



Office for Democratic Institutions and Human Rights

EQUAL ACCESS TO QUALITY EDUCATION FOR ROMA CHILDREN

FIELD ASSESSMENT VISIT TO THE CZECH REPUBLIC

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Executive Summary

The widespread, persistent practice of the disproportionate enrolment of Roma children into separate education for the disabled was challenged in the year 2000, when a case was brought on behalf of 18 Roma children from Ostrava, Czech Republic, before the European Court of Human Rights (ECtHR). The applicants were represented by the Budapest-based European Roma Rights Centre (ERRC) and associates.¹

On 13 November 2007, the Grand Chamber of the ECtHR ruled in the case of *D.H. and Others v. the Czech Republic* that the authorities had discriminated against Romani children by segregating them into “special schools” set up for the education of children with intellectual disabilities.²

For the first time, the Court found a violation of Article 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter “the Convention”) with regard to Article 14 (prohibition of discrimination), read in conjunction with Article 2 of Protocol No. 1 (right to education). The Court required the government of the Czech Republic to adopt general measures in order to “put an end to the violation found by the Court and to redress so far as possible the effects”.³

The need to enhance access to education for Roma and Sinti children and to develop and implement comprehensive school desegregation programmes was included in the provisions of the 2003 Action Plan on Improving the Situation of Roma and Sinti in the OSCE Area.⁴ These commitments were strengthened further in 2008 through Ministerial Council Decision No. 6/08, in which participating states committed themselves to improving equality of access to education and promoting early childhood education for Roma and Sinti children.⁵

¹ *D.H. and Others v. the Czech Republic*, European Court of Human Rights, Grand Chamber, Application no. 57325/00, 13 November 2007, <<http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-83256>>; those were Lord Lester of Herne Hill, Q.C., James Goldstone of the New York Bar, and David Strupek of the Czech Bar Association.

² European Court of Human Rights, *D.H. and others v. Czech Republic*, Grand Chamber Judgment, November 13, 2007, [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx#{\"fulltext\":\[\"D.H. and Others v. Czech Republic\"\],\"documentcollectionid\":\[\"COMMITTEE\",\"DECISIONS\",\"COMMUNICATEDCASES\",\"CLIN\",\"ADVISORYOPINIONS\",\"REPORTS\",\"RESOLUTIONS\"\],\"itemid\":\[\"001-83256\"\]},](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx#{\) see also: <<http://www.errc.org/cms/upload/media/02/D1/m000002D1.pdf>>

³ *Ibid.* p. 71

⁴ OSCE Ministerial Council, Decision No. 3/03, “Action Plan on Improving the Situation of Roma and Sinti in OSCE Area”, Maastricht, 1-2 December 2003, < www.osce.org/odihr/17554>

⁵ OSCE Ministerial Council, Decision No. 6/08, “Enhancing OSCE Efforts to Implement the Action Plan on Improving the Situation of Roma and Sinti within the OSCE Area”, < <http://www.osce.org/cio/40707>>

In its 2008 assessment report on the implementation of the Action Plan, ODIHR recognized the *D.H.* judgment as a “landmark”.⁶ Concerned by the slow pace of action to remove discriminatory barriers to education for Roma children, as prescribed by the ECtHR decision, and following communication with the Czech authorities in 2011, ODIHR conducted a field assessment visit to the Czech Republic, which took place from 21 to 25 May 2012.

The visit was undertaken in accordance with the provisions of the Action Plan,⁷ which mandates ODIHR to “(...) assume a proactive role in analysing measures undertaken by participating States, as well as in particular situations and incidents relating to Roma and Sinti people. Towards this end CPRSI will establish and develop direct contacts with participating States and will offer advice and opinions to them”.⁸

The ODIHR-led delegation for the field visit included: the OSCE Chairperson-in-Office’s Personal Representative on Combating Racism, Xenophobia and Discrimination; a representative of the Office of the OSCE High Commissioner on National Minorities; and experts in the field of education, law (including disability law), minority issues in general, and Roma issues in particular.

The primary objective of the field assessment visit was to gather first-hand information and assess government efforts to introduce inclusive measures to provide Roma children with unhindered access to mainstream, quality education, in line with the ECtHR ruling. The delegation visited nine schools in eight localities in several regions of the Czech Republic and met with headmasters, teachers, mayors, the Ombudsperson, and representatives from civil society, local and regional authorities and the central government, as well as with Roma parents, children and other stakeholders dealing with education and Roma children. ODIHR staff undertook in-depth desk research and paid two study visits to the Czech Republic prior to the field assessment visit.

The field assessment report consists of two main parts: a background section and the field assessment findings. Based on the latter, the report provides a set of recommendations to the Czech authorities.

In the background section of this report, ODIHR provides a brief historical account of major developments regarding Roma in post-World War II Czechoslovakia and the Czech Republic, with a focus on the legislative framework for the special schools and its impact on the Roma community. This section concludes with a brief analysis of the ECtHR judgment and the government’s steps to implement it to date. ODIHR looks at research and surveys that have been conducted by state bodies, international

⁶ “Implementation of the Action Plan on Improving the Situation of Roma and Sinti in OSCE Area, Status Report 2008”, OSCE/ODIHR, pp. 41-42, <<http://www.osce.org/odihr/33500>>

⁷ OSCE Ministerial Council Decision 3/03, op.cit.

⁸ *Ibid.*, p. 27, par. 129

organizations and civil society to evaluate state efforts to “put an end to the violation found by the Court and to redress so far as possible the effects.”⁹

The section on the field assessment findings is based on the delegation’s direct observations and discussions with various interlocutors during the week-long visit and is organized into separate chapters highlighting specific issues.

ODIHR acknowledges that the Czech Government did, as early as 2000, take some steps to improve the situation regarding education for Roma. The most significant step came with the adoption of the new School Act (561/2004), which came into effect in 2005.¹⁰ The Act abolished special (*zvláštní*) schools, replacing them with specialized (*speciální*) primary schools, for children with “mid-range to severe disability”, and practical (*practické*) primary schools, for children with “light mental disability”. The Framework Education Program for Children with Light Mental Disability (*lehká mentální postižení* – hereinafter referred to as the “LMP curriculum”) was designed for the education of children assessed as falling within this category. The Act was then augmented by two Ministerial Decrees: No. 72/2005,¹¹ on the provision of counselling services at schools and school counselling facilities, and No. 73/2005,¹² on the education of pupils with special educational needs and of gifted children. Furthermore, the government put forward plans for reforming the education system as envisioned in the National Action Plan on Inclusive Education (NAPIE),¹³ approved in March 2010, and in the Strategy for the Fight against Social Exclusion (*Strategie boje proti sociálnímu vyloučení 2012-2015* – hereinafter, the Strategy),¹⁴ from 2011, both of which list eliminating the educational segregation of Roma children as a priority.

From desk research and field visit findings, the delegation concluded that, overall, the steps taken by the Czech Government have not “put an end” to the practice the ECtHR ruled a violation of the Convention; Roma children are still overrepresented in segregated educational arrangements for children with special educational needs. Plans for reforming the education system as outlined in the NAPIE and the Strategy have, at best, been only partially implemented.

⁹ European Court of Human Rights, *D.H. and others v. Czech Republic*, Grand Chamber Judgment, November 13, 2007, <<http://www.errc.org/cms/upload/media/02/D1/m000002D1.pdf>>, op.cit.

¹⁰ Act No. 561/2004 Coll., on Pre-school, Basic, Secondary, Tertiary Professional and Other Education (School Act), <<http://info.edu.cz/en/node/416>>

¹¹ Vyhláška č. 72/2005 Sb., o poskytování poradenských služeb ve školách a školských poradenských zařízeních, Ministry of Education of the Czech Republic, 17 February 2005, <http://www.msmt.cz/uploads/soubory/sb020_05.pdf>

¹² Vyhláška č. 73/2005 Sb., o vzdělávání dětí, žáků a studentů se speciálními vzdělávacími potřebami a dětí, žáků a studentů mimořádně nadaných, Ministry of Education of the Czech Republic, 17 February 2005, <http://www.msmt.cz/uploads/soubory/sb020_05.pdf>

¹³ “Národní akční plán inkluzivního vzdělávání” (The National Action Plan on Inclusive Education) <http://www.msmt.cz/uploads/Skupina_6/NAPIV.doc.pdf>

¹⁴ “Strategie boje proti sociálnímu vyloučení” (Strategy for the Fight against Social Exclusion), Office of the Government of the Czech Republic, August 2011, <www.aspcr.cz/sites/default/files/strategie-2011-2015_2.pdf>

The section in the report with the delegation's findings opens with a case study of a public, specialized primary school that was typical of the former special (zvláštní) schools visited. This example illustrates the complexity of the curriculum programmes used by the staff, the different kinds of students attending the school, and what is required to enrol in the school. The case study serves also as a reference point for the delegation's observations and conclusions. Several other case studies are also presented in the report to illustrate existing practices on the ground.

When trying to find an explanation for the slow pace of action to remove discriminatory barriers to education for Roma children as prescribed by the ECtHR, the delegation realized that various branches of the Czech Government have been sending mixed messages to both educators and the public regarding the desirability of an inclusive approach to education.

The delegation also found the whole process to suffer from a lack of leadership and consistency on the part of Ministry of Education in the area of implementation, with frequent changes in the leadership of the Ministry likely contributing to this problem. A lack of clear guidelines from the Ministry, despite unequivocal calls by the Czech Government's Human Rights Commissioner and Ombudsperson for reforms to the system, have resulted in the maintenance of the status quo.

In a number of schools the delegation visited, educators expressed bafflement at the ECtHR decision and other findings of discrimination against Roma in the school system, as well as at calls from civil society for the elimination of the practical primary schools. Most of the educators with whom the delegation met viewed these calls as attacks on special needs education per se, and said they believed strongly that the ECtHR ruling had been unjust. This position is backed by an influential civil society organization with which the delegation also met, the Association of Special Pedagogues.

The delegation is concerned that, despite the official elimination of the former category of the "zvláštní" (special) school, the changes introduced are simply recreating the same categorization and segregation of children in the new system. Children with learning or other intellectual disabilities and disadvantaged children end up in separate special education tracks, with the result that Roma children continue to be affected negatively by these processes. This is preventing the creation of a fair, inclusive system that would make the advantages gained through education available to all children and could serve as a powerful tool to make society more equitable and inclusive.

The delegation was pleased to learn that there are some examples of good practice, in the form of schools that have taken on board the methods and objectives of inclusive education, and the delegation has highlighted them as case studies in the report. As much as there is an obvious need to reform the system in the direction set by the NAPIE and the Strategy, the mindset of both educators and the general public is also in need of

transformation, especially the views of those who have been part of the special education system for decades.

The chapter on the complexity of the current primary education system in the Czech Republic shows how the delegation struggled to grasp the system's design during the visit. Compounding the confusion is the fact that the system seems to be only halfway through the reform process; administrators, teachers and Roma parents confirmed this to the delegation. Such complexities allow for abuses, especially with regard to the enrolment decisions made by Roma parents, many of whom have achieved only low levels of education themselves.

Reforms are needed to make the education system more transparent. The delegation was concerned by the fact that practical primary schools are being attended by children without any disabilities and that ministerial decrees permit this. The delegation realizes this is part of a strategy to deal with demographic pressures, as reduced enrolments could justify the closure of some of these schools or necessitate their merging.

The delegation also encountered conflicting attitudes regarding the collection of data on ethnicity. Most school headmasters objected to providing statistics disaggregated by ethnicity, stating that they do not distinguish ethnicity; many claimed to follow a "colour-blind" approach. This contrasted with the attitudes toward ethnic data collection presented by the Czech Government Human Rights Commissioner and Ombudsperson, both of whom told the delegation they consider ethnically disaggregated school enrolment data to be crucial. The Office of the Ombudsperson commissioned the collection of sampling data on Roma enrolments from a number of practical primary schools throughout the country and issued its findings shortly after the delegation concluded its visit. The collection and compilation of ethnic data on children enrolled in schools is one of the major recommendations made by the delegation, as such data are needed both to support the further implementation of reforms and to monitor and evaluate their progress.

The delegation devoted particular attention to the issue of how children are assessed for disability. The delegation's view is that the current system still leads to Roma children without any intellectual disabilities being incorrectly recommended for enrolment in practical primary schools or temporary placement into specialized primary schools. The delegation recommends that the Education Ministry should, as a matter of urgency, re-examine its existing practices for assessing intellectual capacity and the methodology, concepts and standards now in place for such testing, as well as any ethnic disparities in the outcomes these practices currently generate. The Ministry of Education should take into account existing international research that has demonstrated that more integrated education systems not only create social equality but also improve the performance of all pupils, including the top performers. In the current situation, it is likely that educators in the Czech Republic are recommending both the assessment of potential disability and the tracking of children's aptitudes too early in their educational careers.

The delegation found disturbing the assumption articulated by several interlocutors that a child with a slightly lower than average or a “borderline” IQ should not be educated in a mainstream setting. In the view of the delegation, the practical primary schools have clearly defined their target populations not only as “lightly mentally disabled” children, but also as children from socially disadvantaged areas. As a result, students who have missed out on early childhood education are classified very early on in this system as “mentally disabled” and rarely leave that educational track.

Roma children should be treated as able to learn and develop just the same as any other children in the school system. The disadvantages they often face because of their socio-economic backgrounds, or the marginalized communities from which they come, can be overcome with proper assistance. Children from socially or economically disadvantaged backgrounds who face learning challenges should be included in mainstream primary schooling, where they should be provided with extra help and assistance by teachers who can address their individual needs. As such, the delegation could not identify any real need for maintaining the practical primary schools.

In the view of the delegation, inclusive education should be promoted much more strongly and should be clearly supported by appropriate legislation and funding mechanisms. Due attention should be given to the already-existing positive examples of inclusive mainstream primary schools. The ministry should make it clear that diversity – i.e., non-segregation – benefits all children, regardless of their ethnic or other background. Promoting good practices in this area can be conducive to breaking down segregation barriers. Primary schools and classrooms should be level playing fields for all, not instruments of ethnic and social separation. The provision of support measures must be designed so as to ameliorate, not exacerbate, perceived differences among children of different levels of ability, different ethnicities and nationalities, and different socio-economic backgrounds.

In the view of the delegation, parents, school administrators and teachers need to be persuaded to change their mindsets about diversity in the classroom. Children from excluded localities, many of whom are Roma, should be treated as able to learn and develop. The deficiencies of children caused by disadvantaged backgrounds can be overcome with proper assistance, and Roma children should not be treated as ‘inadaptable’¹⁵ by definition.

This report also reviews the issue of segregation of Roma children in mainstream schools and how to prevent it. The delegation was informed about various initiatives and approaches that actively promote inclusive, integrated education. One tool available to those establishing schools is catchment-area zoning. Parents enrolling children in public schools can select from among those available in their catchment area, although they are

¹⁵ This term is widely used in the Czech media and public discourse as a reference to Roma people; for more see: “Mediální obraz Romů v ČR aneb Síla slova“, Romea.cz, 25 May 2012, available at: <<http://www.romea.cz/cz/zpravodajstvi/domaci/medialni-obraz-romu-v-cr-aneb-sila-slova>>

free to send their children outside of their catchment area as well. When multiple primary schools are available for a catchment area, this makes it possible for parents to choose where their children enrol in a way that supports the *de facto* segregation of the schools along lines of ethnicity and social status; few parents, in fact, are opting to send their children to schools with diverse populations. The higher representation of Roma children in a catchment area, due to a residential concentration of Roma there, often results in “white flight” away from a particular local school, as it becomes labelled as the “Roma” school by the community. Careful zoning can transform this.

Ethnic segregation in the schools is also related to the existence of the so-called “excluded localities”, which, in most cases, refer to disadvantaged Roma communities. The delegation learned that the number of Roma families who find themselves in excluded localities is rising, and that these localities are becoming increasingly identified as Roma areas. Ethnically segregated mainstream primary schools are the end result of this process. Excluded localities, especially those dominated by Roma families, bear a social stigma that works towards increasing their *de facto* segregation. The delegation concluded that the existence of excluded localities also provides fertile ground for anti-Roma prejudices and sentiments in Czech society and should urgently be addressed.

Through this field assessment visit and this report, ODIHR joins the earlier efforts of other international organizations following up on the issue of the implementation of the ECtHR judgment in the *D.H.* case.¹⁶ ODIHR contributes its unique perspective stemming from its mandate to address Roma and Sinti issues provided by OSCE commitments in this area.

Recommendations

The relevant OSCE commitments, especially those included in the 2003 Action Plan on Improving the Situation of Roma and Sinti in the OSCE Area, call upon participating States to eliminate discrimination in education, to develop and implement comprehensive school desegregation programs, and to take strong actions to actively promote equal opportunities in the field of education. In OSCE Ministerial Council Decision No. 6/08, on “Enhancing OSCE Efforts to Implement the Action Plan on Improving the Situation of Roma and Sinti in the OSCE Area”, the participating States committed themselves to improving equal access to education and promoting early childhood education for Roma

¹⁶ International community and civil society organizations have formulated a number of recommendations addressed to the Czech authorities in follow-up to the ECtHR judgment in the *D.H.* case. Most recent recommendations can be found in the Open Society Institute Justice Initiative and the European Roma Rights Centre communication from November 2011, <<http://www.errc.org/cikk.php?cikk=3559>>; the OECD’s Program for International Student Assessment made a number of general observations and recommendations about education in the Czech Republic in January 2012 (see in Appendix 1) available at: <http://www.oecd.org/dataoecd/4/50/49603567.pdf>

and Sinti. Attention to following up on these commitments, including through investment in early childhood education, would provide the best opportunity to counter harmful practices that underpin educational segregation.

The OSCE's Office for Democratic Institutions and Human Rights recommends that the relevant authorities of the Czech Republic:

1. Step up efforts to implement the ECtHR's order in the ruling in *D.H. and Others v. the Czech Republic* to "remove discriminatory barriers in relation to the education of children from the Roma minority," that is, to reform the education system to provide unhindered access for all children to equal, quality education;
2. Implement the reform of the education system envisioned in the National Action Plan for Inclusive Education (NAPIE) and in the Strategy to Fight Social Exclusion, so as to promote inclusive education and the closure of the practical primary schools;
3. Implement the Ombudsperson's recommendations on amendments to decrees on special education that violate the Schools Act in order to accelerate the reform process, as well as the Ombudsperson's recommendations on the duty of schools to report their use of the LMP curriculum;
4. Reinstatement the Working Group that previously functioned within the Ministry of Education and was charged with preparing concrete measures and action for implementation of the NAPIE;
5. In collaboration with the Czech Statistical Bureau, institute a data-collection system that can provide long-term statistics on those enrolled in primary, secondary and tertiary education, disaggregated by age, citizenship, gender, disability, ethnic and national origin, socio-economic status (including education attained by a child's parents) and educational attainment;

6. Enhance collaboration between the Ministry of Education and the Ministry of Health and have them share relevant data on intellectual disability in the population in order to design appropriate policies that safeguard equal access to education for all.

