

Information provided by the Czech Republic as a follow-up on some of the
concluding observations of the Committee on the
Elimination of Racial Discrimination

Adopted on the basis of consideration of the Sixth and seventh periodic reports of the Czech Republic on compliance with the International Convention on the Elimination of all Forms of Racial Discrimination

This Information was approved by the government of the Czech Republic by its Resolution No. 289 dated 26 March 2008

Introductory Notes

The Committee on the Elimination of Racial Discrimination (hereinafter the “Committee”) adopted, on the basis of its consideration of the Sixth and seventh periodic reports of the Czech Republic (CERD/CZE/7) on compliance with the International Convention on the Elimination of all Forms of Racial Discrimination (hereinafter the “Report” and “Convention”) on March 1 and 2, 2007, a number of concluding recommendations (CERD/C/CZE/CO/7). In their section 27 the Committee invited Czech Republic to provide information, within one year, on the way it followed up on the recommendations of the Committee contained in paragraphs 8, 14, 17 and 19.

The submitted Information of the Czech Republic reacts to the criticism formulated by the Committee and provides answers to queries initiated by the Committee. Recommendations No. 8 and 19 are, due to their common thematic ground, addressed together in one chapter.

Information to the recommendations No. 8 and No. 19:

Quote:

„8. The Committee reiterates its concern that, despite efforts to that end, the State party has still not adopted a general anti-discrimination law guaranteeing the right to equal treatment and protection against discrimination. (Articles 1, 2 and 5).

The Committee recommends again that the State party adopt legislation providing for the prohibition of discrimination based on colour, race, descent, national or ethnic origin, as defined in Article 1 of the Convention, as a general principle applicable in the political, economic, social and cultural spheres or any other field of public life.¹

„19. The Committee notes that the Office of the Ombudsman, which is authorized to deal with complaints against State institutions and administrations listed in the Act on the Public Defender of Rights, has received very few complaints of racial discrimination. It is concerned that, because of delays in the adoption of general anti-discrimination legislation, no specific institution has been mandated to safeguard the right to equal treatment, assist victims in bringing their claims, or receive complaints of racial discrimination in the private sector. The Committee is further concerned that difficulties in obtaining legal aid continue to be an important barrier preventing victims of racial discrimination from bringing cases before the courts. (Article 6).

The Committee reminds the State party that a low number of complaints by victims of racial discrimination could result from the inadequate character of relevant specific legislation, from the victims’ ignorance of their individual rights and of the availability of legal remedies, and from their lack of confidence in the justice system. The State party should assess the extent to which such possible obstacles impede victims from bringing their claims and take appropriate action to overcome them where necessary. The Committee also recommends that the State party ensure that a specific institution be mandated to promote and monitor the right to equal treatment, to assist victims in bringing their claims including through legal aid, and to receive complaints of racial discrimination in both the public and the private sectors.“²

¹ Accentuated by the Committee

² Accentuated by the Committee

Information provided by the Czech Republic:

Czech Republic reiterates its declaration of intent to guarantee protection to the victims of discrimination through a special legislation. In concrete terms, the government of the Czech Republic committed itself in its Programme Declaration to adopt an antidiscrimination law which will guarantee the right to equal treatment and protection against discrimination within the intentions of the Directives of the European Union so as to ensure that the prohibition of discrimination be effectively enforceable.

In its replies to the queries of the reporter related to the contents of the Report (hereinafter the “Replies”) the Czech Republic stated that a new draft of the antidiscrimination law is being prepared (following the dismissal of the previous draft by the Parliament of the Czech Republic in 2006). This statement is now followed upon by the Czech Republic by the summary of steps that were taken in the meantime (i.e. between February 2007³ and February 2008⁴).

The draft law on the equal treatment and on legal measures for the protection against discrimination (the Antidiscrimination Act) regulates the framework of the rights to equal treatment for the protection against discrimination on the grounds of race and ethnic origin, nationality, sex, sexual orientation, age, health handicap, religious persuasion, faith or world outlook. The prohibition of discrimination will be set forth by the Act in a number of nominated spheres, which are: the right to employment and access to employment, access to vocation, entrepreneurial activity or other self-employed gainful activity, in the sphere of employment and other dependant activity, including remuneration, membership and activities of trade unions, employee councils or organizations of employers, membership and activities in professional associations including the participation in benefits provided by such organizations to its members, in social security and social benefits, health care, education and access to goods and services which are provided to the public, including accommodation, and their provision. The draft Act also defines exemptions under which differing treatment may be considered lawful. The draft Act further defines the titles which the victims of discrimination may claim.

The draft Act appoints the Public Defender of Rights to secure equal treatment – the Public Defender is to provide the victims of discrimination with assistance in filing of motions to initiate proceedings on the grounds of discriminatory conduct, undertake research, publish reports and issue recommendations in areas related to discrimination and to ensure exchange of available information with competent European subjects.

