



Ref: CommHR/NM/sf 042-2016

Mr Bohuslav SOBOTKA
Prime Minister of the Czech Republic

Strasbourg, 7 October 2016

Dear Prime Minister,

Further to my 2012 visit to the Czech Republic and the very useful exchange I held with you in 2014 and 2015, I would like to follow up on our dialogue concerning the human rights of Roma and persons with disabilities.

Sterilisation of Roma women

In my letter of October 2015 I expressed dismay over the Czech government's decision not to introduce extra-judicial compensation for involuntary sterilisation by way of the draft Compensation Act. I still urge you to adopt all measures necessary to establish an *ex gratia* compensation procedure for victims, which I honestly believe is the best way forward in the circumstances. A number of Council of Europe member states which have assumed responsibility for sterilisation policies have put into place special remedies for victims, for example, Austria, Germany, Sweden, Norway and Switzerland. Under the 2011 Guidelines of the Council of Europe's Committee of Ministers *On eradicating impunity for serious human rights violations*, states bear special duties towards victims. In particular, under Guideline XVI *Reparation*, states should take all appropriate measures to establish accessible and effective mechanisms which ensure that victims of serious human rights violations receive prompt and adequate reparation for the harm they have suffered.

Applying to a court with a claim for compensation for non-pecuniary damage is not a satisfactory approach for the following reasons: Firstly, the three year statute of limitations for initiating civil claims works against victims, as it is often only years later that victims appreciate the nature and consequences of the damage they have suffered. A complaint on this issue is currently pending before the European Court of Human Rights (*Anna Maděrová v. the Czech Republic*) and was communicated to your authorities in July 2015. Secondly, it is often difficult for the victims to provide the necessary documentary proof which is required, when that documentation lies in the hands of the authorities. Thirdly, court proceedings are usually very lengthy. I would like to know how recent proposals to reform legal aid would affect such claims for compensation.

Segregation of Roma children in schools and execution of the D.H. v. the Czech Republic judgment

Up until now, the variety of legislative and practical measures adopted by the Czech authorities since the *D.H* judgment in 2007 has failed to bring about any real, significant change in the education of Roma children. All data available indicate that Roma children continue to be over-represented in schools and classes for pupils with mild mental disabilities and segregated in Roma-only schools and classes. If not fully executed within the next few months, 2017 will mark 10 years since the *D.H.* judgment has been final. This situation is not tenable. As I have already stressed, prolonged non-implementation of the judgments of the Strasbourg Court is a challenge to the Court's authority and thus to the European human rights protection system as a whole.

Nevertheless, the recent legislative changes have been adopted and took effect on 1 September. I have read with interest your government's revised action plan to the Council of Europe Committee of Ministers of 5 February 2016 setting out your comprehensive desegregation plan. This includes the establishment of the principle of inclusive education for all children, support provided for those

who have special educational needs in the mainstream, and a compulsory year of free pre-school education for all pupils.

I welcome these changes and your government's commitment to inclusive education. Each child has the right to high-quality, inclusive education where all children are educated together irrespective of their differences and everybody benefits from that education. I believe that at least one year of free pre-school education is absolutely necessary to prepare Roma children for entry into mainstream primary education. In line with the Committee of Ministers' decision from June this year, I look forward to information showing the impact of this reform in practice, including the first statistics. Concretely, I would like to know how many Roma children will stop attending "practical" primary schools and start attending mainstream primary schools as a result of the inclusion measures that take effect next month. The reforms also need to be accompanied by addressing institutional prejudice against Roma in the school system, including teachers' negative attitude towards Romani children.

In addition to the question of "practical" primary schools, there also remains the issue of segregated Roma classes in regular primary schools. This practice receives less international attention but is also of concern to me. I would be grateful to hear how your authorities intend to respond to this. It is essential that there are safeguards in place in the schools to prevent the segregation of pupils on an ethnic or other basis.

Finally, I understand that there have been some difficulties for Roma families to enrol their children in primary schools as entrance tests, or "school readiness tests", may be required by some head teachers. Complaints have been made that these tests are discriminatory. School readiness tests cannot be used as a reason to refuse to enrol a child in a specific school. I would be grateful to hear your position on this issue.

Territorial segregation and housing of Roma

In my 2013 report I expressed serious concern about the segregation of Roma in marginalised communities. I note that a complaint has been brought by the European Roma and Travellers Forum (ERTF) against the Czech Republic (complaint no. 104/2014) to the European Committee on Social Rights alleging that Roma are disproportionately subjected to residential segregation, substandard housing conditions, forced evictions and other systemic violations of the right to adequate housing and the right to health. This complaint is pending.

Concern over segregation has also been echoed by the Advisory Committee on the Framework Convention for the Protection of National Minorities ("FCNM") in their Fourth Opinion and the European Commission of Racism and Intolerance's ("ECRI") report, both adopted in 2015. In particular, they denounce the systemic discrimination of Roma in the housing market, with many Roma forced to live in "residential hostels" situated on the outskirts of municipalities. I support the recommendation made by the Advisory Committee to move residents of residential hostels to adequate social housing. ECRI also expressed its astonishment that the authorities provide housing support for Roma tenants to pay exorbitant rents to the so-called "slum landlords" (these are landlords in the private market who rent accommodation to Roma in hostels or dormitories at extremely high prices). I join their call to put an end to this practice immediately.