ODIHR recommends that, in particular, the Ministry of Education:

7. Assume a leadership role and provide educators with a clear vision and guidelines regarding inclusive education. Changing the system starts with changing the mindsets of educators;
8. Examine existing practices with regard to intellectual assessment, including current methodologies, concepts and standards, as well as the outcomes of these processes, to see: whether the practices now in place are resulting in a higher percentage of children being categorized as “lightly mentally disabled” than in other European school systems, and whether children are subjected to assessment and categorization at too early an age, as previously suggested by OECD reviews;
9. Stop harmful practices that result in an unnecessarily high percentage of children, including Roma children, being taught according to the LMP curriculum, which may also contribute to unnecessarily low educational expectations for all socially disadvantaged children. Assistance to children with learning challenges can be provided to them without early categorization of their IQs;
10. Bar the use of the Framework Education Programme for Elementary Education for Pupils with Light Mental Disability in grades 1-4. Such a programme should only be used for children from grades 5 and higher who have been diagnosed with a specific intellectual disability (not “borderline” cases), in tandem with an individual educational plan;

11. Stop testing children for potential disability (or “borderline” disability) from the start of their primary school careers, as this potentially leads to misidentification and over-identification of disability;
12. Identify schools that implement inclusive education programmes. These schools should be promoted as good-practice examples demonstrating that schools that do not segregate are better for everyone;
13. Adopt regulations clearly stipulating that integration into standard schools should be given preference for a broad range of children with varied abilities and from varied cultural and socio-economic backgrounds;
14. Clearly distinguish which particular educational measures are designed to address intellectual disability and which are designed to address the effects of socio-economic disadvantage (including non-cognitive skills). These two types of educational measures should be separated in terms of regulation and financing;
15. Design the provision of support measures so as to ameliorate, not exacerbate, perceived differences among children of different levels of ability, different ethnicities and nationalities, and from different socio-economic backgrounds;
16. Promote the vision of classrooms and schools as level playing fields for all, not instruments of ethnic and social segregation;
17. Discontinue the practical primary schools from the system;
18. Make the education system and the process of streaming students more transparent, simple to grasp and understandable for parents, especially those from socially disadvantaged backgrounds or excluded localities;

19. Examine the financial incentive structure(s) that continue to perpetuate segregation and consider changing the incentives towards prioritizing inclusive, non-segregated education;
20. Review existing PISA¹⁷ research on how integrating the school system can improve the performance of pupils of all socio-economic backgrounds;
21. Actively promote the idea that Roma children are able to learn and develop in the regular school system; no lower standards and expectations should be assumed or applied by educators to Roma children or parents.

¹⁷ PISA is an international study that was launched by the OECD in 1997. It aims to evaluate education systems worldwide every three years by assessing 15-year-olds' competencies in the key subjects: reading, mathematics and science. To date over 70 countries and economies have participated in PISA, for more see at: <http://www.oecd.org/pisa/>

Terminology

Prior to 2005, the School Act (1984) (of Czechoslovakia) defined “special schools” (*zvláštní školy*) in Article 31 as follows: “Special schools educate children whose intellectual deficiencies are such that they cannot be successfully educated in either primary school or specialized primary school.”¹⁸ This particular term was no longer included in the School Act of 2004 (No. 561), and schools given this name were thus formally eliminated from the education system of the Czech Republic at that time.

Currently, primary schools in the Czech Republic are designated as one of three types:

- 1) Primary schools (*základní školy*)
- 2) Practical primary schools (*základní školy praktické*). These schools educate children according to the Framework Curriculum Program for Primary Education for Children with Light Mental Disability.¹⁹
- 3) Specialized²⁰ schools (*speciální školy*). The law says children “suffering from serious mental disability, pupils with multiple defects, and autistic pupils may be educated at special[ized] basic schools with the prior consent of their statutory representative and on the basis of a recommendation in writing issued by a medical specialist and the relevant school advisory facility.”²¹

¹⁸ Zákon o soustavě základních škol, středních škol a vyšších odborných škol (School Act), 29/1984 Coll., Article 31, Section (1), <http://www.pravnipredpisy.cz/predpisy/ZAKONY/1984/029984/Sb_029984_-----_php>

¹⁹ The term “practical” school is not used directly in the law with respect to primary education, although schools bearing this name do exist. Section 49 refers to “basic education for disabled pupils” as contrasted to “special[ized] basic schools”. The “basic education for disabled pupils” is what is provided in the practical elementary schools. Section 49; paragraph (2) reads “A head teacher may transfer a pupil to the educational programme of basic education for disabled pupils or to the educational programme of a special basic school upon a recommendation in writing issued by the school advisory facility, however only after the prior written consent of the pupil’s statutory representative. The head teacher shall be obliged to provide the pupil’s statutory representative with information on differences in educational programmes and organisational changes which could occur in relation to the transfer to a different educational programme.” Available at: 561/2004 Sb. Zákon ze dne 24. září 2004 o předškolním, základním, středním, vyšším odborném a jiném vzdělávání (školský zákon), (Act No. 561/2004 Coll., on Pre-school, Basic, Secondary, Tertiary Professional and Other Education (School Act)), <<http://info.edu.cz/en/node/416>>

²⁰ *Ibid.* While the official translation of the 2004 School Act provided by the Ministry of Education uses the term “special” to refer to these schools, in this report the term “special school” will be understood to refer to the *zvláštní školy* that existed prior to the new law taking effect in 2005 and “specialized school” will be used as defined above to describe schools serving populations with greater than light mental disability.

²¹ *Ibid.* Article 48a

1. Introduction

On 13 November 2007, the Grand Chamber of the European Court of Human Rights in Strasbourg (ECtHR) found in the case of *D.H. and Others v. the Czech Republic* (hereinafter “*D.H.*”) that the authorities had discriminated against Romani children by segregating them into “special educational schools” intended for children with intellectual disabilities.²²

For the first time, the Court found a violation of Article 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter “the Convention”) in relation to a pattern of racial discrimination in a particular sphere of public life – in this case, public primary schools. The Court underscored that the Convention addresses not only specific acts of discrimination, but also systemic practices that deny the enjoyment of rights to racial or ethnic groups. The verdict obliged the Czech Republic to remove discriminatory barriers in relation to the education of children from the Roma minority.²³

The 2007 ruling exposed the widespread, continued practice of the disproportionate enrolment of Roma children into separate education for the disabled. The evidence provided to the court by the applicants demonstrated that Roma children were over-represented in special education and were receiving lower quality education following a reduced curriculum on the basis of their having been diagnosed with intellectual deficiencies.

The practice of segregating Roma children into separate schools or classrooms was next documented in other European countries through further Strasbourg rulings: In 2008 in the case of *Sampanis and Others v. Greece*²⁴ and in 2010 in the case of *Oršuš and Others v. Croatia*²⁵. In addition, courts in Slovakia²⁶ and Hungary²⁷ have banned the segregation of Roma children in education.

Through the 2003 OSCE Action Plan on Improving the Situation of Roma and Sinti in the OSCE Area,²⁸ the OSCE participating States recognized the need to enhance access to education for Roma and Sinti and committed to ban discrimination in education; to develop and implement comprehensive school desegregation programs; and to actively

²² European Court of Human Rights, *D.H. and others v. Czech Republic*, Grand Chamber Judgment, November 13, 2007, <<http://www.errc.org/cms/upload/media/02/D1/m000002D1.pdf>> op. cit.

²³ *Ibid.*, see also: “*D.H. and Others v. the Czech Republic*”, European Roma Rights Centre, 14 June 2012, <<http://www.errc.org/cikk.php?cikk=3559>>

²⁴ <<http://hudoc.echr.coe.int/sites/eng-press/pages/search.aspx?i=003-2378798-2552166>>

²⁵ <[http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?{"dmdocnumber":\["864619"\],"itemid":\["001-97689"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?{)>

²⁶ “Supreme Court Victory for Segregated Roma Children in Miskolc”, <<http://pilnet.org/project-updates/59-supreme-court-victory-for-segregated-roma-children-in-miskolc.html>>

²⁷ “Slovak court rules against segregation in education”, Amnesty International, Press release, 9 January 2012, <<http://www.amnesty.org/en/for-media/press-releases/slovak-court-rules-against-segregation-education-2012-01-09>>

²⁸ OSCE Ministerial Council, Decision No. 3/03, op. cit., <<http://www.osce.org/odihr/17554>>

promote equal opportunities in the field of education. Furthermore, in the 2008 Helsinki Ministerial Council Decision No. 6/08, the OSCE participating States committed themselves to improve equal access to education and promote early childhood education for Roma and Sinti children.

In its 2008 assessment report, ODIHR recognized the *D.H.* judgment as a “landmark”.²⁹ At the 2009 OSCE Human Dimension Implementation Meeting, the Czech Republic Delegation reported on measures adopted since 2008 to improve access by Roma children to all levels of education as a follow-up to *D.H.*³⁰ Similarly, at the 2010 OSCE Review Conference in Warsaw, the Czech Republic Delegation presented its “Report on steps taken by public administration and other bodies to improve the position of the Roma minority in the Czech Republic”³¹. Some observers, however, were of the view that little progress had been made with regard to reform of the education system as a follow-up to *D.H.*³²

Concerned with the situation, and following communication with the Czech authorities in 2011, ODIHR conducted a field assessment visit to the Czech Republic, which took place from 21 to 25 May 2012. The visit was undertaken in accordance with the provisions of the 2003 OSCE Action Plan on Improving the Situation of Roma and Sinti within the OSCE Area,³³ which mandates the ODIHR Contact Point for Roma and Sinti Issues (CPRSI) to “(...) assume a proactive role in analyzing measures undertaken by participating States, as well as in particular situations and incidents relating to Roma and Sinti people. Towards this end CPRSI will establish and develop direct contacts with participating States and will offer advice and opinions to them”.³⁴

The field visit team, led by ODIHR, included the Personal Representative of the OSCE Chairperson-in-Office on Combating Racism, Xenophobia and Discrimination, a representative of the OSCE High Commissioner on National Minorities, and external experts (see Appendix 2).

The primary objective of the field assessment visit to the Czech Republic was to gather first-hand information and assess government efforts to introduce inclusive measures that

²⁹ “Implementation of the Action Plan on Improving the Situation of Roma and Sinti in OSCE Area, Status Report 2008”, OSCE/ODIHR, <<http://www.osce.org/odihr/33500>> pp. 41-42

³⁰ Statement of the delegation of the Czech Republic for the working session 14: Roma/Sinti and, in particular, early education for Roma and Sinti children, OSCE Human Dimension Implementation Meeting, Warsaw, 7 October, 2009

³¹ Report on steps taken by public administration and other bodies to improve the position of the Roma minority in the Czech Republic, RC. DEL/126/10, Warsaw, 6 October 2010

³² “Implementation of Judgments of the European Court of Human Rights in Discrimination of Roma Children in Education (Croatia, Greece, Czech Republic)”, European Roma Rights Centre, OSCE Review Conference, RC.NGO/162/10, Warsaw, 7 October 2010, <<http://www.osce.org/home/71928>>

³³ MC Decision 3/03, <www.osce.org/odihr/17554>

³⁴ *Ibid.*, para 129

would enable Roma children's unhindered access to mainstream, quality education³⁵ following the ECtHR's ruling, especially as regards the following:

- the status of implementation of the ECtHR ruling;
- measures introduced by the government to ensure equal access and quality education for Roma children;
- identified good practices in overcoming segregation and facilitating access to mainstream and integrated education;
- the main barriers and factors hindering the pace of change or reform of the system;
- the role of racist anti-Roma activities and intolerant political and public discourse; and,
- recommendations on how to better ensure the equal access of Roma children to quality education.

In the preparatory phase³⁶ and during the field visit, the delegation visited nine schools in eight localities in several regions of the Czech Republic and met with headmasters, teachers, mayors and the Ombudsperson, representatives from civil society, local and regional authorities, and the central government, as well as Roma parents, children and other stakeholders dealing with education or Roma children (Appendix 3).

The report is divided into two main sections, the first on background information and the second on the field-visit findings. Each section is divided into chapters that describe clusters of issues representing barriers to inclusive education in the Czech Republic.

ODIHR conducted similar field-assessment visits to Romania in 2007³⁷, Italy in 2008³⁸, and Hungary in 2009³⁹. The issues that were the focus of the field assessment visit to the

³⁵ The presented report follows the UNESCO Policy Guidelines on Inclusion in Education in which this concept is defined as a "process of addressing and responding to the diversity of needs of all children, youth and adults through increasing participation in learning, cultures and communities and reducing and eliminating exclusion" *Policy Guidelines on Inclusion in Education*, United Nations Educational, Scientific and Cultural Organization, Paris 2009, <unesdoc.unesco.org/images/0017/001778/177849e.pdf>, p. 8;

³⁶ ODIHR staff visited the Czech Republic and held meetings with representatives of the Ministry of Education, Ministry of Interior, and the Agency for Social Inclusion in Roma Localities; visited and held meetings with municipal officials in northern Bohemia (Rumburk and Vansdorf), and met with civil society in Prague. ODIHR staff also participated in a civil society roundtable devoted to the issue of reforming the education system in the Czech Republic, organized by the NGO coalition Together to School (Společně do školy), which unites 18 civil society organizations. Observations from those visits are included in the report.

³⁷ "Field Visit on police and Roma Relations, Romania 12-15 November, 2007", OSCE ODIHR, <<http://www.osce.org/odihr/30876>>

³⁸ "Assessment of the Human Rights Situation of Roma and Sinti in Italy, Report of a fact-finding mission to Milan, Naples and Rome on 20-26 July 2008", OSCE ODIHR, <<http://www.osce.org/odihr/36374>>

Czech Republic are not specific to the Czech Republic only. The report's findings and recommendations may, therefore, also be of value to other OSCE participating States.

2. Background

2.1. Roma in the Czech Republic: Census data and population estimates

The Czech Government's Council for National Minorities states that the number of members of the Roma communities in the Czech Republic is between 150,000 and 300,000 people, mainly living in northern Moravia (Ostrava, Karviná), northern Bohemia (Děčín, Ústí nad Labem), and the country's two largest cities, Prague and Brno.⁴⁰ In 2006, the Ministry of Labour and Social Affairs commissioned a study to map socially excluded localities in the Czech Republic inhabited by Roma. The study identified 310 such localities, with a total estimated population of 60,000 to 80,000 Roma.⁴¹ In 2011, the Czech media reported that the number of socially excluded localities had increased to approximately 400.⁴²

In 1991, for the first time, Roma had the opportunity to declare their Roma ethnicity in the census, but only approximately ten percent of the estimated Roma population chose to do so. In the 2001 census, 11,746 persons declared Roma ethnicity, whereas in 2011 the number rose to 13,150.⁴³ While the number of people declaring Roma ethnicity has risen, it is still significantly below the unofficial estimates.⁴⁴

³⁹ "Addressing Violence, Promoting Integration. Field assessment of Violent Incidents Against Roma in Hungary. Key Developments, Findings and Recommendation. June-July 2009", OSCE ODIHR, <<http://www.osce.org/odihr/68545>>

⁴⁰ "Romská národnostní menšina", *Government's Council for National Minorities, Government of the Czech Republic*, <<http://www.vlada.cz/cz/pracovni-a-poradni-organy-vlady/rnm/nm-roma-6638/>>

⁴¹ "Analysis of socially excluded Roma localities in the Czech Republic and the absorption capacity of entities involved in this field", *GAC/ Nová Škola*, Prague, August 2006; definitions of the socially excluded communities and Roma excluded localities are presented at pp.8-9; available at: <http://www.gac.cz/userfiles/File/nase_prace_vystupy/GAC_MAPA_Socially_Excluded_Roma_Localities_in_the_CR_en.pdf?langSEO=documents&parentSEO=nase_prace_vystupy&midSEO=GAC_MAPA_Socially_Excluded_Roma_Localities_in_the_CR_en.pdf>

⁴² The director of the government's Agency for Social Inclusion in Roma Localities (hereinafter the "Agency") confirmed that increase. "Počet romských ghett se rozrůstá. Jsou jich už čtyři stovky", *Lidovky.cz* news server, 18 September 2011, <http://www.lidovky.cz/pocet-romskych-ghett-se-rozrusta-jsou-jich-uz-ctyri-stovky-pqj-/ln_domov.asp?c=A110918_195344_ln_domov_sk>

⁴³ "Population by nationality and mother tongue: as measured by 1970, 1991 and 2001 censuses", Czech Statistical Office, <[http://www.czso.cz/csu/2008edicniplan.nsf/eng/24003E05F5/\\$File/4032080118.pdf](http://www.czso.cz/csu/2008edicniplan.nsf/eng/24003E05F5/$File/4032080118.pdf)>

⁴⁴ "Czech census: 2000 more people registered as Roma than 10 years ago", *Romea* news website, 15 December 2011, <http://www.romea.cz/english/index.php?id=detail&detail=2007_3018> ; "Předběžné výsledky Sčítání lidu 2011 jsou online", *cnews.cz*, 15 December 2011, <http://www.cnews.cz/predbezne-vysledky-scitani-lidu-2011-jsou-online>>

2.2. Roma in the former Czechoslovakia/Czech Republic: A brief historical account

During World War II, a systematic genocide of Roma and Sinti was perpetrated in the Nazi Protectorate of Bohemia and Moravia. Almost all of the pre-war Czech and Moravian Roma population, estimated to be about 6,000, were sent to the concentration camps and only 583 of them survived.⁴⁵ During the post-war era, Czechoslovakian federal authorities moved Roma residents of the Slovak Republic into the Czech Republic, a policy that continued for decades. Approximately 80 per cent of the Roma in the Czech Republic today are, therefore, of Slovak Roma ancestry.⁴⁶

The communist authorities adopted assimilation policies.⁴⁷ In 1978, the civic initiative Charter 77 criticized the Czechoslovakian state policy of coercively sterilizing Roma women, a practice that in some instances was not discontinued with the fall of communism.⁴⁸

The 1989 transition brought about major changes, including providing Roma with the status of a national minority, which entitled them to the right to education in their mother tongue. In 1990, 11 Roma candidates were elected to the Federal Parliament, but only one Roma candidate was elected in 1992. The post-1989 liberalization did not lead to the economic and social improvements of the situation of Roma. On the contrary, negative trends unfolded in most areas of Roma life.⁴⁹

⁴⁵ *Museum of Roma Culture, Přehled dějin Romů do roku 1989, Původ Romů a jejich příchod do Evropy*, <http://www.rommuz.cz/index.php?option=com_content&view=article&id=320&Itemid=25&lang=cs>, In 1995 the genocide of the Roma at the former concentration camp in Lety by Písek, South Bohemia, was officially commemorated for the first time ever. A pig farm remains in place on the site of the former camp which has been the subject of much controversy. “Vláda nebude bourat páchnoucí vepřín v Letech u Písku”, *Romea*, 8 October 2010, <<http://www.romea.cz/cz/zpravy/vlada-nebude-bourat-pachnouci-veprin-v-letech-u-pisku>>, see also: Ctibor Nečas, “Nad osudem českých a slovenských Cikánů v letech 1939-1945” Brno, Univerzita J.E. Purkyně, 1981.

