to predict and organise the kindergarten capacity needed for the citizens of the municipality. The Education Act provides that the municipal authority of a municipality in whose territory a kindergarten is located furnishes that school with a list of children eligible for admission well in advance of the enrolment deadline.

110. Under the Education Act, a kindergarten director is obliged to prioritise the admission of children reaching at least the age of three before the start of the school year, insofar as the kindergarten's capacity allows (see § 22 above). Directors are not allowed to admit an out-of-catchment child at the expense of a catchment child. A child's having their place of permanent residence in the school district is therefore the key to admission to a kindergarten where there is an overhang of children.

111. In practice, a situation may arise where a family's registered permanent residence is in a place other than where they actually live. They might explain this by claiming, for example, that the family when moving has not received consent to register their permanent residence in the new location. However, such consent to change the place of their permanent residence is not required (see § 42 above). All they need to do is provide proof of legitimate occupancy of a dwelling, such as a tenancy agreement. In many instances, the main problem may therefore be a lack of awareness. Families who are unable to prove that they are entitled to use their dwelling may register the address of the municipal authority as their place of permanent residence (see § 43 above). However, catchment districts are set up in such a way that the address of the municipal authority may be assigned to a catchment school which is not the school closest to the child's actual home, so this solution may not be a sufficient compensatory factor. As a result of this situation, the child may not have the right of preferential admission to the kindergarten in whose catchment area their home is located, and, at the same time, their catchment kindergarten may be too far away to enable the child's legal guardians to arrange for daily attendance there. Nevertheless, the requirement of registering permanent residence is justified, as it allows municipalities to administer the availability of preschool education in their territory and, under current conditions, there is no other suitable criterion that would make it possible to predict and organise the kindergarten capacity necessary for the citizens of the municipality.

112. The requirement of enrolment plays a role similar to that of permanent residence, in that, on the basis of current demand, it enables children to be admitted to kindergarten according to their right of priority, which is derived from the child's age and place of permanent residence. If admission to kindergarten were not conditional on enrolment by a certain date, it would be difficult to plan a kindergarten's capacity for the following year. Rather than changing the enrolment system, it would be advisable to increase efforts to raise awareness

among all families about the enrolment requirement in order for a child to be admitted to kindergarten, and about the deadlines set for this. One of the activities aimed at increasing preschool enrolment under the Education Policy Strategy 2030+ (see § 73 above) is intended to raise awareness among legal guardians about their rights and obligations.

(iv) Education according to an individual plan

113. Compulsory preschool education may also take the form of individualised education, where the child does not have to attend kindergarten on a regular daily basis. In cases where a child is to be educated according to an individual plan for the majority of the school year, the child's legal guardian is required to notify this to the director of the kindergarten to which the child has been admitted no later than three months before the start of the school year. The kindergarten director advises the legal guardian of a child who is to be educated according to an individual plan about the areas in which the child should be educated. The legal guardian is obliged to ensure that the child attends tests to verify that they have learnt the expected outcomes, which take place between the third and fourth month from the beginning of the school year, otherwise the child's individualised education is terminated.

114. The way in which the funding of kindergartens is set should act as an incentive for municipalities. The Act on the Budgetary Determination of Taxes provides that the amount of funds a municipality receives for establishing kindergartens and primary schools is connected with the ratio of the number of children and pupils attending a municipality-established school to the number of such children and pupils for all municipalities. The number of children attending school and participating in preschool education does not include children educated according to an individual plan. The funds provided to municipalities as per the budgetary determination of taxes, which it can be assumed will be used for schools' non-capital operating expenditure, thus serve, to some extent, as an incentive to increase the capacity of kindergartens and fill that capacity with in-person attendance. Nevertheless, the actual way in which these funds are used falls within the autonomous competence of the municipality.

115. A 2017 questionnaire survey conducted by the non-profit organisation People in Need (*Člověk v tísni*) revealed that in the first year in which compulsory preschool education was introduced, the fear that parents of socially disadvantaged children would be pressured to opt for homeschooling instead of standard kindergarten attendance did not materialise.¹⁴ The Final Report on the *Evaluation of the Impacts of Introducing a Compulsory Final Year of Preschool Education* does not point to abuse or excessive use of individualised education in the case of Roma or socially disadvantaged children. It does note, however, that

¹⁴ People in Need. Individualised education is not taking the place of compulsory kindergarten for children [online]. Prague: People in Need. Available at: <https://www.clovekvtisni.cz/tz-deti-si-individualnim-vzdelavanim-povinnou-materskou-skolu-nenahrazuji-4801gp>.

such education according to an individual plan may come into play when capacity is already full, for example as a result of late enrolment (see § 67 above).

116. More recent data is not currently available. Kindergarten directors' qualified estimates of the proportion of Roma in preschool education currently do not include data on the ethnicity of children who are participating in compulsory preschool education in the form of individualised education, or do not distinguish between whether compulsory school attendance is in-person or according to an individual plan. In order to verify the extent to which individualised education is used, there are plans, in response to the judgment handed down in *D.H. and Others v. the Czech Republic* (cited above), to expand the collection of this data to include information on how many children who are undertaking their compulsory preschool education via individualised studies are Roma.

(v) Status of children whose school attendance is deferred

117. A child whose compulsory school attendance is deferred continues their compulsory preschool attendance. Children granted a deferment of compulsory school attendance are preferentially admitted to primary schools' preparatory classes established under section 47(1) of the Education Act. In all cases, the head is required to inform the legal guardian of the obligation for the child to attend preschool education and of the ways in which this obligation can be met. If a child's compulsory school attendance is not deferred until a later stage, there is no right for that child to be re-admitted to preschool education in their catchment kindergarten. However, it can be inferred that the head of a primary school, considering the best interests of the child, should decide on late-stage deferment only when they can be sure that the child's education is secured after leaving the primary school, whether that takes the form of admission to a preparatory class or to a kindergarten.

(D) CONCLUSION

118. In the light of the arguments set out above, the Government submit that the Czech Republic is taking the steps necessary so that affordable, accessible and high-quality preschool education is within reach of all families and their children who wish to make use of preschool education services. In doing so, it takes into account the specific needs of Roma and socially disadvantaged children.

119. The Government recognise that the proportion of Roma pupils in preschool education is lower than that of children from the majority population, especially in the lower, non-compulsory years. They are also conscious of how important the preschool preparation of socio-economically disadvantaged children is for their success in their subsequent academic careers and the need for specific support. The Government consider the presented legislation, available programmes and implemented measures to be sufficient to ensure an effective support system for children who may face certain barriers in accessing preschool education and to prevent discrimination against them on the basis of their ethnic origin or socio-economic status. They are also prepared, in line with the

progressive nature of the rights under Article 16 of the Charter, to continue identifying the needs of the Czech population and to set appropriate measures for the coming years so as to ensure that preschool education is accessible on an equal basis to all.

OVERALL CONCLUSION

120. In the light of the foregoing, the Government of the Czech Republic, in their Observations on the complainant organisation's complaint, propose that the Committee hold that there has been no violation of Article 16 of the Charter, alone or in conjunction with the Preamble thereto.

Petr Konůpka
Government Agent
signed electronically

ENCLOSURES

1. Summary tables of the number (proportion) of children, by age, outside and in preschool education
2. Qualified estimates of the proportion of Roma in preschool education for the 2022/2023 school year
3. Information on calls under the Integrated Regional Operational Programme that are intended to increase the capacity of kindergartens
4. Information on progress under the Roma Integration Strategy
5. Allocation and uptake of subsidies aimed at promoting attendance in preschool education
6. Overview of kindergarten capacities, by municipality with extended powers

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