The government of the Czech Republic approved the draft Act on 11 June 2007 and submitted it to the Chamber of Deputies on 12 July 2007. The draft Act is, as of the date of this Information, being considered by the Deputies as Parliamentary Bill No. 253. Of the four separate Committees which considered the Act, three recommended that it be adopted. The Chamber of Deputies adopted the draft Act on 19 March 2008. Now, the draft Act will be

³ Replies of the Czech Republic to the preliminary queries of the Committee were finalised as of 27 February 2007.

⁴ Preparation of this text was finalised as of 25 February 2008.

considered by the upper house of the Parliament, in the Senate. The process of adoption of the Act will be completed by the signature thereof by the President of the Republic.

In relation to the note of the Committee on the very few complaints of racial discrimination processed by the Office of the Public Defender of Rights, the government wishes to reiterate its explanations of these facts as given earlier in its Replies:

“The low number of complains addressed to the Public Defender of Rights pertinent to racial discrimination is not caused by insufficient attention or sensitivity of the Public Defender of Rights toward the occurrences of racial discrimination. The low number of complaints in this field is more likely the result of the fact that most of the discriminatory conduct on the grounds of race occurs in those areas of public life which are outside his jurisdiction as set forth by the law. The Public Defender of Rights may, under the existing legal regulation, effectively protect victims of racial discrimination only against conduct of authorities and other institutions which perform duties of state administration.”

As given above, the jurisdiction of the Public Defender of Rights in the areas of discrimination (and such in the extent encompassing not only the conduct of state administration but also in connection with the conduct of private-law subjects and between individuals) will be further expanded by the Antidiscrimination Act, respectively by the amendment of the Act No. 349/1999 Coll., On the Public Defender of Rights, as amended.

Although as of this time there is no officially appointed public institution whose task is to exercise the rights to equal treatment, the victims of discrimination do have a number of tools to seek protection. Institutions providing protection in certain sectional spheres (labour / employment law, access to goods and services) were already discussed in the Report (sections 31 – 38). The various possibilities of engagement of legal services provided by the non-governmental non-profit organizations, as well as promotion of awareness of the availability of such assistance was dealt with in the Replies (please see the reply to query No. 22).

The legal framework of the Czech Republic includes certain laws which allow that the victims of discrimination be represented by civic associations. Under the provisions of the Civil Code of Procedure (Act No. 99/1963 Coll.), Administrative Code of Procedure (Act No. 150/2002 Coll.) and the Consumer Protection Act (Act No. 634/1992 Coll.) any participant in the matter related to the protection against discrimination may be represented by association established in accordance with the Act on Associations of Citizens (Act No. 83/1990 Coll.), as long as their activities as defined in their bye-laws include protection against discrimination. The Consumer Protection Act (Act No. 634/1992 Coll.) allows such associations to file motions to initiate court proceedings to restraint unlawful activities in the matters of protection of consumer rights and to be participants in such proceedings.

Information to the recommendations No. 14:

Quote:

„14. The Committee notes with concern that women, a high proportion of which being Roma women, have been subjected to coerced sterilization. It welcomes the inquiries undertaken by the Public Defender of Rights on this matter, but remains concerned that to date, the State

party has not taken sufficient and prompt action to establish responsibilities and provide reparation to the victims. While noting that a distinction should be drawn between sterilizations that have occurred before and after 1991, when an official policy encouraging such violations was ended, the Committee is deeply concerned that the State party has not taken sufficient action to abide by its positive obligation to impede their illegal performance by doctors after 1991, and that sterilizations without the prior informed consent of women are reported to have been carried out as late as 2004. (Articles 2, 5 (b) and (e) (iv), and 6).

The State party should take strong action, without further delay, to acknowledge the harm done to the victims, whether committed before or after 1991, and recognize the particular situation of Roma women in this regard. It should take all necessary steps to facilitate victims' access to justice and reparation, including through the establishment of criminal responsibilities and the creation of a fund to assist victims in bringing their claims. The Committee urges the State party to establish clear and compulsory criteria for the informed consent of women prior to sterilization and ensure that criteria and procedures to be followed are well known to practitioners and the public..⁵

Information provided by the Czech Republic:

Czech Republic insists on its earlier position that sterilizations which took place were not nation-wide nor racially or ethnically-driven policies. Any potential wrongs which took place during these procedures were wrongs committed by individual healthcare institutions. Thus any such occurrences were of individual nature and the conclusions of their investigations were also significantly different.

On the other hand Czech Republic admits that there were problems during sterilization procedures with the manner of obtaining of the informed consent of the patients prior to the procedure itself.