⁴⁶ *Museum of Roma Culture, Přehled dějin Romů do roku 1989, Původ Romů a jejich příchod do Evropy*.

⁴⁷ *Ibid.*, see also: *A History of the Gypsies of Eastern Europe and Russia*, (ed) David M. Crowe, New York, 1994.

⁴⁸ Minister for Human Rights, Podnět ministra pro lidská práva ke sterilizacím žen v ČR provedeným v rozporu s právem, Attachment to the Resolution of the Government of the Czech Republic 1424 from 23 November 2009, <<http://www.vlada.cz/assets/ppov/rp/aktuality/podnet-sterilizace.pdf>>; The Czech Government expressed regret for instances of error in the performance of female sterilization in 2009.

⁴⁹ “Struggling for ethnic identity. Czechoslovakia’s endangered Gypsies”, A Helsinki Watch Report, Human Rights Watch, August 1992, available at: <<http://www.hrw.org/legacy/reports/pdfs/c/czechrep/czech.928/czech928full.pdf>>; “Roma (Gypsies) in the CSCE Region: Report of the High Commissioner on National Minorities”, CSCE Communication No. 240, Prague, 14 September 1993, available at: <http://www.osce.org/documents/hcnm/1993/09/3473_en.pdf>;

Since the early 1990s, racism and xenophobia in Czechoslovakia and the Czech Republic, including neo-Nazi, ultra-right activity, with Roma often the targets, have been on rise.⁵⁰ The 1993 breakup of Czechoslovakia involved the Czech Republic adopting a Citizenship Law, which made tens of thousands of Slovak Roma in the Czech Republic stateless.⁵¹ After criticism by international organizations, the law was amended in April 1996.⁵²

The rise in hostility against Roma during this period was perhaps best epitomized by the decision of the municipality of Ustí nad Labem to build a wall to separate the Roma residents on Maticní Street from non-Roma residents in May 1998.⁵³

Following criticism and pressure from human rights and international intergovernmental organizations, the Czech Government adopted Resolution #279, entitled “Policy concept of the government towards the Roma community supporting their integration into society”(Koncepce politiky vlády vůči příslušníkům romské komunity, napomáhající jejich integraci do společnosti) on 7 April 1999.⁵⁴ In the year 2000, the government adopted its first version of the “Concept of government policy towards members of Roma community supporting their integration into society” (Koncepce politiky vlády vůči příslušníkům romské komunity napomáhající jejich integraci do společnosti), which was followed by a second version in 2002.⁵⁵ These Concepts introduced an integration approach and have been regularly updated ever since.⁵⁶

The incidents in the city of Litvínov from November 2008, during which members of the Workers’ Party (Dělnická strana) incited hatred and violence against the Roma marked a

⁵⁰ “Prevention of Violence and Discrimination against the Roma in Central and Eastern Europe”, Report of a conference held in Bucharest, Romania, Project on Ethnic Relations (PER), 1997 Princeton, available at: <http://www.per-usa.org/1997-2007/prv_viol.htm>; see also: European Commission against Racism and Intolerance (ECRI), General Policy Recommendation No. 3 on Combating racism and intolerance against Roma/Gypsies, 6 March 1998, http://www.coe.int/t/dghl/monitoring/ecri/activities/GPR/EN/Recommendation_N3/Rec03en.pdf;

⁵¹ The newly formed Slovak Republic allowed all citizens of the Czech and Slovak Federative Republic of either Czech or Slovak citizenship to select Slovak citizenship by choice. The requirement was to declare Slovak citizenship at local authority in Slovakia or embassy abroad with the only condition of confirming that the person was a citizen of Czech and Slovak Federative Republic. (Act on the State Citizenship of the Slovak Republic – Zákon o štátnom občianstve Slovenskej republiky, 40/1993 Z. z.; <<http://www.zakonypreludi.sk/zz/1993-40>>)

⁵² although Human Rights Watch said the amendment did not go far enough to bring the Czech Republic into line with its international commitments “Roma in the Czech Republic: Foreigners in Their Own Land”, Human Rights Watch, 1 June 1996, D811 <<http://www.unhcr.org/refworld/docid/3ae6a7ea0.html>>

⁵³ The wall was erected on 13 October 1999. It was removed on 24 November 1999 after an agreement was reached between the Government and the municipality. Today, the residential properties on Maticní street are unoccupied “Před 10 lety postavili zeď v Maticní ulici. Domy, kvůli nimž vznikla, zbourají”, *iDnes.cz*, 11 October 2009, <http://zpravy.idnes.cz/pred-10-lety-postavili-zed-v-maticni-domy-kvuli-nimz-vznikla-zbouraji-lib-domaci.aspx?c=A091011_121634_domaci_jw>, “Jak se stavěla zeď v Maticní ulici“, archiv.radio.cz, 1999, <http://archiv.radio.cz/romove/usti.html>

⁵⁴ <<http://racek.vlada.cz/usneseni/usnweb.nsf/0/55AD941C77019AA0C12571B6006DFB6D>>

⁵⁵ <http://aa.ecn.cz/img_upload/ac73df0652aad2b828f9cf53d867ecf4/koncepce2003.pdf>

⁵⁶ See for example the *Roma Integration Concept for 2010–2013* from December 2009, available at: <http://ec.europa.eu/justice/discrimination/files/roma_czech_republic_strategy_en.pdf>

new wave of anti-Roma activities in the Czech Republic.⁵⁷ An arson attack on a Roma-occupied house in Vítkov in April 2009 that left a two-year-old Roma girl severely burned has become a symbol of this resurgent violence.⁵⁸ The Czech Government has been concerned with the rise of extremism in the country and has been monitoring and reporting on it.⁵⁹

The Czech authorities have been taking some steps to counter these developments; the perpetrators of the attack in Vítkov have been arrested and sentenced, the Workers' Party was outlawed,⁶⁰ and Czech Police have protected Roma people during most of anti-Roma marches organized by extreme-right and neo-Nazi groups. Special efforts regarding Roma issues were undertaken during the Czech Republic's EU Council Presidency, when the Czech Government ended its presidency by introducing the policy guideline document "10 Common Basic Principles on Roma Inclusion". This document was adopted by the Council of the European Union at Luxemburg, on 8 June 2009 and has become part of EU Roma policy.⁶¹ These efforts by the Czech Government, however, have not stemmed the tide of events, especially at the local level in some regions, such as North Bohemia.⁶²

⁵⁷ "Neo-Nazis clash with police in Litvínov", <<http://romove.radio.cz/en/article/22135>>

⁵⁸ During the night of 18th – 19th April 2009 three Molotov cocktails were thrown into the home of a Romani family in the town of Vítkov, resulting in an infant suffering third-degree burns over 80 % of her body and the amputation of several fingers. Four suspects were arrested, charged with racially motivated attempted murder, and brought to trial. Their ties to neo-Nazi organizations and the Workers' Party, their participation in the Litvínov riots, and the timing of the attack as a celebration of Hitler were a major part of the prosecution's case. The defendants were convicted in October 2010 and were sentenced between 22 and 20 years of prison.

⁵⁹ "Extremism". Ministry of Interior of the Czech Republic Security Policy Section. Report on the Issue of Extremism in the Czech Republic in 1999". <http://aplikace.mvcr.cz/archiv2008/extremis/1999/angl/trendy.html#3_1>. The Ministry has reported an increase in number of events organized by right-wing extremists in 2011 as compared with 2010; 123 as compared to 80 in 2010. For more see: "Zpráva o situaci v oblasti vnitřní bezpečnosti a veřejného pořádku na území České republiky v roce 2011 (ve srovnání s rokem 2010)", Ministry of Interior of the Czech Republic, Prague, 2012, <<http://www.mvcr.cz/soubor/material-vnitri-bezpecnost-pdf.aspx>>, p. 63

⁶⁰ "Czech Court Bans Far-Right Party"; *New York Times*, <<http://www.nytimes.com/2010/02/19/world/europe/19prague.html>>

⁶¹ <http://www.euromanet.eu/upload/21/69/EU_Council_conclusions_on_Roma_inclusion_-_June_2009.pdf>

⁶² In the fourth ECRI report on Czech Republic from September 2009 the Commission observes: "*In recent years, high-ranking politicians at national and local level have made widely publicized anti-Roma statements. Anti-Roma slogans have been used as part of local election campaigns, and inflammatory statements by politicians appear to have been rewarded. Alongside this, attitudes to Roma in the tabloid press, as well as in online discussions on newspaper and magazine websites, are overwhelmingly negative. At the same time, there has been a disturbing intensification in the activities of the extreme right-wing milieu in the Czech Republic, including the setting up of a uniformed paramilitary group by one political party. Repeated demonstrations by extreme rightwing groups have led to escalating tensions and, at times, violent acts. ECRI is deeply concerned at the aggressive anti-Roma stance expressed by one political party in particular, which is reported to be supported by neo-Nazi groups, and the actions of which appear deliberately designed to intimidate the Roma community*". [In] "Report on Czech Republic (forth

2.3. Special education: Historical and legislative framework

Special schools (*zvláštní školy*) have a long tradition in the Czech education system. They “were established after the First World War for children with special needs, including those suffering from a mental or social handicap.”⁶³ The system flourished during the communist era, and by 1988 there were 59,301 children enrolled in these schools in the Czech Republic of the former Czechoslovakia alone, most of them Roma.⁶⁴ This system was continued after the transition and the breakup of the country into the Czech and Slovak Republics in 1993.

Two years after the dissolution of Czechoslovakia, in 1995, the Czech Education Ministry ordered the provision of additional education for special-school graduates. From the fall of 1996, preparatory classes for disadvantaged children were opened at nursery, primary and special schools. In 1998, the ministry approved an alternative curriculum specifically for Roma children enrolled in the special schools, and Roma teaching assistants were assigned to both primary and special schools to assist Roma pupils.⁶⁵

Research conducted by the ERRC in 1999 revealed that at eight special schools in Ostrava, 56 per cent of the 1,360 pupils were Roma, while of the 33,372 pupils at the city’s 69 standard primary schools, Roma comprised only 2.26 per cent. In addition, while only 1.8 per cent of non-Romani pupils were placed in special schools, the proportion of Roma pupils in special schools was 50.3 per cent. Thus, a Romani child from Ostrava was 27 times more likely to be placed in a special school than a non-Romani child.⁶⁶

In the year 2000, a group of 18 Roma children who had been enrolled into the special schools at some stage during their primary education applied to the ECtHR, arguing that they had been discriminated against in their access to education on the basis of their Romani ethnicity. The applicants were represented by the Budapest-based European Roma Rights Centre (ERRC), Lord Lester of Herne Hill, Q.C., James Goldstone of the

monitoring cycle)”, ECRI, Summary, p. 8;
<http://hudoc.ecri.coe.int/XML/Ecri/ENGLISH/Cycle_04/04_CbC_eng/CZE-CbC-IV-2009-030-ENG.pdf>;
see also: ERRC report on “Attacks against Roma in the Czech Republic: January 2008-January 2012”
<<http://www.errc.org/cms/upload/file/attacks-list-in-czech-republic.pdf>>

⁶³ Data provided by the government of the Czech Republic, quoted in ‘D.H.’, ECtHR, 2007, , <<http://www.errc.org/cms/upload/media/02/D1/m000002D1.pdf>>, Article 15

⁶⁴ *Ibid.*

⁶⁵ “Informace o zřízení funkce romského asistenta v základní a zvláštní škole”, Věstník Ministerstva školství, mládeže a tělovýchovy České republiky, Ročník LIV, Sešit 6, June 1998, <<http://aplikace.msmt.cz/PDF/100952.pdf>>

⁶⁶ ‘D.H.’, ECtHR, 2007, <<http://www.errc.org/cms/upload/media/02/D1/m000002D1.pdf>>, Article 18

New York Bar, and David Strupek of the Czech Bar Association.⁶⁷ The ERRC's 1999 research was a key component of the lawsuit.

In 2005, commenting on the Czech special schools and the assessment procedures used to identify candidates for them, the Advisory Committee on the Framework Convention for the Protection of National Minorities of the Council of Europe stated that: "According to non-official estimates, Roma account for up to 70 percent of pupils in these schools, and this – having regard to the percentage of Roma in the population – raises doubts concerning the tests' validity and the relevant methodology followed in practice."⁶⁸

Most recently, in 2012,⁶⁹ the Organization for Economic Cooperation and Development (OECD) issued a general report on the Czech Republic, which found that the mean performance of Czech students on the most recent Program for International Student Assessment (PISA) test is below the OECD average. In reading, 23.1 per cent of students in the Czech Republic reportedly lack the skills needed to function in the labour market, compared to an OECD average of 18.8 per cent. There is also a large difference in performance between schools in the Czech Republic, "suggesting that students are selected on the basis of academic ability... Part of this variance in performance is explained by students' socio-economic background. Disadvantaged schools tend to reinforce students' socio-economic inequalities...since they do not mitigate the negative impact of the students' disadvantaged background and in fact they amplify its negative effect on their performance." The report also noted that "evidence indicates...few Czech students from Roma families" attain secondary education.⁷⁰

With respect to special-needs education, another OECD review published in 2012, on Evaluation and Assessment in Education in the Czech Republic, observed that "there is some evidence from international student surveys of a significant decline in student learning outcomes in the last decade. There are also indications that both performance and choice of educational track are strongly influenced by family background. Another concern relates to the basis for attending a special school, sometimes as a result of learning difficulties and/or a social disadvantage and not following the identification of a learning disability."⁷¹

⁶⁷ 'D.H.', ECtHR, 2007, <http://www.errc.org/cms/upload/media/02/D1/m000002D1.pdf>, Article 10

⁶⁸ "Second opinion on the Czech Republic adopted on 24 February 2005", Advisory Committee on the Framework Convention for the Protection of National Minorities, Strasbourg, 26 October 2005, <http://www.coe.int/t/dghl/monitoring/minorities/3_fcnmdocs/PDF_2nd_OP_CzechRepublic_en.pdf>, Article 146

⁶⁹ "Equity and Quality in Education: Supporting Disadvantaged Students and Schools, SPOTLIGHT REPORT: CZECH REPUBLIC", OECD 2012, pg. 6, <<http://www.oecd.org/education/preschoolandschool/49603567.pdf>>

⁷⁰ *Ibid.*

⁷¹ "OECD REVIEWS OF EVALUATION AND ASSESSMENT IN EDUCATION: CZECH REPUBLIC", OECD 2012, pg. 9, <<http://www.oecd.org/education/preschoolandschool/49479976.pdf>>

2.4. D.H. and Others v. the Czech Republic - the judgment and its implementation

On 13 November 2007, the Grand Chamber of the ECtHR held that the Czech Republic had violated the European Convention of Human Rights by segregating Roma children into special schools, with regard to Article 14 (prohibition of discrimination), read in conjunction with Article 2 of Protocol No. 1 (right to education). The Court required the government of the Czech Republic to adopt general measures in order to “put an end to the violation found by the Court and to redress so far as possible the effects.”⁷²

The judgment is important for several reasons. It was historic: For the first time, the Court found a violation of the ban on discrimination in relation to a pattern of racial discrimination in public life (i.e., not just with respect to an isolated plaintiff). The judgment also found that racial segregation amounts to discrimination. The Court also noted that such barriers to education for Roma children exist elsewhere in Europe.

The Court clarified that the disproportionately prejudicial effects of a law that is neutrally worded may amount to “indirect discrimination”, and that statistical evidence can provide relevant proof of indirect discrimination. The Court also confirmed that the burden is on the respondent State to show that different treatment is not discriminatory, and reiterated that no waiver of the right not to be subjected to racial discrimination can be accepted. Lastly, the Court found that Romani people belong to a disadvantaged minority requiring protection.⁷³

The Czech Government had undertaken some corrective steps as early as the year 2000 in response to the concerns raised by reports and research on this issue, which was included in the Strasbourg application. Among these steps was the amendment of the 1984 Czechoslovakian School Act that made it possible for special school graduates to apply to secondary schools, provided they passed the entrance exams (such pupils had been legally barred from applying prior to this amendment).

The adoption of the new School Act (561/2004), which took effect in 2005, was a major step toward reforming the system. The Act abolished the category of special (*zvláštní*) schools. It refers to the existence of an “educational programme of basic education for disabled pupils” (which, in practice, is provided by practical primary classes or schools) and introduced specialized (*speciální*) schools for children with “mid-range to severe disability”. All schools were granted the discretion to design their own curriculum according to principles drafted by the Education Ministry. The Framework Education Program for Children with Light Mental Disability (*lehká mentální postižení*),

⁷² D.H. ECtHR, 2007, op. cit. Article 216

⁷³ “D.H. and Others v. The Czech Republic”, ERRC, 24 April 2010, more on relevance of the judgment available at <<http://www.errc.org/cikk.php?cikk=3559>>

(hereinafter, the LMP curriculum) was designed for the education of children diagnosed with such disability.⁷⁴

The Act specified that specialized (*speciální*) primary schools are intended for pupils with autism, multiple disabilities and severe mental disability. Section 16 of the Act regulates education for children with “special educational needs”, defined as “children with disabilities, health problems, or social disadvantage”.⁷⁵ Social disadvantage is defined as a family environment with “low socio-cultural status” or “one at risk of social pathology”.⁷⁶ Educational guidance centres assess children’s special educational needs and recommend compensatory measures. The Act provides for teaching assistants, individualized education and preparatory classes for socially disadvantaged children prior to their compulsory school attendance, as well as additional instruction for those who never complete primary education.