I welcome the government's efforts to introduce a Social Housing bill and urge you to press ahead with these reforms without delay. I understand that an expert conference was organised on 16 September by the Human Rights Minister in order to share practices in this field. I look forward to receiving updated information on this issue.

Manifestations of intolerance, racism, xenophobia and hate speech

I am concerned about the 'perceptible increase in xenophobia and intolerance within the Czech society', which was recently noted in the FCNM's Fourth Opinion. This includes intolerant language entering mainstream political discourse and the toleration of racist remarks by politicians at local and state level. The statement of the Deputy Prime Minister and Finance Minister, Andrej Babiš, on the Lety concentration camp and the Roma who were sent there, is one recent example from September this year. Another is when a Member of Parliament shared a Holocaust denial video online in August.

There should be zero tolerance by the Czech authorities for hatred expressed in any way whatsoever. ECRI's Policy Recommendation No. 15 on Combating Hate Speech (2016) may provide the Czech authorities with useful guidance in planning and implementing effective policies aimed at eradicating hate speech that poses grave dangers for the social cohesion of all democratic societies.

I raised the issue of anti-Roma demonstrations in my letter in February 2014, when I suggested that your authorities consider banning demonstrations in the vicinity of Roma neighbourhoods where there are indications that the participants intend to march towards those neighbourhoods with the aim of targeting Roma communities. I am encouraged to see that in the ECRI 2015 report there has been a diminution in the kinds of rallies witnessed in 2013. Nevertheless, I understand that violent rallies still do take place but with a different target group: migrants and Muslims. For example, a number of demonstrations took place on 28 September 2016 against the alleged "Islamization" of Europe. This is just as much a cause for concern.

Memorial site in Lety u Písku

I deeply regret the fact that no progress has been made to date to remove the pig farm from the site of the former Nazi concentration camp in Lety. This is despite the fact that your Strategy for Roma Integration for 2015-2020 includes the task of formulating measures leading to its closure. Preserving a permanent and dignified memory of Roma Holocaust victims at Lety should continue to be the government's urgent priority. I call on the authorities to pursue their plans with renewed vigour and for there to be concrete signals of change underway. This was also the message from the chair of the International Holocaust Remembrance Alliance during his visit to the site this July. I would appreciate receiving details on the current state of negotiations. I support calls to build a dignified memorial to the victims and entrust its administration to a competent institution.

Protection of the human rights of persons with disabilities

In my visit report in 2013, I welcomed the fact that preparations for the ratification of the Optional Protocol to the United Nations Convention on the Rights of Persons with Disabilities ("CPRD") were underway. However, the Czech Republic has not yet ratified that Protocol and I urge you to do so. This is also in line with your new National Plan for the Promotion of Equal Opportunities for Persons with Disabilities 2015-2020. I regret that an independent mechanism to promote, protect and monitor the implementation of the CPRD pursuant to Article 33(2) has still not been designated.

At the time of my report, I was concerned about the very high number of persons with psychosocial disabilities in the Czech Republic living in institutions, separated from the rest of society. The 2015 concluding observations of the United Nations Committee on the Rights of Persons with Disabilities confirm that this still is the case with more resources being invested in institutional settings than in support services that would enable persons with disabilities to live independently. I regret this approach. Everyone has the right to live and be included in the community.

In my visit report I was particularly concerned that children with disabilities are often cared for in institutions. I call upon the authorities to develop support services for disabled children and their families in local communities. In this context, I look forward to receiving information on measures taken or envisaged to abolish the practice of placing children under 3 years old in institutionalised care.

Concerning the issue of the disproportionate use of restrictions and restraints of persons living in institutions, the execution of the *Bureš v the Czech Republic* judgment (2012) by the Strasbourg Court is still pending. That case concerned the inhuman and degrading treatment of the applicant, who was restrained and attached to a bed for several hours at the Brno-Cernovice's psychiatric hospital's sobering-up centre. I understand from the latest Action Plan sent by your authorities to the Council of Europe Committee of Ministers that the Ministry of Health has prepared a draft amendment of the Medical Care Act which was approved by the government and presented to the Parliament. Its entry into force is foreseen for 31 December 2016. I look forward to receiving information on progress made and results foreseen.

Lastly, another important issue which I raised in 2013 was the fact that a large number of persons with disabilities in the Czech Republic are totally deprived of their legal capacity. The new Civil Code which entered into force on 1 January 2014 introduced several changes regarding the legal capacity of a person, which I welcome. Now, for example, the legal capacity of a person may be restricted only if a less restrictive measure would not suffice. The new provisions move away from the concept of "substitute decision-making" (when a guardian makes decisions on behalf of the person) and have replaced it with the concept of "supported" or "assisted" decision-making. Restriction of legal capacity is also limited in time to a maximum of three years. I would like to know how successful these changes have been in practice. The new Civil Code also established the possibility to create Guardianship Councils to oversee the activities of the guardian. However, I understand that these institutions are not yet widespread and would like to know how many Guardianship Councils have already been established and how many are foreseen?

I look forward to receiving your reply and continuing our constructive dialogue and co-operation.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Nils Muižnieks', with a long horizontal flourish extending to the right.

Nils Muižnieks