

D.H. and Others v Czech Republic: Urgent Implementation Measures Needed

The implementation of *DH and others v Czech Republic* continues to falter. The problem is not a function of a lack of law or resources. Lack of political will and commitment to inclusive education principles, confusion over strategy, resistance to data collection to support policy development and ineffective human capacity to implement an inclusive agenda all combine to hinder implementation. The original D.H. applicants remain disillusioned that inclusive education will become a reality any time soon. Since the December 2011 Committee of Ministers meeting, five key developments serve to highlight the ongoing crisis in implementation.

1. FUNDING WOES

Two serious problems have been discovered with the use of structural funds earmarked for inclusive education in the Czech Republic. The first is the European Commission's decision in January 2012 to halt the disbursement of its latest tranche of structural funds to the Czech Republic – worth approximately 1.9 million Euro -- after it found serious irregularities in the way the country was spending monies intended for inclusive education projects. In its letter to the Czech government on January 24, 2012, the European Commission reported finding “serious shortcomings” in the management and control of funds, and expenses linked to “serious inconsistencies” which were “not justified”.¹ This compounds a pre-existing second problem, highlighted in a previous Justice Initiative submission to this Committee: the Czech government's failure to spend all the structural funds available to it for inclusive education purposes. The lack of spending, as the end of the funding period draws near, has given rise to concerns that this money may either be diverted to other unrelated projects (such as building highways) or given back to the European Commission. The problems with funding, then, can be summed up as follows: the Czech government is not spending all it can to promote inclusive education – and money which it has spent has been done poorly. Examples given by activists in Czech Republic have been of structural funds allocated for education which have instead been used to build a carpark in Ostrava (the city in which the DH case first originated).

We encourage the Committee of Ministers ask the Czech government to provide detailed information at its June meeting about how it has spent EU structural funds on inclusive education to date (specifically how it furthers the NAPIE); how it plans to address the problems identified by the European Commission; and what its plans are to improve spending on inclusive education for the next structural funds period (2014-2020).

2. LACK OF DATA TO INFORM POLICY

The country's Ombudsman's office has been seriously hindered in its own efforts to garner updated statistics on the placement of Roma children into practical schools. After collecting data from 68 percent of the country, the Office's efforts have been stymied by special needs teachers who have banded together to create an organized resistance to the Ombudman's work. After a meeting in Parliament in January this year, special education teachers vowed to boycott the Ombudman's office's data collection efforts, refusing to allow the Ombudsman's staff access to their schools or to fill in questionnaires indicating ethnic data of the students. An inability to complete this data collection effort will hinder effective decision-making and policy development.

We request that the Committee of Ministers ask the Czech government to provide information about the status of the Ombudsman's data collection efforts, and provide assurances that the Ombudsman will be able to complete his data collection unhindered.

3. LACK OF CLEAR POLICY

The Czech government now has two competing strategies to promote inclusive education. The status and funding of each remains unclear, as does their relationship to each other.

The first is the National Action Plan on Inclusive Education (NAPIE), which has been submitted to this Committee in response to DH implementation requirements. As noted in prior submissions from the Justice Initiative/ERRC, it is really a plan to create a plan, with no concrete targets, no defined or identified funding and an unacceptably long timeframe for implementation (practical results on the ground would not be anticipated until 2014). Moreover, the NAPIE fails to embrace the fundamental principle of inclusive education: that all children, Roma and non-Roma, those with disabilities and those without, should be educated together in a mainstream school setting with appropriate supports, and not separated out into schools or classes that carry the stigma of inferiority.

Now, the Czech Republic has developed a competing inclusive education plan. In September 2011 the Czech government adopted the Strategy for the Fight Against Social Exclusion 2011-2015 (the "Strategy"). The Strategy is regarded by education experts and civil society actors as an impressive document that is premised on the notion that a fair and efficient education system is central to the fight against the reproduction of generational social disadvantage. It envisions a 50 percent increase in per capita financing available for socially disadvantaged children (including Romani children) and an array of support measures that would help children transition from "practical" schools to mainstream education. The Strategy includes plans for subsidies for meals, school supplies and transportation to ensure that all children are learning under the same conditions. It also proposes extending the mandatory school attendance to ten years. While the Strategy, if executed, would be a big step forward, there remain serious doubts as to its implementation. Despite calling for an increase in funding to address exclusion, no budget has been allocated to implement this Strategy, nor is it binding on any government department. The Strategy has not been publicly endorsed by the Ministry of Education. Meanwhile, Education Minister Josef Dobes stated on November 1, 2011 that the Ministry of Education has no intention to abolish special or practical schools, while the Strategy calls for the elimination of such schools.

In the past month, the Ministry of Education has approached the Education Expert Platform – the group of experts who originally worked with the Ministry in the hope of fleshing out the NAPIE, but quit in May 2011 citing lack of political will to pursue an inclusive agenda on the part of the Ministry– to work with it again to implement the NAPIE. The education experts are now considering whether to work with the Ministry again given its prior experience.

We encourage the Committee of Ministers to request detailed, written information on the status of the Inclusion Strategy and the NAPIE, how they relate to each other, and how their implementation will be supported politically and financially.

4. LACK OF COMMITMENT TO INCLUSIVE EDUCATION PRINCIPLES IN PRACTICE

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.

We encourage the Committee of Ministers to request more information from the Czech authorities about this new testing plan, and how they will ensure that it operates in a way which is consistent with inclusive education goals.

5. ONGOING DISILLUSIONMENT AMONG ROMA COMMUNITY

Discussions with three families involved in the DH case during February 2012 indicate an ongoing sense of disillusionment with the lack of implementation of the DH judgment. One family reported ongoing bullying by teachers of the applicants' younger siblings who are still in high school. According to one Roma mother, teachers allegedly told her children regularly that they were "animals," "stupid" and would "never succeed." Another family questioned the value of ongoing efforts to implement the DH judgment as so little change has been seen on the ground in their community in Ostrava.

Strong signals by the Committee of Ministers that DH implementation has to speed up significantly – and requirements that the Czech government demonstrate changes on the ground this year – is fundamental to both restoring hope among Roma communities and ensuring that actual change is felt by Roma students still caught in a discriminatory system.

CONCLUSION

The June 2012 Committee of Ministers meeting will be an important opportunity to get updated information and clarification about the distressing news emerging from Czech Republic in recent months. Highlighting the key areas of concern during the March meeting, and requesting specific information needed from the Czech government is a valuable endeavor, which we support.

ENDNOTES

ⁱ For English language reporting of the decision, see Martin Rychlik, EU blocks at least Kč 1.2 billion due to Education Ministry mismanagement, January 27, 2012, available at <http://www.ceskapozice.cz/en/news/politics-policy/eu-blocks-least-kc-12-billion-due-education-ministry-mismanagement>.