The Act was then augmented by two Ministerial Decrees: No. 72/2005,⁷⁷ on the provision of educational guidance counselling services at schools and school counselling facilities, and No. 73/2005,⁷⁸ on the education of children, pupils and students with special educational needs and gifted children, pupils and students. These decrees stipulate that students are to receive support above and beyond the individualized measures available in mainstream schools. Article 2 of Decree 73 provides that children whose special needs have been established by the educational guidance centres should receive special schooling if their needs are clear and compelling.⁷⁹

The new Act and decrees were, however, criticized by civil society and international human rights organizations for being largely superficial, as Roma children have

⁷⁴ Use of this curriculum requires both reduced class size (12 pupils maximum) and the deceleration of the curriculum by approximately three grade levels. For example, a 1st grade cohort in a practical school would learn to count, add and subtract with the numbers between 1 and 5 only, without the introduction of 0 or work with double digits; in a mainstream school, the 1st grade is expected to master work with numbers between 1 and 20. Practical school students will receive more instruction in skills such as cooking, metal work and woodwork; there is also a greater focus on getting the children to be “diligent and patient”, as one teacher interviewed described it.

⁷⁵ Act No. 561/2004 Coll., on Pre-school, Basic, Secondary, Tertiary Professional and Other Education (School Act), Article 48, <http://www.msmt.cz/uploads/soubory/vysoke_skoly/IM_novelizovanyzakon561rijen2008.pdf>, Article 16

⁷⁶ *Ibid.*

⁷⁷ Vyhláška č. 72/2005 Sb., o poskytování poradenských služeb ve školách a školských poradenských zařízeních, Ministry of Education of the Czech Republic, 17 February 2005, <http://www.msmt.cz/uploads/soubory/sb020_05.pdf>

⁷⁸ Vyhláška č. 73/2005 Sb., o vzdělávání dětí, žáků a studentů se speciálními vzdělávacími potřebami a dětí, žáků a studentů mimořádně nadaných, Ministry of Education of the Czech Republic, 17 February 2005, <http://www.msmt.cz/uploads/soubory/sb020_05.pdf>

⁷⁹ *Ibid.*

continued to be over-represented in practical primary schools, where they follow reduced curricula as per the LMP curriculum.⁸⁰

The adoption of the National Action Plan on Inclusive Education (NAPIE)⁸¹ in March 2010 was a direct response to the 2007 ECtHR ruling. The NAPIE envisioned ending persistent segregation practices. The action plan has been criticized, however, for lack of a concrete timeline for desegregating the schools, for its lengthy preparatory phase (scheduled to last until the end of 2013), and for the fact that implementation will start only in 2014.⁸²

In April 2011, Decrees 72 and 73 were amended. Some observers hoped these amendments, regulating the provision of special needs assessments and instruction, would introduce measures to support inclusive education of Roma pupils in particular. Some civil society experts say they do not foresee these amendments having any positive impact. Even though the amended Decree 73 was supposed to prevent the placement of children into special education on the basis of social disadvantage, the text ultimately adopted has reportedly had the opposite effect and practically legitimized existing practices.⁸³

Section 3 of the amended Decree 73 states:

“(5) Pupils without disabilities may, in exceptional cases and only as long as necessary to compensate for their disadvantages, be educated in a school, class or study group established for pupils with disabilities(...),

b) in the case of a pupil with a social disadvantage who, within the scope of education in a mainstream school, fails to cope in general over an extended period despite consideration for his individual educational needs and the application of compensatory measures in accordance with Section 1(2), and if required in his interest; Section 9(1) shall apply mutatis mutandis. A pupil with a social disadvantage may be placed in a school, class or study group

⁸⁰ “D.H. and others v. Czech Republic”, Submission to the Committee of Ministers of the Council of Europe, COSIV-OSJI-ERRC, June 2012, <<http://www.errc.org/cms/upload/file/eighth-communication-to-the-committee-of-ministers-on-judgment-implementation-18-may-2012.pdf>>

⁸¹ “National Action Plan on Inclusive Education”, Ministry of Education of the Czech Republic, 2010, <http://www.msmt.cz/uploads/Skupina_6/NAPIV.doc.pdf>

⁸² “D.H. and others v. Czech Republic”, Submission to the Committee of Ministers of the Council of Europe, COSIV-OSJI-ERRC, June 2012, <<http://www.errc.org/cms/upload/file/eighth-communication-to-the-committee-of-ministers-on-judgment-implementation-18-may-2012.pdf>>

⁸³ “D.H. and Others v Czech Republic: Consideration by the Committee of Ministers – November 2011”, OSJI-ERRC, 7 November 2011, <<http://www.errc.org/cms/upload/file/seventh-communication-to-the-committee-of-ministers-on-judgment-implementation-7-november-2011.pdf>>

for a maximum period of five months; over the duration of such a placement, the pupil shall remain a pupil of his original school.”⁸⁴

In 2011, the Government also adopted its “Strategy for the Fight against Social Exclusion 2012-2015” (SFSE)⁸⁵, which stated, *inter alia*, that eliminating the segregation of Roma children in education is a priority. The Czech Government Agency for Social Inclusion in Roma Localities (hereinafter, the Agency) contributed to designing the Strategy and is now involved in its implementation. The director of the Agency has repeatedly stressed the need to enhance implementation, including ending segregation in housing and schools.

In May 2011, more than 50 experts, including representatives of the Ombudsperson’s Office, resigned from a working group on the implementation of the NAPIE, set up by the Ministry of Education, in protest against the Minister of Education’s alleged lack of commitment towards inclusive education.⁸⁶

Since *D.H.*, civil society organizations have submitted a number of follow-up reports on the implementation of the judgment in the Czech Republic. From 2007 onward, the European Roma Rights Centre, Amnesty International, the Open Society Justice Initiative, Mental Disability Advocacy Centre, Czech Expert Society for Inclusive Education (ČOSIV), and the Together to School Coalition, have been raising concerns jointly and separately about the lack of inclusive measures in Czech education: submissions and communications have been issued to various bodies, such as the UN Committee on the Elimination of Racial Discrimination, the Committee of Ministers of the Council of Europe, and the UN Committee on the Rights of the Child. The most recent such submission was in November 2011.⁸⁷ Civil society experts have been providing the Czech Government with constructive criticism and very specific recommendations on how to enhance the inclusion of Roma children in education.⁸⁸

The Czech Statistical Office has collected various data on children in special education.⁸⁹ The Ministry of Education has also collected another set of data (see

⁸⁴ Communication from the authorities of the Czech Republic in the case of D.H. and others against Czech Republic (Application No. 57325/00), Secretariat of the Committee of Ministers of the Council of Europe, 22 November 2011,

<<https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=1987330&SecMode=1&DocId=1824278&Usage=2>>

⁸⁵ “Strategie boje proti sociálnímu vyloučení”, Office of the Government of the Czech Republic, August 2011, <www.aspcr.cz/sites/default/files/strategie-2011-2015_2.pdf>

⁸⁶ “Open letter of resignation from NAPIV team to Czech PM Nečas and Education Minister Dobeš”, *Romea.cz*, 31 May 2010, <http://www.romea.cz/english/index.php?detail=2007_2507&id=detail>

⁸⁷ <<http://www.errc.org/cikk.php?cikk=3559>>

⁸⁸ <<http://www.errc.org/cikk.php?cikk=3559>>

⁸⁹ “Speciální školství v ČR po roce 1989”, Czech Statistical Office, 11 July 2006, <<http://www.czso.cz/csu/2006edicniplan.nsf/p/3307-06>>; “Základní školství v ČR po roce 1996”, Czech Statistical Office, 22 April 2009, <<http://www.czso.cz/csu/2009edicniplan.nsf/p/3312-09>> According to this data in the school year 1999/2000 there were 4,068 schools with a total of 1,071,318 pupils in primary

appendix 4), following the changes introduced by the School Act of 2004; these data are available on its website (including numbers and percentages of pupils with health disability and/or disadvantage since 2005).⁹⁰ While the data in the table (see appendix 5) reflect the number of pupils in specialized education classes and those being individually integrated into mainstream classes, they do not further specify the various kinds of health disability or disadvantage that have been identified.⁹¹

Since statistics about the ethnicity of children in the schools are not officially collected for the country as a whole, some partial studies have been undertaken to assess this issue. A 2009 study found that almost 30 per cent of the primary school headmasters in socially excluded areas who were surveyed agreed that, as a group, most Roma children from poor families have difficulties coping with study in mainstream schools and should, therefore, attend the practical primary schools.⁹²

According to the March 2010 findings of the Czech School Inspectorate,⁹³ more than one-third of children diagnosed with light mental disability and educated in the former “special schools” are Roma. Roma children constituted 35 per cent of the children diagnosed with this disability on average; the number in some regions was as high as 50 per cent. Moreover, at least 5,000 children without any diagnosis of disability of any kind were attending the former “special schools” and being instructed as if they were in fact disabled. The report found that 83 per cent of the former “special schools” had not changed substantively, describing them as “hidden special schools”.⁹⁴

The Czech School Inspectors also highlighted a general lack of distinction in the Czech education system between the special educational needs of socially disadvantaged pupils and the kind of support they should be provided, as opposed to the special educational needs and kind of support appropriate for intellectually disabled pupils. There is a tendency to evaluate all pupils who fail to progress on time in mainstream education as candidates for an LMP diagnosis.⁹⁵

education in the Czech Republic. Of these, 451 (11%) were special schools, with 32,721 (3%) pupils in them. In school year 2004/2005 there were respectively 403 (10,82%) special schools and 25,617 (2,79%) pupils taught there.

⁹⁰ Ministry of Education of the Czech Republic, <<http://www.msmt.cz/file/21525>>

⁹¹ *Ibid.*

⁹² “Vzdělanostní dráhy a vzdělanostní šance romských žákyň a žáků základních škol v okolí vyloučených romských lokalit“, Ministry of Education, Youth and Sports, Prague, January 2009, <http://www.msmt.cz/uploads/soubory/tiskove_zpravy/vzdelanostni_drahy_a_vzdelanostni_sance_romsky_ch_zakyn_a_zaku.pdf>

⁹³ “Zpráva z kontrolní činnosti v bývalých zvláštních školách“, Czech School Inspectorate, 20 April 2010, <<http://www.csicr.cz/getattachment/6e4232be-1c17-4ff8-ac72-763a23569109>>

⁹⁴ *Ibid.*

⁹⁵ “Tematická zpráva: Souhrnné poznatky z tematické kontrolní činnosti v bývalých zvláštních školách“, Czech School Inspectorate, March 2010, <<http://www.csicr.cz/getattachment/6e4232be-1c17-4ff8-ac72-763a23569109>>

In an Opinion rendered in April 2010 at the request of the Czech School Inspectorate, the Czech Public Defender of Rights (the Ombudsperson) said the situations described in the March 2010 report constituted discrimination.⁹⁶ The Ombudsperson's own recent research from 2012 found that, even though Roma people comprise between 1.4 and 2.8 per cent of the population of the Czech Republic, Roma children comprise 32 per cent of those educated in practical primary schools.⁹⁷ The fact that Roma children are being so disproportionately identified as "lightly mentally disabled" is the primary reason why non-governmental organizations have recommended that the Committee of Ministers of the Council of Europe call on the government of the Czech Republic to implement a moratorium on new admissions of Roma children into practical primary schools.⁹⁸

In 2011, when the Government adopted its "SFSE", the Czech media reported that its school desegregation measures would cost the country "CZK 15 billion"⁹⁹ annually (approximately EUR 587 million), some of which would come from EU Structural Funds. Much of the media attention paid to desegregation in the Czech context emphasized the costs, rather than the benefits.¹⁰⁰

The Education Ministry has undergone dramatic changes in direction within the course of just a few years according to ROMEA.¹⁰¹ The former Education Ministers Ondřej Liška (2007-2009) and Miroslava Kopicová (2009-2010) were both considered to be pro-inclusion, Education Minister Josef Dobeš, whose term in office lasted from 2010-2012, undid some of the institutional arrangements introduced by his predecessors related to the implementation of *D.H.* Minister Dobeš was consequently criticized by civil society throughout his tenure for extending the life of the practices challenged by the *D.H.*

⁹⁶ "Stanovisko veřejného ochránce práv k podezření na diskriminaci romských dětí a žáků – poznatky ze zprávy z tematické kontrolní činnosti České školní inspekce na základních školách praktických", Public Defender of Rights, 20 April 2010, <<http://spolecnedoskoly.cz/wp-content/uploads/stanovisko-verejneho-ochrance-prav-k-diskriminaci-romskych-zaku.pdf>>

⁹⁷ <http://www.ochrance.cz/tiskove-zpravy/tiskove-zpravy-2012/vyzkum-potvrdil-neprimou-diskriminaci-romskych-zaku/>

⁹⁸ *D.H. and Others v. the Czech Republic, Memorandum Concerning the State and Implementation of General Measures*, European Roma Rights Centre and Open Society Justice Initiative, May 2009, <<http://www.errc.org/cms/upload/file/second-communication-to-the-committee-of-ministers-on-judgment-implementation.pdf>>

⁹⁹ "Vláda nechce romské děti ve zvláštních školách, bude to stát miliardy", iDNES.cz, 21 September 2011, <http://zpravy.idnes.cz/vlada-nechce-romske-deti-ve-zvlastnich-skolach-bude-to-stat-miliardy-1gz-domaci.aspx?c=A110921_100104_domaci_jj>

¹⁰⁰ The government has not successfully justified this expenditure to the public, even though the potential positive return on such an investment for the Czech Republic in particular was calculated in a 2009 World Bank study. Media headlines include statements such as "Government has a recipe for the Roma ghettos and crime. It will cost billions." See "Vláda má recept, jak na romská ghetta a zločinnost. Bude stát miliardy" – 15 September 2011, http://zpravy.idnes.cz/vlada-ma-recept-jak-na-romska-ghetta-a-zlocinnost-bude-stat-miliardy-1pn-domaci.aspx?c=A110914_213115_domaci_abr available at http://zpravy.idnes.cz/vlada-ma-recept-jak-na-romska-ghetta-a-zlocinnost-bude-stat-miliardy-1pn-domaci.aspx?c=A110914_213115_domaci_abr;

¹⁰¹ Albert, Gwendolyn, "Education Policies in the Czech Republic", in *Ten Years After: A History of Roma School Desegregation in Central and Eastern Europe*, Iulius Rostas, (ed.), CEU Press 2012, pp.179-195

judgment. Under Dobeš' leadership, the ministry allegedly blocked the implementation of the Government's SFSE, in particular, plans for the abolition of the practical primary schools.¹⁰²

3. Field visit findings

3.1. Case study: Rumburk

The public specialized primary school in Rumburk described below was typical of many of the former special (zvláštní) schools visited. It has existed continuously since the 1950's, and some of the faculty have been working there for several decades. This example illustrates the complexity of the curriculum programmes used by the staff, the different kinds of students attending the school, and the requirements to enrol in the school. This example serves as a reference point for concerns and issues later raised by the delegation. For example, even though the school is identified as a specialized school intended for children with mid-range or combined disabilities, children with light mental disability are also enrolled here.

"Rumburk Specialized Primary School" (Speciální základní škola Rumburk)¹⁰³

The Šluknov district has approximately 54,000 inhabitants. There are four specialized schools in the district, one of which is privately run. The total enrolment of the four specialized schools is 450. LMP pupils might attend mainstream primary schools if their parents do not consent to enrolling them into the practical primary or specialized primary schools. If there are enough LMP pupils, then a school can open a whole practical primary class, but if there are only one or two, then the specialized education centre will recommend individual integration plans for them. These centres will also recommend assistants for these pupils.

There are two full (i.e., grades 1-9) primary schools in Rumburk. In addition, there is one public and one private school for grades 1-5 only. The headmaster said he did not know how many Romani students attend the other local primary schools because "there aren't any estimates."

The Specialized Primary School in Rumburk is the central primary school for pupils with special needs from several municipalities near Rumburk. It

¹⁰²On 28 May 2012, Deputy Education Minister Ladislav Němec announced that the new Education Minister, Petr Fiala, also does not intend to implement the portion of the strategy calling for the abolition of the practical schools, for more, see: "Czech Deputy EdMin: Parts of social exclusion strategy not feasible", Prague, 28.5.2012 19:30, *Romea.cz*, http://www.romea.cz/english/index.php?id=detail&detail=2007_3397

¹⁰³ All information was provided by the headmaster and the local representative of the Czech Government Agency for Social Inclusion in Roma Localities, interviewed on 23 May 2012

was established in 1950 as a special (zvláštní) school. The headmaster has been in special education for 30 years. Currently, the school has 92 pupils, 52 of whom commute from outside Rumburk to the school every day. The school has 10 classes today: Six practical primary classes, three specialized classes for children with mid-range, severe and combined disabilities, and one preparatory class.¹⁰⁴ In 1985 it became the only special school (zvláštní) in Šluknov district, at which time it had about 15 classes.

The headmaster explained that specialized education has to do with pupils who have lower IQs. Children with IQs under 50 are considered mid-range or seriously disabled and receive specialized education. Children with IQs between 50 and 69 are considered lightly mentally disabled (i.e., LMP) and attend practical primary schools. The children must first be tested; without an educational psychological consultation they cannot be enrolled into the school. The recommendation of a professional is crucial to specialized school enrolments, and this is how it has worked for years.

The LMP pupils follow the Framework Education Program for Primary Students with LMP. Pupils who cannot follow the standard curriculum study the same subjects that pupils in a standard mainstream school do, but at a more basic level and at a slower pace. For instance, in the first grade the practical primary schools teach counting, addition and subtraction using the numbers from 1 to 5 only (i.e., no zero, no double-digits) while at the mainstream school, 1st graders learn to count, and add and subtract numbers from 1 to 20. In the 8th and 9th grades, the practical primary students learn multiplication and division, but not percentage calculations, fractions or double-digit numbers in general. In most subjects they do not go in-depth, as for example in chemistry and physics. They do study chemistry in the 9th grade, but in a more superficial, less mathematics-based version. Nothing is left out subject-wise, but everything is delayed and simplified.

The practical primary school students also receive more instruction in cooking, woodworking and metal work than mainstream school pupils do. There is also more focus on teaching them to be patient and diligent. This is the main difference in content, a greater emphasis on practical subjects. The practical classes also get a reduced class size, 10-12 pupils per class, so teachers can give them more individual assistance and attention. Most children go on to secondary vocational schools from practical primary schools.

¹⁰⁴ Note that despite the name of this school, the majority of its classes are not for children with mid-range, severe or combined disabilities, but are for children with light mental disability (six practical primary classes).

