



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

18 June 2024

Case Document No. 5

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

**REPLY FROM THE GOVERNMENT
TO THE ERRC RESPONSE ON THE MERITS**

Registered at the Secretariat on 31 May 2024



THE CZECH REPUBLIC

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

ERRC v. the CZECH REPUBLIC
(no. 220/2023)

PRAGUE

31 MAY 2024

1. In response to the letter of 25 April 2024 regarding the above mentioned collective complaint lodged with the European Committee of Social Rights (“the Committee”) by the European Roma Rights Centre (ERRC), a non-governmental organisation (“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 (“response of the complainant’s organisation” or “their response”), the Government, maintaining their position expressed in their initial observations of 15 January 2024 (“the Government’s initial observations”), wish to submit the following additional comments

2. The Government recall that the complainant organisation alleges that there 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.

ON THE MERITS

3. The Government will react below only to some arguments contained in the response of the complainant’s organisation. The Government do not deem it necessary to comment on all arguments since they are sufficiently addressed in their initial observations.

4. *First*, the Government remain convinced that the obligations stemming from Article 16 of the Charter may be implemented progressively using the means earmarked for that and available by the State (see § 9–10 of the Government’s initial observations). They, nevertheless, are being mindful of the impact that their decisions will have on groups of people experiencing heightened vulnerability, including Roma as was described in their initial observations.

5. They reiterate, that according to Article 16 of the Charter states are required to ensure that all families wishing to use early childhood education and care services should have access to affordable and high-quality education and care, 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]. The nature of the obligation corresponds to ensuring access rather than achieving attendance. In the national context, this is particularly important in relation to children who have not reached the age of five and, therefore, the pre-school education is not compulsory but only voluntary for them. In this regard, although the Government recognise that the proportion of Roma children from the age of three to five in preschool education is lower than that of children

from majority population, this does not necessarily mean they are being discriminated on the basis of their race or social status as there may be various reasons why it is so including their parents' choice (see § 64–67 of the Government's initial observations).

6. Furthermore, the Government consider the reference to the interpretation on the UN Convention on the Right of Persons with Disabilities and its principle of the reasonable accommodation to be inappropriate. The situation of Roma or socially disadvantaged children in relation to their access to kindergartens is complex in nature and cannot technically be addressed by immediate measures to be taken in individual cases. Moreover, the principle of reasonable accommodation has so far been only associated to the ground of disability [cf. *European Action of the Disabled (AEH) v. France*, Complaint No. 81/2012, decision on the merits of 11 September 2013, § 78 and 81; or *Conclusion 2020, Andorra*, Article 15-1, 2020/def/AND/15/1/EN], which is not relevant to the case at hand.

7. *Second*, it is premature to argue by the complainant's organisation in any way about the draft law on the new state social benefit system, which has not yet been approved either by the Government, or by the Parliament and on which the collection of comments in the inter-ministerial comment procedure has been only completed recently. Number of substantial comments, including by the Ministry of Education, Youth and Sports ("MEYS"), had been submitted, some of which are aimed at strengthening the position of socially disadvantaged children and pupils. These comments are awaiting to be resolved between the ministries.

8. *Third*, in the opinion of the Government, the involvement of local and private actors in the mediation of the assistance financed by subsidy schemes such as payment of school meal, removal of other financial barriers and cooperation with the family or legal representatives of the child including informal influence on the legal representatives of the children to support their motivation to ensure the preschool attendance of the child cannot be rejected outright (see § 86–91 of the Government's initial observations). Moreover, the removal of financial barriers to access to pre-school education is further a matter of state social benefit and assistance in material distress, which are essentially based on the specific legal entitlements of applicants (see § 97–99 of the Government's initial observations).

9. *Fourth*, the complainant's assertion that preparatory classes at primary schools, through which the compulsory preschool education can be also received, are inherently segregated and thus constitute an inappropriate measure shall be considered as misleading. The *Final Report on the Evaluation of the Impacts of Introducing a Compulsory Final Year of Preschool Education* (see § 54 of the Government's initial observations) states that "For the education of children from socially disadvantaged backgrounds, preparatory classes have both advantages and disadvantages. Advantages include lower class sizes or the possibility of more intense preparation for the start of compulsory schooling. On the other hand, their creation depends on the decision of the founder, and in some cases, they can be indeed segregating." Nevertheless, according to the MEYS's estimates for the year of 2022, the proportion of the Roma children and pupils in the preparatory classes

amounted to 65,8 %. As a possible measure the *Final Report* proposes the establishment of preparatory classes to be rotated among the available primary schools.

GENERAL CONCLUSION

10. As to the merits of the collective complaint at hand, the Government refer to their initial observations of 15 January 2024, supplemented by the above comments.

Petr Konůpka
Agent of the Government
(*signed electronically*)