The specialized education classes have four to six pupils, maximum, per class. Specialized education students have a greater variance of capacities compared to the lightly mentally disabled. The school is also currently instructing 18 pupils with individualized education plans. Individualized plans are designed by teachers on the basis of diagnostics performed when the pupil is newly enrolled. The school sometimes collaborates with the specialized education centre on this and the parents sign off on it, as do the class teacher and the headmaster. Pupils enrolled in the practical primary classes, however, do not have individualized plans and are not “integrated”.

The headmaster said the percentage of Romani children at his school was high because the Romani population in the region is high, but added that he did not know how large that population was.¹⁰⁵ He also said Romani parents have historically had a different approach to education:

“It’s not as important for them as it is for non-Romani parents. The tendency has been for Romani parents to say to me, maybe 10 years ago, ‘Why should he study when he will just be unemployed anyway and get welfare?’ There is no motivation, focus, to complete secondary education. They tell me they don’t continue secondary education because it doesn’t amuse them anymore, but I think it is because they faced their first failures there and didn’t know how to overcome them. I don’t really know why this is, though. We do our best to follow this, but I don’t have data for you about the eventual employment of these people.”

The headmaster expressed concerns about ethnic data collection:

“It bothers me too to label someone Romani. I don’t distinguish between the students ethnicity-wise. At enrolment we can see which children have been socially neglected by their parents. This is why preparatory classes are good for overcoming social neglect. The Romani children don’t know how to draw or hold a crayon. Their parents just let them watch television. I don’t think this is enough of a reason for children to attend practical primary school, but they won’t be successful in the 1st grade. The parents aren’t interested in sending them to nursery school for even one year before grade school.”

¹⁰⁵ The representative of the Agency for Social Inclusion in Roma Localities said informal estimates based on field work found that the population of Rumburk and Varnsdorf is 2 -3 % Romani, while other towns in the district have Romani populations of about 10 %.

Last year, the school had 10 students in its preparatory class and this year it has 14. The headmaster said:

“I explain to the parents who enrol [their children] into preparatory class here that they do not have to enrol their children for first grade here. I want them to attend mainstream schools. Only two children last year remained here from the preparatory classes, because their diagnoses were discovered and confirmed.”

The headmaster also made the following observation:

“If a child doesn’t belong here, then he should go to mainstream education, but in my experience if a child doesn’t have what it takes to succeed in mainstream education, specialized education is better for him because he will experience success at school; the other children won’t tease him or mock him for being slow. At the mainstream schools this sometimes happens; it’s psychological bullying.”

3.2. Strasbourg ruling: Standpoints and mindsets

The *D.H.* case has stirred up still on-going public debate about Roma children in the Czech schools and the provision of special needs education. While the main protagonists’ positions in this regard seem not to have changed much over time, diverse opinions are held among different stakeholders within the Czech executive structures. For instance, the delegation heard different points of view expressed by representatives of from the Ministry of Education, the Czech Government Human Rights Commissioner, the Ombudsperson and the head of the Czech Government Agency for Social Inclusion in Roma Localities.

The delegation also noted that various branches of the Czech Government have sent educators and the public mixed messages regarding the desirability of an inclusive approach to education (and more generally, to social policy). The Government has adopted several documents – strategies on Roma integration and the fight against social exclusion, as well as the NAPIE – that outline specific measures needed to improve inclusion in education generally, and the inclusion of Roma people in education specifically. The Agency and various ministries are responsible for promoting these measures, but adequate funding has yet to be allocated to most of them.

Education Ministry representatives stated to the delegation that, while they were allowing for some changes prompted by the follow-up to *D.H.*, they were in favour of maintaining a system in which children with special educational needs are educated by teachers specialized in this kind of education. The Ministry’s views were evidently a response to

the main concerns expressed to the delegation by practical primary and specialized primary school headmasters and teachers. These professionals view the NAPIE or the SFSE as inevitably leading to the closure of their schools.

The delegation learned that these fears led some special needs educators to form an association in 2010 that reportedly involves approximately 1,000 members and has become a powerful defender of the existing system. Jiří Pilař, the founder and head of that association (Asociace speciálních pedagogů), managed the Department for Special Education at the Ministry of Education for a decade, until he was released from service by Education Minister Ondřej Liška. Mr. Pilař has become a very vocal opponent of current plans to reform the system, which he views as potentially detrimental to children with special needs.¹⁰⁶

Representatives of the ministry said one positive outcome of the *D.H.* judgment is that it is much more difficult now to enrol children into education outside the mainstream; a child's poor academic achievements are reportedly no longer sufficient reason for such placement. Similar views were voiced by educators in most of the schools visited, who said a double diagnosis by the specialized education centres is now required with respect to light mental disability. Similarly, the educational guidance centres have reportedly become more careful before they recommend children enrol in specialized education institutions.

In a number of schools visited, educators expressed bafflement at the criticisms and findings of discrimination, including civil society calls for the elimination of the practical primary schools. Educators viewed these calls as an attack on special needs education per se, and perceived *D.H.* as strongly unjust. Many educators expressed the passionate conviction that children now being educated according to the LMP curriculum (for whatever reason, whether genuine incapacity or social disadvantage) would never be able to “survive” mainstream education with their self-confidence intact, a matter to which this report returns below. In their view, mainstream primary schools are unable to embrace such pupils to the degree necessary. The view was expressed that Roma children, in particular, would find the competitive atmosphere of the mainstream primary school intolerable. They would feel unsuccessful and might sometimes be bullied. Many special needs educators were convinced they are doing what is best for these children and believe Roma children, in particular, are best off in the practical primary schools in terms of their day-to-day experience. The fact that, for decades now, large numbers of Roma people educated in the Czech schools have not become fully employed or integrated as adults was said to be due to factors outside of the educators' control.

In the view of the delegation, participatory practices involving facilitated discussions among community members, parents, students and teachers could address the thorny

¹⁰⁶“Zrušení 'zvláštních' škol zvýší počet agresorů, kritizuje úřad Pilař”, *Lidovky.cz*, <http://www.lidovky.cz/zruseni-zvlastnich-skol-zvysi-pocet-agresoru-kritizuje-urad-pilar-11m-/ln_domov.asp?c=A111105_105711_ln_domov_mev

problem of bullying in the mainstream primary schools. Currently, the most pervasive notion among special needs educators seems to be that segregation of Roma children away from non-Roma children is an adequate response to bullying.

Most of the special needs educators interviewed shared a similar mindset regarding Roma children and specialized education. This is not surprising, considering some of the teachers the delegation met have been involved in special needs education for nearly 30 years, such as the headmaster of the school in Rumburk. School officials questioned the validity of the *D.H.* judgment to the delegation, pointing out that the data presented to the ECtHR had concerned Ostrava only and should not have been extrapolated to indict the country as a whole. The Ombudsperson's 2012 study, however, was countrywide and its findings indicate the persistence of discriminatory treatment of Roma children.

On the other hand, several representatives of the younger generation of educators, such as the headmaster of the mainstream primary school visited in Prague, manifested a different approach and vision. This particular headmaster criticized the Government and the Education Ministry for its lack of guidelines and leadership in this matter, claiming that currently there is no "system" worthy of the name in place for primary education and no standards defined for teachers. He argued

*"(...) we have met with the ministry, they listen, then they promise, but the reality is different. We [i.e., his school] are the 'token' example [of integrated education]. [Education] Minister [Ondřej] Liška's strategy was very different and we felt there was support, but then came [Education Minister Josef] Dobeš."*¹⁰⁷

This headmaster also expressed the view that

*"society is changing. (...) Previously, people wanted the exclusive schools; now more parents want inclusive education and a safe environment for their children, not performance-based [education], but [education] about critical thinking. Education is not about being a walking encyclopaedia... a child [must] learn to think. The curricular reform is helping a bit, even though it's not ideal. (...) The teachers need to be re-educated as well. I think that the administrators and ministry should appoint school headmasters and pay headmasters who share this vision. It's about the whole system. I want the state to say 'this is the way'."*¹⁰⁸

The Czech Government Human Rights Commissioner has been in favour of reforming the system as envisioned in the NAPIE and the SFSE; both documents promote inclusive education and foresee eradicating practical primary schools. In the Commissioner's view, the Education Ministry has not adequately explained to special needs educators what their roles would be in a reformed system; such teachers would be still needed, but they would

¹⁰⁷ Interview with the director of Základní škola (Elementary School), Lyčkovo náměstí, Praha, 25 May 2012

¹⁰⁸ *Ibid.*

work in mainstream primary schools following inclusive education programmes. The Ombudsperson also argued that special needs education is appropriate only for children with intellectual disabilities and not for those otherwise disadvantaged.

The director of the Agency told the delegation that the Government's SFSE recommends supporting universities and other teacher-training institutions to better educate teachers regarding special education methods involving individualized instruction. Teaching assistance is reportedly underfinanced with respect to the identified needs, as is educational psychology support in mainstream schools.

Both the Commissioner and the Ombudsperson, as a result of their stated positions and their efforts to reform the system, have encountered verbal hostility from educators during discussions of this issue with them. The Ombudsperson reported that, during a recent survey into the ethnic composition of the former special (*zvláštní*) schools carried out countrywide by his office, both he and his team were subjected to verbal attacks in person and to letters of complaint. He informed the delegation that some of these letters were seemingly written and signed by Roma parents. All of the voices of complaint (some of which may have been mobilized by the special needs educators who feel at risk) were in favour of preserving the status quo and against the Ombudsperson even carrying out a survey of the ethnic composition of the schools, as they foresaw the survey as part of an effort to dismantle the system. The delegation also noted during the visit that many of the educators were defensive and exasperated in general.

As much as there is an obvious need to reform the system in the direction set by the NAPIE and the SFSE, the mindset of both educators and the general public is also in need of transformation, especially the views of those who have been part of the special education system for decades. This view was well-described by the Czech Government Human Rights Commissioner, who underlined that

*“The lobbying done by the ‘special education’ industry is very strong. (...) The general public perception in the Czech Republic is that Roma children are best off in the practical primary schools and this is strong, it can't be changed overnight. It's even harder to change this perception among the teachers at the practical primary schools, because they themselves have convinced themselves they are doing the best they can. (...) It will greatly depend on the approach taken by the Minister of Education, how quickly he starts turning around what was done by the previous minister.”*¹⁰⁹

In the view of the delegation, change needs to occur not only among the teaching staff and administrators of these schools, but also among parents. This will require changing the mindset of both, as children from excluded localities, many of whom are Roma, should be treated as able to learn and develop. The deficiencies of children caused by

¹⁰⁹ Interview with Czech Government Human Rights Commissioner, 25 May 2012.

disadvantaged backgrounds can be overcome with proper assistance. Roma children should not be treated as “inadaptable” by definition.¹¹⁰

3.3. School with an inclusive education program: Examples of good practice

The delegation visited a school in the Karlin neighbourhood of Prague that should be considered an example of good practice. The school’s enrolment was 374 for 2011-2012. Of those pupils, 44 have special educational needs and were integrated through individualized assistance within regular classrooms (i.e., no separate special needs classes have been established there).

The director of the school informed the delegation that eight years ago there were only 120 students attending the school, which now expects to serve a student body of 420, of whom 10-15 per cent are Romani. Following the adoption of the 2004 School Act, the school designed its curriculum to make it attractive to local parents. Because of the catchment area enrolment rule, people who live in the school’s catchment area are preferentially enrolled (although parents may choose to enrol their children elsewhere). From the start, this school opted for inclusive education and tried to integrate pupils with special needs into mainstream classrooms instead of creating separate special needs classes for them. They chose to individualize these pupils’ education, for example, through integration groups that consist of two or three children, who visit the special needs teacher for an hour a day of individual instruction and are otherwise in the classroom with everyone else.

Though there are problems with financing the special needs teachers at this mainstream school, four such teachers work there, financed from the school’s operations budget. Children who have special educational needs have individualized study plans and their parents are consulted more frequently than are the parents of children without special needs. A total of 50 children of all ages are currently slated to be involved in individualized instruction.

During 1st grade enrolment, a small team is set up to observe the children and assess them. After the completion of a voluntary preparatory class, the school lets the parents know whether their children are prepared for school, whether they should attend kindergarten, or whether they should delay enrolling in primary education for a year. A paediatrician and educational guidance counsellor must recommend delayed enrolment. The school needs their diagnosis of the child to serve the child’s best interests. If difficulties arise over time, the parents always have the last word on where their children enrol and into what kind of programme.

¹¹⁰ The term is increasingly being used to refer to Roma and was used e.g. by the mayor of Rumburk in the interview on 23 May 2012. Study devoted to media analysis on articles related to Roma in January every 5 years revealed that while in January 2007 it was used in 96 articles, in January 2012 it was used 474 times. (See AppendixAppendix 5)

Two years ago, the school opened up a preparatory class, intended for the socially excluded, that is attended by children whose parents are either foreigners or Roma. The director underlined that part of his school's success with Roma students is that Roma parents do consider education important and want to address their children's problems; as he told the delegation, "These Roma parents escort their children to and from school and they trust us, so they come to us with their issues". Not all of the Roma children who live in Karlín attend this school; there is another mainstream primary school nearby that shares its space with a specialized primary school.

Throughout the Czech Republic there are, however, primary schools that are being commonly referred to as "Roma schools". The Prague headmaster recalled an example given him by another primary school headmaster. When the Roma population of her school was found to be 20 per cent, she offered programmes for that specific population; now the school's enrolment is 90 per cent Roma. The headmaster then told us he believed his colleague had made a mistake by "reducing the quality of instruction" at the school, which led non-Roma parents to remove their children. Reportedly, when standards are not upheld, it opens the door to the creation of such "Roma schools". The headmaster said he takes care to uphold standards by headhunting and hiring the best and most recently educated teachers.

One of the special needs educators working at the mainstream primary school in Prague told the delegation that

"Contact with parents is important, but when the parents are anti-social, it's hard. We are in contact with [the NGO] People in Need, and they provide tutoring in the children's homes. The approach to the Roma parents must be a little different; it may be that they don't trust the other parents and won't come to a class gathering. You have to approach them individually".¹¹¹

In the view of the delegation, mainstream primary schools run in this way should be promoted, as they can function as role models for inclusive education. It is also important that such practices be well funded, even if they are not specifically designed to address Roma education. The Karlín case is a good example of a mainstream primary school that offers its local community education that is well attuned to all the different needs and expectations of a diverse community.

3.4. Case study: Two schools in Brno

The examples of two schools visited in the country's second-largest city, Brno, provide a good illustration of the challenges they face and their contrasting ways of dealing with them.

Primary School (Základní škola) Náměstí 28. října, Brno-Černá Pole

¹¹¹ Interview with the headmaster of Základní škola, Lyčkovo náměstí, Praha, 25 May 2012

This mainstream primary school in the city centre serves mostly Roma students because of the population of its catchment area. As its headmaster underlined:

“We don’t keep track, but [the population is] 80 per cent Roma. We don’t want to be a segregated school but, de facto, we are. [We have] 450 pupils, mainstream primary and kindergarten pupils (53 are in kindergarten). The first level (grades 1-3) is located in [a separate] building.... We have three preparatory [i.e., kindergarten] classes (18 pupils each) providing early childhood care. We also have a daily study programme for people to catch up, even for adults.”¹¹²

The school is part of a league of “community schools”, where socially disadvantaged children are educated (not just Roma children). The school follows the inclusive education principle:

“We take everyone, irrespective of intellectual level, ethnicity, etc. We want to compensate for their handicaps so they don’t have to go elsewhere. A minimum of children leave here for the former special schools, the ones who really are mid-range mentally disabled. The lightly mentally disabled we can handle.”¹¹³

There are no separate special needs classes in the school. Everyone follows the standard curriculum, and individuals who follow individualized programmes receive individual assistance.

As it was further explained:

“Inclusivity is not only about Romani people, it’s about individualizing the educational care. We are creating a heterogeneous environment in the classes and the school, where we work with them as individuals. We are not interested in ethnicity because it’s not a special educational need. There are four kinds of [teaching] assistants: People who have teaching certificates (young people); Roma assistants, who help with access to school (in the preparatory classes and 1st grade, to overcome the language barrier); integration assistants for individualized integration, which has to do with assigning an assistant to an individual child (these are children with psychiatric diagnoses, mental disabilities, behavioural disorders); and the fourth kind are assistants for the physically disabled, but we don’t have any of those. In each educational field there is a professional assistant. We teach 10 subjects, so we hire 10 assistants. We either hire two teachers per class, or the class is broken up into groups; for example, those who have been absent get catch-up assistance.”¹¹⁴

¹¹² Interview with the headmaster of Základní škola, 28. října, Brno, 22 May 2012

¹¹³ *Ibid.*

¹¹⁴ Interview with the deputy headmaster of Základní škola, 28. října, Brno, 22 May 2012

The headmaster emphasized that the inclusive measures they are introducing are financed primarily from the European Social Fund and other EU funding, and that they hoped the state would eventually fund this approach nationwide.¹¹⁵

Despite the fact that this school seems to be an "exclusive" one because of its prime location and the good quality of its infrastructure, equipment, programmes and staff, the delegation was informed that its reputation locally is that of a "Roma school". Parents from the majority population do not enrol their children there.

Primary School (Základní škola) Sekaninova 1, Brno 14

An example of a different approach was embodied by a primary school in a locality referred to as the "Brno Bronx", a district comprised of some 9,000 socially disadvantaged Roma people, although the school's name does not reflect this fact. The school provides all of the various kinds of primary education offered by the Czech system, from standard primary education to practical primary education to specialized primary education for children who are more severely disabled or who have combined disabilities.

The school has an enrolment of 130 in grades 1-9. As the headmaster explained to the delegation:

*"All of the teachers are fully qualified as special education teachers. Some are speech therapists, some are special education teachers (psychopeds), and the 'etoped' deals with children with behavioural disorders or disciplinary problems. We have a child here who has a hearing disability and we co-operate with a special educational centre elsewhere for his needs. We also have assistants – they used to be called Roma assistants, now they are just teaching assistants – but ours are Roma."*¹¹⁶

The school's headmaster underlined:

*"All of the pupils here are equal; we don't distinguish on the basis of ethnicity. The children don't want to speak Romanes here – we tried it. Most of the pupils here live in the catchment area, and 90 per cent of the population here is Roma. Some of the children don't want to identify themselves as Roma or their parents don't want to have their nationality listed. It's not because they are ashamed, but they would rather not stress it."*¹¹⁷

The headmaster and educators at this particular school described their work as "demanding" because the children "come from across the spectrum" and reportedly

¹¹⁵ Interview with the headmaster of Základní škola, 28. října, Brno, 22 May 2012

¹¹⁶ Interview with the headmaster of Základní škola, Sekaninova, Brno, 22 May 2012

¹¹⁷ *Ibid.*

display social pathologies, such as drug addiction and involvement in prostitution. One of the teachers posited that drug addiction might lie behind some of the mental disability diagnoses.

The school also runs a preparatory class. Half of the children attending that class reportedly enrol in mainstream primary schools, while the other half usually repeats the preparatory class. This year, none of the 19 pupils reportedly were graduating from the preparatory class.

The school includes a special needs educational guidance centre on its premises that serves all the other schools in the area. For this reason, as well as its high Roma enrolment, this particular primary school seems to deserve the designation of a “hidden special school”. Of all the schools visited by the delegation, the administrators of this one also seemed to hold the lowest opinion of the community they were serving.

3.5. Half-way reforms: The complexity of the primary education system

The Czech system in which the Roma children receive primary education came across as complex, confusing and half-way through a reform process, and the delegation learned that administrators, teachers and parents alike find the system confusing. There is little doubt that this applies to Roma parents and could make abuses of the system more likely, especially given that many Roma parents have only achieved no more than low levels of education at best themselves.

Within the Czech school system, in principle, municipalities establish primary schools. Funding for practical and specialized primary schools comes from regional governments, on the assumption that these schools are likely to serve children from multiple municipalities. The Education Ministry provides higher per-pupil funding to the regional authorities for pupils in need of practical or specialized education; this is intended to keep class sizes small.¹¹⁸

The delegation learned that municipalities are also co-founders of practical and specialized schools. Private entities such as charitable or religious organizations can also establish primary schools, and one such school was visited by the delegation in Ostrava.¹¹⁹ However, it is also the case that practical and specialized primary schools may open classes that follow a standard primary education curriculum. Similarly, standard primary schools can open classes for children with special education needs, either practical or specialized classes. An added layer of complexity exists in the fact that any kind of primary school can establish classes that are not “primary” at all, ranging from nursery, kindergarten and preparatory classes to secondary school classes.

¹¹⁸ Theoretically, the way to check the status of a given institution and to find out whether it provides either practical or specialized education would be to find out who the school’s establisher is and identify where these higher per-pupil transfers are being sent.

¹¹⁹ Církevní základní škola a mateřská škola Přemysla Pittra

The delegation was concerned by the fact that practical primary schools with special education staff are being attended by children without LMP diagnoses and that ministerial decrees permit this. The delegation realized this is part of a strategy to deal with demographic pressures, as smaller enrolments could justify the closure of some of these schools or necessitate their merging. The current per capita financing system requires schools to maximize enrolments in order to pay for their operations. The maximum class size was said to be 12 for an LMP curriculum class¹²⁰ and 25 for an ordinary class. Given the overall decrease in birth rates, this means schools are generally competing with one another for a shrinking pool of students. One primary school headmaster reported that parents who had wanted to switch their children to a mainstream school from a practical primary school were even approached on the street by social workers from the practical primary school actively pressuring them not to switch. Complaints about their precarious funding situations were the main topic of concern for mainstream school headmasters. However, the headmasters at the specialized primary schools the delegation visited never mentioned funding issues at all in their discussions, stressing instead their decades of continuity and stability in their communities.

Some of the mainstream primary school headmasters said they feel it is inappropriate for practical primary or specialized primary schools to run kindergarten classes for children who do not have disabilities. The headmaster of a school in Brno expressed her concerns as follows: *“These specialized primary schools offer preparatory classes even though we could take the children, we have capacity. They don’t co-operate with us, they compete.”*¹²¹ These educators also found it disturbing that the educational guidance centres that test and certify children’s disabilities are sometimes located in the same buildings as the practical primary or specialized schools.¹²²

Some headmasters were concerned by the lack of clear guidelines regarding what kind of system the government wants to have and promote – an exclusive system, or a system that is inclusive and public in nature.¹²³ Some educators expressed the view that the Czech education system as a whole is quite exclusionary, echoing the 2012 OECD findings, which critiqued the system for preserving social stratification and not doing enough to enhance the upward mobility of disadvantaged children.¹²⁴

More than one headmaster noted that, while it is not their stated aim, the practical primary schools seem, *de facto*, to be intended for children with behavioural problems who are socially disadvantaged, and not necessarily for the intellectually disabled. In the

¹²⁰ Such classes receive a higher per-pupil normative to compensate for their lower enrolments.

¹²¹ Interview with the headmaster of the Základní škola, 28. října, Brno, 22 May 2012

¹²² *Ibid.*

¹²³ Interview 25 May 2012. Another administrator said their school was part of a “League of Community Schools”, schools which define their mission as serving the needs of the communities in which they are located (www.komunitniskola.cz)

¹²⁴ OECD, 2012, *Equity and Quality in Education: Supporting Disadvantaged Students and Schools SPOTLIGHT REPORT: CZECH REPUBLIC*, <<http://www.oecd.org/dataoecd/4/50/49603567.pdf>>

view of one headmaster, “classic mainstream schools did not want to address any of these issues and shifted the burden elsewhere – all that had to happen was that the child would not do well, or stop attending, and they would send them to special schools.”¹²⁵

The lack of a comprehensive overview of the country’s primary school system was confirmed by the Office of the Ombudsperson, whose staff informed the delegation that neither the Czech School Inspectorate nor the Education Ministry had been able to provide them with the precise number of practical primary schools in the country.¹²⁶ The Ministry’s representative also admitted that the Ministry does not know the total number of children currently being educated according to the LMP curriculum.

Despite the fact that early childhood education and preschool are essential to educational achievement and to preventing especially Roma children from being channelled into practical or specialized education, too few children benefit from it.¹²⁷ The charity primary school visited by the delegation and some practical primary schools addressed this by establishing preparatory classes for the final year of preschool (which, by law, must be provided to all free of charge). It was difficult to assess how many mainstream schools also feel the need to establish preparatory classes. Educators in impoverished communities said it is reportedly rare for Roma children to attend even that free, final preschool year. The Step by Step programme,¹²⁸ which focuses on inclusion beginning at the preschool level, was mentioned as having had a successful run in the Czech Republic some time ago, but the programme had ultimately reportedly proved too costly to maintain.

Educators repeatedly mentioned the fact that existing mechanisms for fostering the inclusion of either disabled or disadvantaged pupils are too complicated, time-consuming and unstable, due to the necessity of reapplying annually for funds, including the funding of adjunct faculty at mainstream schools (educational psychologists, speech therapists, teaching assistants, etc). The state funding of teaching assistants (which is regionally administered), in particular, had been cut over the past few years; administrators said they had to draw from funding intended for teachers’ salaries in order to maintain teaching assistants in classrooms. The state currently funds only 80 per cent of teaching assistant salaries, with schools responsible for the rest. Assistants are paid CZK 5 000 monthly (EUR 195) for four-hour workdays.

The operating costs of preparatory classes, practical primary schools and upper-secondary schools are usually funded by the regional authorities,¹²⁹ ostensibly because the pupils attending such schools come from multiple municipalities. For their part, municipalities

¹²⁵ *Ibid.*

¹²⁶ Surprisingly, there are such data available at the website of the Ministry itself.

¹²⁷ “*Mapping of participation of Roma and Sinti children in early education processes within the OSCE region*”, available at: <<http://www.osce.org/odihr/73874>>

¹²⁸ More on the Program on Roma in Czech Republic see at: <<http://www.issa.nl/network/czech/czech.html>>

¹²⁹ One municipality (Ostrava) said it was also funding preparatory courses and teaching assistants.

were described as having the authority to establish schools and to hire and fire their managements. Municipal funding, like regional funding, only covers school operations and overhead. Staff salaries are paid by the Ministry of Education, and the Czech School Inspectorate was said to be responsible for monitoring the quality of education. The director of the Agency told the delegation that, in practice, the regional financing mechanism for the practical primary schools is a barrier to the transformation of such schools into mainstream schools, as municipalities may refuse to take up the administration associated with such transformations.

Representatives of the Ombudsperson raised objections to the fact that it is possible to enrol children into practical primary schools starting from the 1st grade, as they were convinced that assessments of intellectual disability necessitating special intervention cannot be confirmed until children are 10 years old. The Education Ministry has been consulting the Ombudsperson during the design of these reforms, but his recommendations have not yet been taken into account.

Educators told the delegation that it is difficult to assess which primary schools best serve pupils in the Czech school system, as primary schools do not systematically receive feedback about their graduates' progress in secondary education. The director of the Agency said these and other issues were originally to have been addressed by the NAPIE by 2010, i.e., the Government is two years behind on implementing its own plans.

In the view of the delegation, the Education Ministry should consider setting up a clear schedule for the implementation of the NAPIE and support implementing the SFSE, as both plans have the potential to improve the situation of Roma in the Czech Republic, especially with regards to reducing the number of children inappropriately enrolled into education for the disabled, and the desegregation of the school system in general.

The Education Ministry should more clearly distinguish which particular educational measures are designed to address intellectual disability and which measures are designed to address the effects of socio-economic disadvantage. These two kinds of educational need should be separated in terms of regulation and financing. The provision of support measures must be designed so as to ameliorate, not exacerbate, perceived differences between children of different levels of ability, different ethnicities and nationalities, and different socio-economic backgrounds, in order to make classrooms level playing fields for all.

3.6. The ethnic data collection dilemma and colour-blindness policy

The delegation was exposed to contradictory attitudes regarding the collection of data and statistics on ethnicity. This continues to be a controversial issue, although the delegation was also provided with substantive data regarding the Roma population by some of those interviewed.

Some school headmasters objected to providing statistics disaggregated by ethnicity, stating that they do not distinguish ethnicity, and some claimed to follow a colour-blind approach (e.g., “We are not interested in ethnicity, because it’s not a special educational need.”)¹³⁰ These headmasters also expressed scepticism over how statistics on the distribution of Roma children in various kinds of schools in the Czech Republic have previously been compiled for various studies. However, some headmasters were able to provide such estimates (even including the numbers of children with only one Roma parent), stressing, nevertheless, that they do not *officially* track pupils’ ethnicity. In some schools, the delegation was provided with detailed accounts of how many Roma children attend the school, in which classes, etc. “The percentage of Roma pupils here at this school has never exceeded 60 per cent in the 20 years I have been here. Now we have 85 students and about 50 of them are Roma,” one specialized primary headmaster said.¹³¹ At another school, the headmaster informed the delegation: “We don’t keep track, but it’s 80 per cent Roma. We don’t want to be a segregated school but, *de facto*, we are.”¹³²

The “colour-blind” approach was usually accompanied by statements that attempts had previously been made to promote Roma identity, such as facilitating the use of the Romanes language, but that children and their parents had “not been interested” in those attempts and were not interested in identifying themselves as Roma. Statements were also made regarding Roma people who “don’t even seem Roma” because of their successful assimilation. The delegation was introduced to a graduate of one school who is now a teacher there; when asked how many other Roma people had graduated along with him, his response was: “How would I be able to tell who is Roma?”

Some municipal and regional representatives were able to offer estimates of their overall Roma populations, but stressed that the collection of ethnically disaggregated data about school enrolments was “impossible” or “not officially permitted”. These claims contrasted with more specific, if unofficial, estimates produced by the municipal Roma assistants and representatives of the Agency. Both educators and political representatives noted that the proportion of Roma pupils in mainstream education is much higher now than it was 20 years ago, due to differences in birth-rate trends and the demographic profiles of the majority population and the Roma minority. The delegation also learned that, because of the overall demographic trends, schools are being merged. The phenomenon of “white flight” (non-Roma parents removing their children from schools when the proportion of Roma children in them rises) was also repeatedly mentioned, especially in urban areas, as a driver behind ethnic segregation in education. The delegation visited a school where 200 non-Roma children had left *en masse* after it merged with another, mostly-Roma school. The headmaster also complained that, even though the non-Roma director of a prominent NGO active on equality issues lived in her catchment area, even he wouldn’t enrol his child in her mostly-Roma school.

¹³⁰ Deputy Headmaster, Základní škola, 28. října, Brno, interview on 22 May 2012

¹³¹ Headmaster, Speciální základní škola, Rumburk, interview on 23 May 2012

¹³² Interview with the headmaster of Základní škola, 28. října, Brno, on 22 May 2012

The Czech Government Human Rights Commissioner said she found it “sad” that no fresh data were available for the delegation about how many Roma children attend the practical primary schools, and said she supported the Ombudsperson’s survey on ethnicity in the former special schools. Representatives of the Office of the Ombudsperson said ethnically disaggregated data on enrolments is crucial, which is why the Ombudsperson commissioned the sampling of practical primary schools throughout the country.¹³³

For his part, the Ombudsperson said he had not expected that his survey of Roma pupils in the practical primary schools would prompt such a backlash in the media. He reported receiving petitions from both non-Roma and Roma parents asking that he “stop the campaign against the practical primary schools”, including statements such as “we will do with our children what we want and the state has no say”, and petitions specifically against his team, who were actually prevented from accessing several schools by headmasters saying “the parents don’t want you here”. The Ombudsperson said he believes these petitioners comprise a minority view on the issue of collecting ethnically disaggregated data on school enrolments; nevertheless, it is a view that has received a great deal of media coverage.

The Ombudsperson also said he considered the reactions of some Roma parents to his research into the ethnic composition of the practical primary schools to be very serious. These parents rejected the project and insisted on their right to decide where their children will go to school, including to practical primary schools. The Ombudsperson observed that this is proof of how deeply rooted segregation is in the mindset of the Roma population. He has reiterated that the right to education belongs to the individual child, not the parents, and that the state must ensure equal opportunities for all.

3.7. Enrolment and Testing of Children

The *D.H.* ruling criticized the testing process as well. For human rights organizations and civil society, a key question has been how Roma children’s intellectual abilities are assessed. Calls to either refrain from early testing or to significantly change the assessment procedures have been made multiple times by various stakeholders. The assessment process, as described to the delegation, does not seem to take into account specific difficulties with communication or native-language issues, but seemed to be focused on IQ testing as the main criterion.

Some interviewees were ready to acknowledge the *D.H.* ruling, in that they admitted there might still be a problem with the diagnosis and recommendation process.¹³⁴ Most of

¹³³“ Výzkum potvrdil nepřímou diskriminaci romských žáků”, Public Defender of Rights (Ombudsperson), 6 June 2012, <<http://www.ochrance.cz/tiskove-zpravy/tiskove-zpravy-2012/vyzkum-potvrdil-nepriou-diskriminaci-romskych-zaku/>>

¹³⁴ Headmaster of Karlin school told the delegation that “The edpsych centers are now afraid to recommend Romani students for special ed. The special schools are really for children with behavioral problems and

the headmasters and educators interviewed, however, defended the current assessment system, arguing that children can only be educated according to the LMP curriculum if they have undergone a multiple-stage testing process that includes observation of the child in classroom settings, and if their guardians/parents consent. They claim it is more difficult now to enrol a child in practical primary or specialized primary schools than previously.

The impetus for recommending that children undergo such testing comes from educators and headmasters themselves. The recommendation can occur either during enrolment into primary school (particularly if a 1st grader has never attended preschool), or after a child fails to progress – sometimes, but not always, after working according to an individualized educational plan. Parents or legal guardians are reportedly responsible for arranging the testing and consenting to the recommendations, which they can (and reportedly do sometimes) refuse.

Most educators admitted that during the first phase of primary school (grades 1-5) it can be difficult to ascertain whether a child's lack of progress is due to actual intellectual disability or the "pseudo-disability" of socioeconomic disadvantage. Existing legislation was said to not adequately address the range of disability and disadvantage encountered in the schools, especially where multiple disadvantages are concerned. The free provision of speech therapy to impoverished children, for example, was said to be available only at schools that manage to raise funds independently for such adjunct faculty. The head of the Association of Special Pedagogues claimed that *"Every expert trusts the testing process we have in place"* although he did admit that *"some psychologists send 'borderline' children to special needs education without specifying that all they need is a smaller class size, not a decelerated programme as well."*¹³⁵

Reintegration transfers of children from practical primary schools to the mainstream were said to also occur, but rarely. One school, in particular, had designed an entire programme for such transfers, supported though the Operational Programme for Competitiveness in Education. The end of the 3rd grade in practical primary school was said to be a time when pupils are usually retested to see if they can return to the mainstream.

Many educators said the reduced expectations of the LMP curriculum resulted in children receiving "better grades" (for mastering curriculum below grade level), which improves their self-esteem. Keeping children "happy" by educating them in an environment that is less intellectually challenging and less competitive than normal was the argument made most frequently by educators for the existence of the practical primary schools. These same educators also reported that children who "succeed" at performing below grade

social disadvantage – it's not about intellectual capacity". Interview with the headmaster, Prague, 25 of May, 2012

¹³⁵ Interview with the head of the Association of Special Pedagogues, Prague, 25 May 2012

level typically undergo a rude awakening during the transition to secondary school, which will be described further below.

Several mainstream primary schools mentioned they had decided to abandon the practice of recommending pupils suspected of light mental disability in grades 1-5 for testing and were instead addressing their lack of progress through inclusive approaches. In practice, this means individualized instruction, the use of teaching assistants, and providing full classes of 25 with two teachers whenever possible.

One educator said the educational guidance centres' recommendations usually reflect the situation of the specific school it is recommended a child attend. For example, if a child were known to be the only person with an LMP diagnosis in a particular class, individualized assistance would be recommended, but if "enough" LMP pupils were identified to form a class of their own, the guidance centre would recommend all the LMP pupils be educated together in a separate class. This would seem to indicate that the best interests of the child are not necessarily the overriding concern when it comes to recommending a particular type of special education measure.

The Office of the Ombudsperson pointed out a major flaw in the implementing regulations adopted for the recently amended ministerial decrees on the provision of special needs assessment and education: It is still possible to temporarily place non-disabled children into special education, even though this practice contravenes other aspects of the School Act. The opinion of the staff members who carried out the Ombudsperson's 2012 survey of the practical primary schools is that the diagnoses of the children who attend them are based more on their social status than on any genuine disability. This was echoed by a municipal education department official who described the practical primary schools as intended for "Roma and the socially disadvantaged".

The Director of the ASIRL said the educational guidance centres do not take a systematic approach to testing and have not been accurately assessing the needs of individual children; that the tests used were "very old"; and that there was no systematic overview of these centres and their day-to-day work. He said the Education Ministry needs to change the methodology of these centres and supervise them. In several regions, the Agency has noted that the educational guidance centres essentially make sure to recommend enough children attend the practical primary schools to maintain the minimum enrolments necessary to finance those schools' operations. The Director also viewed the regional financing of the schools as a key problem that makes it hard for schools to be transformed. He claimed there is a need to support inclusive mainstream schools in which everyone, including children with special needs, can be educated, but that no such measures are in place at this moment. In his view, *"There are national Framework Educational Programs and each school is supposed to also design its own curriculum based on these frameworks, and we see that the LMP framework is very far from what is being taught in the standard curriculum."*¹³⁶

¹³⁶ Interview with the Director of the Agency for Social Inclusion in Roma Localities, Prague, 25 May 2012

In the view of many civil society stakeholders,¹³⁷ the biggest problem is that children's needs are not central to the assessment process. Every educational guidance centre reportedly works according to its own rules. There are two types of centres: special pedagogy centres (SPCs) and educational psychological centres. The SPCs are often situated inside specialized primary schools, whose managements are sometimes also involved in managing the SPC. This is an obvious conflict of interest. The centres are also said to be too dependent on the individual personalities of the psychologists and special need educators working in them. This was acknowledged by the Education Ministry representatives.

Civil society representatives were also concerned that only one university education department instructs educators in inclusive education. All other university education departments are continuing to teach according to older methods, with the objective of classifying children into various categories of disability.

In the view of the delegation, the current process results in some children being assessed with a lower IQ than they actually have and, therefore, being incorrectly recommended for enrolment into practical primary education. Individual needs seem not to be assessed; all children with an IQ of 70 or less seem to be automatically recommended for practical primary education without considering whether they could be educated in a mainstream setting. The assumption that children with a slightly lower than average IQ or "borderline cases" can never be educated in a mainstream setting means a number of children are actually being undereducated and not challenged to fully develop intellectually.¹³⁸

The delegation found the descriptions of the testing of children and the focus only on the IQ level particularly disturbing, knowing that much more has to be assessed than just IQ.¹³⁹ Moreover, the practical primary curriculum does not seem to be tailored to meet the needs of the individual pupil, but is just the mainstream curriculum taught at a slower

¹³⁷ Meeting with the NGO coalition Together to School, 23 April 2012, Prague; attended by: League of Human Rights, Slovo 21, European Roma Rights Centre, Envi-A, IQ Roma Servis, Open Society Fund Praha, Romodrom.

¹³⁸ In their opinion on the Czech Republic from 2005 the Advisory Committee on the Framework Convention for the Protection of National Minorities expressed concerns about validity of testing when taking comparing the estimated proportion of Roma in the country and estimated proportion of Roma in special schools.

"Second opinion on the Czech Republic adopted on 24 February 2005", Advisory Committee on the Framework Convention for the Protection of National Minorities, Strasbourg, 26 October 2005, <http://www.coe.int/t/dghl/monitoring/minorities/3_fcnmdocs/PDF_2nd_OP_CzechRepublic_en.pdf>, Article 146

¹³⁹ In a number of countries, the identification of special needs is much more developed than what was presented to the delegation by the teachers interviewed. The publication of Save the Children from UK provides a whole set of tools and indicators to be checked: physical skills (running, walking, balance on one foot, etc.), personal a social skills (expressing emotions, sharing toys, etc.), practical skills (helping with household, taking care of pets, etc.), cognitive skills (sing a song, draw a circle, understand size, amount, recognize colors). "Schools for All, Including disabled children in education", Save the Children , 2002, London, UK, <http://www.eenet.org.uk/resources/docs/schools_for_all.pdf>

pace to fewer children at a time. In the view of the delegation, the current process may be “over-identifying” as disabled children whose real needs are then not being met by an approach that separates them from other children. It is possible that this is true not only for Roma children, but for all children so identified.¹⁴⁰

In the view of the delegation, the practical primary schools have defined their target populations not only as lightly intellectually disabled pupils, but also as pupils from socially disadvantaged areas. Pupils who have missed out on early childhood education are classified very early on in the Czech school system as “disabled” and rarely leave that educational track. Similarly, the Czech authorities probably begin tracking all pupils too early in terms of their aptitudes.¹⁴¹

Given the key role played by the educational guidance centres, which perform these assessments, both the Czech School Inspectorate and the Ombudsperson informed the delegation that they will be investigating these centres next. The Czech Government Human Rights Commissioner said the biggest problem discovered by the Czech School Inspectorate in 2010 was that children have been attending the practical primary schools even without LMP diagnoses.

3.8. Zoning, demographics, active school policy and parental choice

Prior to the visit, the delegation was concerned by the phenomenon of Roma children’s *de facto* segregation in primary education in the Czech Republic. As a result of its field

¹⁴⁰ In the “Joint communication by the ERRC and OSJI concerning Czech Republic’s implementation of D.H. and Others v the Czech Republic for consideration by the Committee of Ministers during its November 2011 review”, <<http://www.errc.org/cms/upload/file/seventh-communication-to-the-committee-of-ministers-on-judgment-implementation-7-november-2011.pdf>> it is stated the following: “According to education experts, concerns exist about the proposed piloting of a new standardized testing regime planned by the Ministry of Education for fifth and ninth graders in 2012, which is scheduled for full implementation in 2013. These tests, according to experts, will only assess aggregated school results from each school, and will not take into account learning difficulties of individual children, nor whether they have received the educational support needed to prepare for these tests. Education experts are concerned that this type of standardized testing may dissuade mainstream schools even further from accepting children with learning disabilities or who are from socially disadvantaged backgrounds, for fear that they may lose funding if the school does not score well on the testing. Such a broader testing effort may have an impact on schools’ efforts towards inclusion, and may hit children with disabilities and Romani children hardest.”

¹⁴¹ In 2012, the OECD issued the following general recommendation with respect to tracking students: “Avoid early tracking and defer student selection to upper secondary. Early student selection has a negative impact on students assigned to lower tracks and exacerbates inequities, without raising average performance. Early student selection should be deferred to upper secondary education while reinforcing comprehensive schooling. In contexts where there is reluctance to delay early tracking, suppressing lower-level tracks or groups can mitigate its negative effects. Limiting the number of subjects or duration of ability grouping, increasing opportunities to change tracks or classrooms and providing high curricular standards for students in the different tracks can lessen the negative effects of early tracking, streaming and grouping by ability.” Available at: OECD, 2012, *Equity and Quality in Education: Supporting Disadvantaged Students and Schools SPOTLIGHT REPORT: CZECH REPUBLIC* pg. 3, <<http://www.oecd.org/education/preschoolandschool/49603567.pdf>>

visit, the delegation learned this segregation is the outcome of complex processes involving the interplay of demography, parental choices, school policies and the zoning of catchment areas.

School authorities, aware of the criticism regarding the *de facto* segregation of Roma children in education, are making attempts to actively promote inclusive, integrated education. One of the tools available to the establishers of schools is catchment area zoning. Parents enrolling children into the public schools select from the schools available in their catchment area, although they are free to send their children outside of their catchment area as well. The catchment areas are municipally decreed and must ensure that the first phase of primary education is available to nearby residents. School administrators must give priority enrolment to catchment area residents. Headmasters were quick to acknowledge the impact that the specifics of their catchment areas have on the ethnic composition of their school populations. The availability of several schools in a given catchment area makes it possible for all parents to segregate the schools by ethnicity and social status, with few parents opting to send their children to schools with diverse populations.¹⁴²

On the other hand, Roma parents reportedly rarely make use of their right to reject the recommendation that their children enrol into a practical primary school. The delegation was informed about one such situation in the Roma community in Krásná Lípa, where a local Roma association campaigned among Roma parents and encouraged them not to consent should the educational guidance centres recommend their children enrol into separate, practical primary schools. As a result, reportedly none of the Roma children in the community have recently enrolled into practical primary school.

The delegation became aware that demography exerted pressure on school administrators; fewer children could mean closure of a school or school mergers. Hence, in a number of the schools visited, headmasters and educators were eager to argue that they serve the Roma community well and that their schools are popular with Roma families because of the “kind care” and social work services they offer. They described Roma parents’ preferences for the practical primary schools as comprised of four basic components: Smaller class sizes resulting in more individual attention for the pupils; a decelerated curriculum in which pupils earn top grades (for mastering below-grade-level material), as opposed to a challenging curriculum; staffs who have empathy for Roma

¹⁴² The headmaster of the primary school from Brno (Náměstí 28. října, Brno-Černá Pole) told the delegation that: “The NGOs think our school is wrong and segregated, purely because of its ethnic composition. In 2004, two schools had to merge here, this one and another one. I was the headmaster of the other one and there was different management here, this school had to close because of financial problems. We met with all the parents after the management change, it was an unpleasant time. On 1 September, we had 200 fewer non-Romani children and 17 teachers left. The non-Romani parents had told us that they wanted one floor non-Romani and one Romani”. Interview with the headmaster of Základní škola, 28. října, Brno, 22 May 2012

families, which most mainstream schools are presumed to lack; and a safe environment where Roma children are free of racially motivated abuse (both physical and verbal), bullying, harassment and humiliation at the hands of non-Roma peers.¹⁴³

Some headmasters said Roma parents wanted to directly enrol their children into practical primary schools without having their children assessed for disability at all; such parents were said to be clearly basing their choice on the physical proximity of a school to their residences and on its reputation as Roma-friendly and safe. It was repeatedly stated that Roma parents prefer all of their children to attend the same school together, and that schools with Roma assistants are perceived as treating Roma pupils “fairly”.

On the other hand, the delegation was confronted with stereotypical views regarding Roma parents’ attitudes and efforts to secure proper education for their children. Many headmasters, educators and municipal representatives described Roma people as not motivated to improve their social status and said offers of assistance abounded, but were not taken advantage of. The welfare system was described as “not motivating” them to improve their children’s capacities and skills, although it was acknowledged that social services are underfinanced and that, even where services exist, “high unemployment can undo all of this social work”. These claims were countered by the experiences of large, mainstream schools with high populations of socially disadvantaged pupils that run popular all-day programmes allowing children to attend school from 7 AM until 4 or 5 PM.

One headmaster at a specialized primary school serving pupils with all kinds and levels of disability said Roma parents do not “value” education the way non-Roma parents do, a view echoed by many proponents of the existing system. He also said Roma parents were not interested in sending their children even for vocational training, since they reportedly do not expect them to work as adults. Roma children were said to not have the “drive” to complete vocational training. As this administrator said, “They tell me they don’t continue secondary school because it doesn’t amuse them anymore, but I think it is because they faced their first failures and didn’t know how to overcome them.”

Most of the headmasters and educators had no objection to using the LMP curriculum when recommended to do so, but the large mainstream schools referred to above explicitly rejected resorting to it. Most educators said that if children did not progress in the early grades, they would recommend that parents have them assessed. If the educational guidance centre recommended the LMP programme, they would encourage the parents to enrol their children for such an education, either into an LMP class or a practical primary school, mainly so they can “get better grades and feel better”.

¹⁴³ The delegation found these claims to be particularly credible; the anti-Gypsyism of Czech society has been remarked upon in great detail elsewhere, see: *Human Rights of Roma and Travellers in Europe*, Council of Europe Publications, Strasbourg, 2012, <http://www.coe.int/t/commissioner/source/prems/prems79611_GBR_CouvHumanRightsOfRoma_WEB.pdf>

Mainstream school educators repeatedly described the regionally financed practical primary schools as providing “better conditions” in terms of lower class sizes. These educators also objected to the practice of such schools establishing preparatory classes, especially when they were likely to compete with those established at mainstream schools. The notion that parents would be more likely to enrol their children into a practical primary school once their children had attended a preparatory class at such a school was contested by practical primary headmasters.

Representatives of the Office of the Ombudsperson said the practical primary schools are perceived by everyone involved with them as “comfortable”. Teachers have lower class sizes, Roma parents can keep their children together, and headmasters’ supposedly have an easier workload. Should the system be reconfigured, those working in it are afraid they will lose not only their salaries, but the perquisites and prestige associated with carrying out the “charitable” task of educating the disabled and disadvantaged.

Despite the fact that most of the schools visited served children from socially excluded communities (i.e., Roma children in particular), they all seemed to be in either excellent or good condition. Some of the infrastructure was quite advanced, including extensive gym facilities, computer laboratories, interactive blackboards, etc. The delegation was impressed by how effective some schools were at fundraising, securing significant funding from the European Social Fund and other sources. It was explained to the delegation that the extra financial support theoretically available from the state for schools with high numbers of socially disadvantaged pupils is not currently leading to the promotion of integration through individualized instruction because the promotion of classroom diversity – in terms of ability, ethnicity and socioeconomic status - is not yet the stated aim of educational policy.

The delegation was concerned to learn that, despite the many favourable circumstances for education, the outcomes of the education process, in terms of Roma children successfully concluding primary education and continuing their educations further, were disappointing. The delegation found few positive examples of Roma children successfully graduating and completing higher education.¹⁴⁴ It was also of concern that headmasters and teachers were only rarely able to provide information on how successful their students were after completion of primary school.

Finally, the delegation noticed that such objectives were simply absent from the practical primary schools: These were schools for children with special educational needs and the teachers are realizing the mission of helping them, making them comfortable and “happy” on a day-to-day basis, and providing them with only enough skills to function minimally.

¹⁴⁴ A Roma graduate who became a teacher in the high school (Stredni skola a zakladni skola Trmice, Usti nad Labem); the delegation visited the school on 24 of May and met with this teacher.

NGOs reported cases of headmasters and teachers claiming that the Roma essentially have ““their own schools” and should not attend non-Roma schools.”¹⁴⁵ Some NGOs also argue that reforms to the education system currently being discussed will have a negative impact on Roma pupils: One such proposal involves the general, standardized testing of the knowledge of 5th and 9th graders. This may induce some schools to further exclude Roma or any weaker students so they can maintain high test scores, should the general testing be implemented. The concern on the part of civil society is that these reforms may lead to the further creation of elite schools rather than inclusion.¹⁴⁶

Some NGOs reported that Roma people’s awareness about the risks of their children being manipulated into practical primary schools has been raised recently.¹⁴⁷ Roma parents reportedly now ask NGO representatives to accompany them during enrolment or to check the recommendations made by psychologists. NGOs working on litigating further cases of discrimination in the schools claim that parents very often change their minds before litigation can even begin – they have too many other problems and are afraid litigation would harm them more than help them. Schools are also often chosen on the basis of tradition; Roma parents know a local school already, since they also attended it, or they hear of a school’s reputation from family or neighbours. Safety perceptions can play a role, too, including the safety of children commuting to and from school.¹⁴⁸

In the view of the delegation, Roma parents are presumably driven by the same calculations as non-Roma parents. They want the best for their children. Choosing an option that differs from the one that they are familiar with might be regarded as high risk, even though such a different option might be more conducive to eventually breaking down segregation. Policymakers and schools are responsible for demonstrating to all parents that diverse, non-segregated education is better for everyone.

3.9. Excluded localities, anti-Gypsyism and segregated education

Ethnic segregation in schools is related to the location of so-called “excluded localities”, which in most cases refer to disadvantaged Roma communities. The delegation learned from the director of the Agency that the number of Roma families who find themselves in excluded localities is rising. Municipal officials have been permitting privatization of the public housing stock, which has resulted in the rise of socially excluded localities, especially those predominantly inhabited by Roma. Many Roma families suffering from long-term unemployed and poverty have been subjected to (often dubious) legal evictions; they have either been unable to pay for rent and utilities, or they have become heavily indebted. These families eventually have moved into so-called “residential

¹⁴⁵ Meeting with the NGO coalition Together to School, 23 April 2012, Prague; attended by: League of Human Rights, Slovo 21, European Roma Rights Centre, Envi-A, IQ Roma Servis, Open Society Fund Praha, Romodrom.

¹⁴⁶ *Ibid.*

¹⁴⁷ *Ibid.*

¹⁴⁸ *Ibid.*

hotels” – a kind of social housing indirectly subsidized by the state, which for many landlords, including municipalities, has become a business in itself.

According to the municipal authority’s representative, excluded localities refer to concentrations of poor people living in lower-quality housing. Irrespective of ethnicity, most residents of such localities are unemployed and welfare dependent because of their poor education.¹⁴⁹ According to the police, there are excluded localities in almost every neighbourhood in Ostrava; social workers have been involved in identifying them, and higher crime rates are part of the definition.¹⁵⁰

The municipality of Ostrava has helped to start up NGOs that work with these communities. They can get subsidies from public sources to hire social workers, but there is not enough financing for social services in general or for services corresponding to needs.

In the view of the deputy mayor of Ostrava, there is a need for a comprehensive approach that would combine social work with education, housing and employment, an approach that would focus on families, not individuals. Municipal authorities noted to the delegation that there are currently plans in place to prevent the negative trends in the privatization of housing from continuing. Similar efforts have reportedly been underway in the city of Brno as well. However, the executive branch of government has, to the knowledge of the delegation, never initiated any motions to halt such processes, even though they have occurred throughout the country.

Some Roma families have recently chosen to migrate from expensive areas to regions where they hope for better, more affordable conditions, such as the Šluknov region. Whether due to the privatization of municipal housing, evictions or migration, poor Roma families tend to form excluded communities when they move, increasing the identification of these parts of town as Roma areas. Segregated schools are the end result of this process; a higher representation of Roma children in a catchment area due to a higher concentration of Roma there results in “white flight” from the local school. Excluded localities, especially those dominated by Roma families, bear a social stigma that works towards increasing *de facto* segregation.

¹⁴⁹ Interview with the head of the Department of Social Affairs, Education, Sport and Free-time Activities, Municipality of Ostrava, 21 May 2012

¹⁵⁰ In 2010, the Police started their “Usvit” (“Dawn”) program and adopted a regional perspective on collaborating with municipalities on social inclusion. The program involves specially trained police officers, both at municipal and state level, who very closely cooperate in the excluded localities. In Ostrava, there are six Roma crime prevention assistants as part of this program and four Roma rank and file police members deployed in the excluded localities. Theft is the biggest crime problem in the city, including car theft. Scrap metal collection is also considered theft. The people who run the recycling and salvage centers are supposed to report when they recognize stolen property, and they do it.

The delegation learned that the Ministry of Interior has mapped so-called risk areas in the Czech Republic. In essence, several negative factors characterize those risk areas, namely: high unemployment, poverty, higher crime rates and tensions between local majorities and Roma communities. The delegation was informed that Roma families in excluded localities were heavily welfare dependent and indebted, as well as victims of loan sharking, gambling, drug use, trafficking and prostitution. The excluded localities closely overlap with the risk areas. In the view of the delegation, the existence of excluded localities provides fertile ground for anti-Roma prejudices and sentiments and for anti-Gypsism to flourish. In extreme cases, it has already led to inter-ethnic tensions.

The delegation was interested in visiting schools in areas where ultra-right political actors have organized large-scale demonstrations attended by locals specifically targeting excluded Roma localities with hate speech and violence, such as in northern Bohemia.¹⁵¹

An increase in crime rates was said to explain the inter-ethnic tensions in those regions.¹⁵² A similar view was presented to the delegation by the Deputy Director of the Regional Directorate of the Police of the Czech Republic in Ústí nad Labem, who asserted that “tensions occurred because the population was not able to get used to the petty theft increase, because it happened too quickly.” He acknowledged that “interethnic tensions were exploited by the media and by extreme-right groups and politicians”.

A different view, however, was presented by a crime-prevention advisor to the Interior Minister, who said:

“We monitor crime and keep long-term statistics, and there has not been any great breakthrough lately [sudden rise in crime level]. As for ethnic relations, due to the financial crisis, when the government has had to cut budgets, radical groups have exploited this to raise the ‘Roma question’ in public. The media play

¹⁵¹ North Bohemia made headlines of national and international newsrooms because of anti-Roma marches organized there by DSSS or Neo-Nazi organization; for more see “Anti-Roma Violence in Czech Republic Must End”, European Roma Rights Centre (ERRC, <<http://www.errc.org/article/anti-roma-violence-in-czech-republic-must-end/3969>> and a joint letter of the ERRC, Amnesty International and the Hate Is No Solution Coalition sent to Czech Government on 1 of March 2012, available at: <<http://www.errc.org/cms/upload/file/czech-republic-letter-violence-1-march-2012.pdf>>

¹⁵² Interview with the mayor of Šluknov, 23 May 2012; Mayor claimed that: “In 2010 we noticed a dramatic increase in crime, we were even contacted by mayors [across the border] in Germany about petty theft. The protests here didn’t start after just one attack – in Rumburk, these things had been happening for three years. The Roma people kept moving in, crime kept rising. The situation today is calm, but petty theft persists, it even rose again at the start of the year, and this really is economically motivated”. No doubts, such views are widely shared by the general public, including youth. A study conducted among high school students revealed that for 55 percent of them Roma are one of the crucial problem, while for 19 percent it is the most crucial problem of the Czech Republic. Out of these, 58 percent believe the main reason for the problematic coexistence with Roma is their unemployment as a result of their lack of will to work and for 40 percent it is because of racism exhibited by Roma. For more see: “Jeden svět na školách, Zpráva o dotazníkovém šetření na středních školách 2012 v porovnání s rokem 2009“, People in Need and MillwardBrown, January 2012, pages 16 and 18.

a large role in this, and they exploit scandals and escalate tensions. Society seeks an enemy at such times. The Roma issue is exploited by politicians also.”

On a positive note, the Ministry of Interior is implementing a crime-prevention strategy for 2012-2015, adopted in 2011. This is a cross-sectoral strategy that includes increasing safety in socially excluded areas for crime victims and socially excluded people, and identifying potential perpetrators of extremism. The Ministry is implementing a programme targeting socially excluded localities in which 45 towns are involved. The Ministry’s project on increasing safety in socially excluded localities focuses on the municipal level. As early as 2009, the Ministry started hiring crime-prevention assistants, whereby the state hires residents from socially excluded localities to work with the local police force.

The delegation learned that parts of the general public are reacting more negatively to any policy or measure perceived as benefitting Roma, which may have led the government to recently delete “Roma Localities” from the name of the Agency in an effort to improve its image.¹⁵³

The delegation was concerned by both the state and number of excluded localities in the Czech Republic. This seems to be a phenomenon that few have an idea how to prevent or reverse. The fact is that excluded localities tend to reinforce segregation in education and predetermine the low quality of education that the pupils attending these schools receive. This may partially be due to the rather low educational expectations of parents in the excluded localities, but it is also due to a lack of higher educational expectations and standards set by those schools. Paradoxically, this is even the case in schools that are otherwise far from resembling the “run down” schools one might expect to find in such excluded localities.

¹⁵³ “Agentura pro začleňování by se nově měla zaměřit i na jiné vyloučené skupiny obyvatel”, *Romea.cz*, 26 July 2012, <<http://www.romea.cz/cz/zpravodajstvi/domaci/agentura-pro-zaclenovani-by-se-nove-mela-zamerit-i-na-jine-vyloucene-skupiny-obyvatel><http://www.romea.cz/cz/zpravodajstvi/domaci/agentura-pro-zaclenovani-by-se-nove-mela-zamerit-i-na-jine-vyloucene-skupiny-obyvatel>>

APPENDICES

Appendix 1: List of Delegation Members

- Justice Catherine McGuinness, Personal Representative on Combating Racism, Xenophobia and Discrimination, OSCE Chairperson-in-Office Representative (24-25 May);
- Ilze Brands Kehris, Director of the Office of the OSCE High Commissioner on National Minorities;
- Claire Martinez, Irish Chairmanship of the OSCE;
- Andrzej Mirga, ODIHR Senior Adviser on Roma and Sinti Issues;
- Thomas Rymer, ODIHR Spokesperson/Senior Press and Public Information Officer;
- Stanislav Daniel, ODIHR Officer on Roma and Sinti Issues;
- Gwendolyn Albert, drafter
- Peter Vermeersh, policy expert
- Beth Holbrook, education equality expert

Appendix 2: List of people met by the delegation

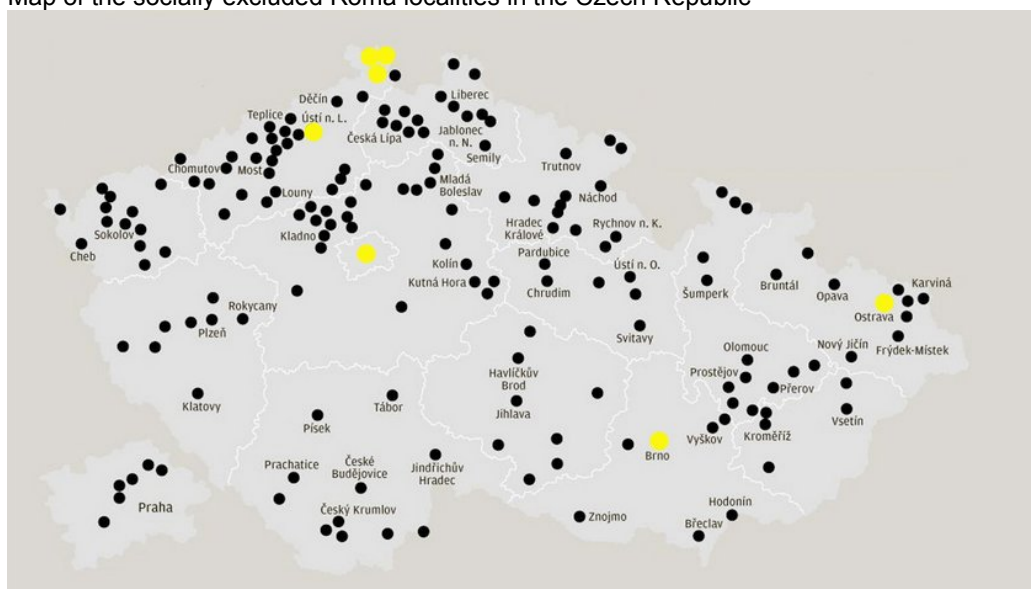
Name	Institution	Position	Town
Ludmila Altmanová	ZŠ 28. října	headmaster	Brno
Libor Tománek	ZŠ 28. října	deputy headmaster	Brno
Alena Kohoutová	Základní škola, Sekaninova	headmaster	Brno
Zdeňka Tůmová	Základní škola, Sekaninova	headmaster	Brno
Lucie Obrovská	Office of Public Defender of Rights		Brno
Jana Kvasnicová	Office of Public Defender of Rights		Brno
Pavel Varvařovský	Public Defender of Rights	Ombudsperson	Brno
Robert Ferenc	NGO Čačipen	chair	Krásná Lípa
Soňa Tarhoviská	Církevní ZŠ a MŠ Přemysla Pittra	deputy headmaster	Ostrava
Jiří Smělík	ZŠ Kunčičky	headmaster	Ostrava
Jana Vrbicová	ZŠ Karasova	headmaster	Ostrava
Jan Effenberger	ZŠ Na Vízině	headmaster	Ostrava
Martin Štěpánek	Municipality of Ostrava	deputy mayor	Ostrava
Jaroslava Rovňáková	Municipality of Ostrava	head of the dept. for social affairs, education, sport and free-time activities	Ostrava
Marta Szúczová	Municipality of Ostrava	head of the unit for education, sport and free-time activities	Ostrava
Zdeněk Harazim	Municipal Police	chief	Ostrava
Tomáš Tuhý	Regional Police Directorate	chief	Ostrava
Kumar Vishwanathan	NGO Life Together	chair	Ostrava
Jan Korda	Základní škola, Lyčkovonáměstí	headmaster	Praha
Olga Havlová	Základní škola, Lyčkovonáměstí	deputy headmaster	Praha

Klára Fišerová	Základní škola, Lyčkov náměstí	special pedagogue	Praha
Monika Šimůnková	Office of the Government	Commissioner for Human Rights	Praha
Martin Šimáček	Agency for Social Inclusion in Roma Localities	director	Praha
Ondřej Klípa	Office of the Government	head of the council for Roma minority affairs	Praha
Anna Pechová	Ministry of Education	officer for NAPIE implementation	Praha
Ondřej Andrys	Czech School Inspection	deputy director	Praha
Vladislava Coufalová	Czech School Inspection	director of dept. for inspection	Praha
Jiří Pilař	Association of Special Pedagogues	chair	Praha
Ilona Bočinská	ZŠ Přerov, Boženy Němcové	headmaster	Přerov
Vladimír Šamša	Speciální základní škola	headmaster	Rumburk
Jaroslav Sykáček	Municipality of Rumburk	mayor	Rumburk
Alena Winterová	Municipality of Rumburk	deputy mayor	Rumburk
Denisa Svobodová	Municipality of Rumburk	head of the dept. for social affairs	Rumburk
Miroslav Jeřábek	Municipal Police	chief	Rumburk
Iva Štefáčková	Municipality of Rumburk	education department	Rumburk
Monika Kadlecová	Speciální základní škola a Praktická škola	headmaster	Šluknov
Vladimír Vyskočil	Municipal Police	chief	Šluknov
Hana Volfová	Govt. Agency for Social Inclusion in Roma Localities	local consultant	Šluknovsko
Eva Džumanová	Municipality of Šluknov	mayor	Šluknovsko
Eva Bavoráková	Municipality of Šluknov	section of internal administration	Šluknovsko
Jitka Demeterová	Municipality of Šluknov	field social worker	Šluknovsko
Marcela Postlerová	Municipality of Šluknov	social worker	Šluknovsko
Pavel Caitaml	Střední a základní škola	headmaster	Trmice
Jiřina Housová	Střední a základní škola	deputy headmaster	Trmice
Oldřich Bubeníček	Committee for education and development	chair	Ústí region
Martin Klika	Regional Council	councilor	Ústí region
Bohumil Kotas	Regional Police Directorate	deputy director	Ústí region
Gabriela Šourková	Police of the Czech Republic	officer for national minorities	Ústí region
Jana Kubecová	Office of the Region	regional coordinator Roma	Ústí region
Václav Hofmann	Office of the Region	chairman of the committee for national minorities	Ústí region
Hana Polonczarová	Office of the Region	dept. for education	Ústí region

Appendix 3: Localities visited by the delegation:

- Ostrava,
- Brno,
- Rumburk,
- Šluknov,
- Krásná Lípa,
- Ústí nad Labem,
- Trmice,
- Praha.

Map of the socially excluded Roma localities in the Czech Republic¹⁵⁴



*visited localities highlighted in yellow

¹⁵⁴ Source: "Počet romských ghett se rozrůstá. Jsou jich už čtyři stovky", Lidovky.cz news server, 18 September 2011, <http://www.lidovky.cz/pocet-romskych-ghett-se-rozrusta-jsou-jich-uz-ctyri-stovky-pqi-/ln_domov.asp?c=A110918_195344_ln_domov_sk>

Appendix 4: Example of a form for collecting statistical data

An example of a form for collecting statistical data: Report on a preparatory class of a primary school and the preparatory level of a specialized primary school¹⁵⁵ (In section VIII, the form asks for the number of children with mid-range mental disability or severe mental disability. Light mental disability data are not recorded).

MINISTERSTVO ŠKOLSTVÍ, MLÁDEŽE A TĚLOVÝCHOVY

Průběh školní docházky – školní docházka dětí žijících v zahraničí
příloha k průběhu docházky

Průběh školní docházky

Průběh školní docházky – školní docházka dětí žijících v zahraničí
průběh školní docházky – školní docházka dětí žijících v zahraničí

Průběh školní docházky – školní docházka dětí žijících v zahraničí
průběh školní docházky – školní docházka dětí žijících v zahraničí

S 4c-01

Výkaz o přípravě tříd základní školy a o přípravě stupni základní školy speciální podle úřadu k MŠ, 9. 2012

Průběh školní docházky	Průběh školní docházky
Průběh školní docházky	Průběh školní docházky

Průběh školní docházky – školní docházka dětí žijících v zahraničí
průběh školní docházky – školní docházka dětí žijících v zahraničí

Škola

Číslo

Průběh školní docházky

I. Průběh školní docházky – školní docházka dětí žijících v zahraničí

Průběh školní docházky	Průběh školní docházky	Průběh školní docházky
Průběh školní docházky	Průběh školní docházky	Průběh školní docházky

Průběh školní docházky – školní docházka dětí žijících v zahraničí

III. Průběh školní docházky

Průběh školní docházky	Průběh školní docházky	Průběh školní docházky	Průběh školní docházky	Průběh školní docházky
Průběh školní docházky	Průběh školní docházky	Průběh školní docházky	Průběh školní docházky	Průběh školní docházky

VIII. Průběh školní docházky – školní docházka dětí žijících v zahraničí

Průběh školní docházky	Průběh školní docházky	Průběh školní docházky
Průběh školní docházky	Průběh školní docházky	Průběh školní docházky

Průběh školní docházky – školní docházka dětí žijících v zahraničí

IX. Průběh školní docházky – školní docházka dětí žijících v zahraničí

Průběh školní docházky	Průběh školní docházky	Průběh školní docházky
Průběh školní docházky	Průběh školní docházky	Průběh školní docházky

Průběh školní docházky – školní docházka dětí žijících v zahraničí

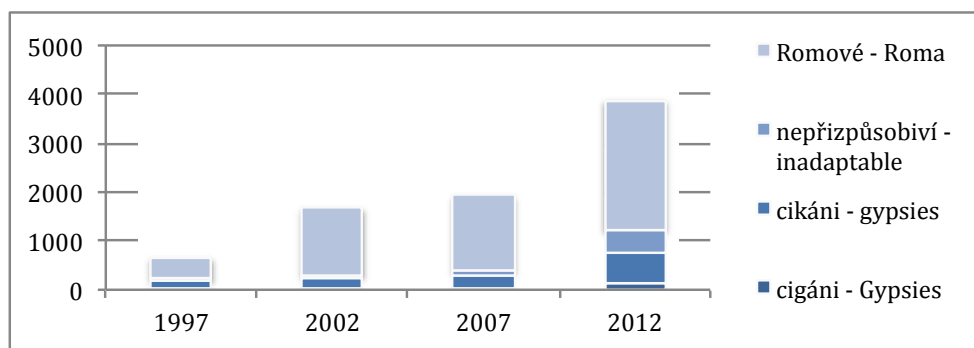
¹⁵⁵ <<http://www.msmt.cz/file/21802>>

Appendix 5: Total pupils with health disability or disadvantage

		2005/06	2006/07	2007/08	2008/09	2009/10	2010/11	2011/12
Total pupils with health disability or disadvantage		89,527	82,080	76,294	72,854	71,801	70,723	71,791
	in special classes	43,971	42,098	40,209	38,504	37,040	34,497	32,631
	individually integrated into mainstream classes	45,556	39,982	36,085	34,350	34,761	36,226	39,160
Proportion of the total number of pupils								
Total pupils with health disability or disadvantage		9.8%	9.4%	9.0%	8.9%	9.0%	9.0%	9.0%
	in special classes	4.8%	4.8%	4.8%	4.7%	4.7%	4.4%	4.1%
	individually integrated into mainstream classes	5.0%	4.6%	4.3%	4.2%	4.4%	4.6%	4.9%

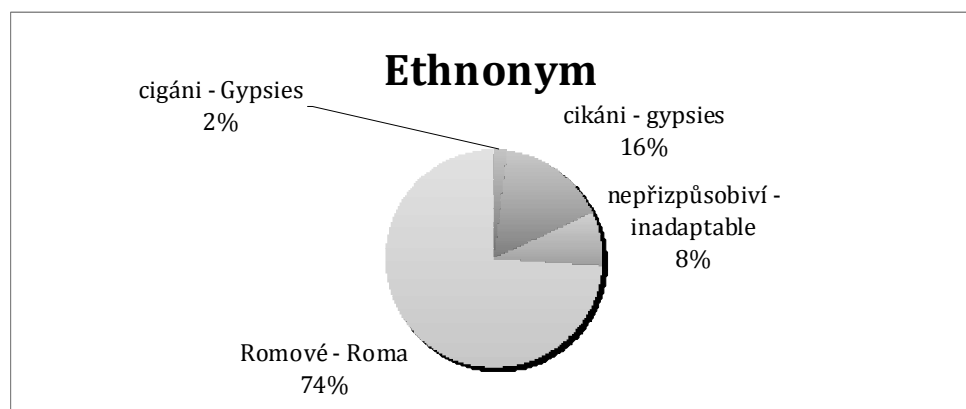
Appendix 6: Media image of Roma¹⁵⁶

A survey published in 2012 collected media articles from January 1997, 2002, 2007 and 2012 analysed the use of references to Roma in the four most used terms. While Roma, as the politically correct term, is still the most used, it's often used in reference to "Roma stealing", "Roma attacking" and "Roma shooting", etc.



	cigáni - Gypsies	cikáni gypsies	nepřizpůsobiví - inadaptable	Romové - Roma
1997	16	171	36	431
2002	29	229	53	1366
2007	22	268	96	1543
2012	117	659	474	2635

"Roma" was used in 74 per cent of the articles analyzed, 16 percent of the articles referred to "gypsies", 8 per cent to "inadaptable", and 2% per cent referred to Roma as "Gypsies".



¹⁵⁶ Presented data were published by Romano Voří on the basis of data collection made by Newton Media. "Mediální obraz Romů v ČR aneb Síla slova", Romea.cz, 25 May 2012, <<http://www.romea.cz/cz/zpravodajstvi/domaci/medialni-obraz-romu-v-cr-aneb-sila-slova>>