Sterilizations continue to be regulated by the **Act No. 20/1966 Coll., On Public Health Care**, as amended. This Act, in its § 27 sets forth that “*sterilization may be performed only with the consent of or at the request of the person subject to sterilization, under the terms set forth by the Ministry of Health.*” Sterilization procedures are further concretized by the guidelines of the Ministry of Healthcare of the Czech Socialist Republic dated 17 December 1971, on sterilization procedures⁶.

With regard to the consent of the patient with the procedure please note that this issue is dealt with by the Public Health Care Act, cited above, which in its § 23 sets forth:

“§ 23

Advice to and Consent of the Sick

(1) Healthcare worker qualified to perform the relevant healthcare occupation informs the patient, eventually other persons in accordance with § 67b para 12 letter d), about the purpose and nature of the provided healthcare and each diagnostic or treatment procedure, as well as about its consequences, alternatives and risks. Should the health of the patient or nature of the illness warrant it then the healthcare worker named in the first sentence shall be authorized to also provide persons close 4b) to the patient and members of his household 4c)

⁵ Accentuated by the Committee

⁶ LP-252.3-19.11.71

who are not close persons with information which is indispensable to them to provide care for such patient or for the protection of their health. In case the patient expressed, in compliance with § 67b para 12 letter d), his wish not to provide information [prohibition], then information mentioned in the second sentence hereof can be provided only with the consent of the patient. The expression of the consent shall be governed by the provisions of § 67b para 12 letter d) and § 67ba para 1 and 2 analogically.

(2) Diagnostic and treatment procedures are undertaken with the consent of the sick or if such consent may be assumed. Should the sick refuse the required care notwithstanding appropriate explanation [being provided] the doctor in charge will request a declaration in writing to that effect (reverse).

(3) Should an exigent performance of a diagnostic or treatment procedure be necessary in order to save the life or health of a child or person without legal capacity and should the parents of guardians refuse to give such consent the doctor in charge shall be authorized to decide on the performance of the procedure. This provision applies to children who are unable to appreciate, due to their intellectual maturity, the necessity of such procedure.

(4) It shall be possible to perform, without the consent of the sick, diagnostic and treatment procedures and if the nature of the illness warrants it, to commit the sick into institutional care

a) if it concerns illnesses defined by special legislation where mandatory treatment may be imposed,

b) if the person manifesting indications of mental illness or intoxication endangers himself/herself or his/her vicinity, or

c) if it is not possible, due to the state of health of the sick to obtain his/her consent and the procedures involved are of exigent nature leading to preservation of one's life or health,

d) if [the person concerned] is a carrier. 4d)“

The requirements with regard to the informed consent as well as to the declaration on refusal of the recommended healthcare are set forth in detail by **Decree No. 385/2006 Coll., On Healthcare Records**, which became effective on 1 April 2007. The existence of this legal regulation was already notified to the Committee in the written Replies, as well as during the consideration of the Report. The Ministry of Health of the Czech Republic notified healthcare institutions about the obligatory compliance with the requirements pertaining to the informed consent. The healthcare institutions' staff are trained with respect to the legal regulation pertaining to the informed consent, healthcare records and general rights of the patients, especially with respect to the Convention on Human Rights and Biomedicine.

The amendment of the Public Healthcare Act No. 111/2007 Coll., sets forth in detail the rights of patients to information, individual aspects of which were not interpreted uniformly until its adoption in practice. The amendment expressly sets forth the rights of the patients to be aware of all information related to their health, the rights of the patients to designate the person/persons who are to be provided with information about their health, and the rights of the patients to prohibit provision of that information to any person. This detailed regulation also addresses the rights of the patients to inspect/review their health records and to make copies, transcripts and extracts thereof. In order to further strengthen the rights of the patients the important aspect is that the amendment imposes a 30-day deadline during which the healthcare institution has to provide such copies or transcript to the patient.

An entirely new legal regulation is currently being prepared, within the wider framework of the healthcare reform, which will uniformly cover, by an independent law, all specific healthcare procedures, including sterilizations. **The draft Act on Specific Healthcare**

Services⁷ will define in detail the terms under which sterilizations may be performed; sterilizations for health reasons and for reasons other than health are properly differentiated in this draft. Increased protection is provided to minors and to legally incapable persons. The draft Act assumes the issue of an implementing regulation which will specify criteria for evaluation of health reasons which could lead to sterilization and the pre-requisites of requests for sterilization for other reasons than health.

As the Czech Republic previously stated in its written Replies, and consequently during the briefing, the issue of forced sterilizations of the Roma women continues to be discussed by the counselling bodies of the government. The Government Council for the Human Rights discussed and adopted at its session on 13 December 2007 **the Initiative of the Committee for Human Rights and Biomedicine on the sterilization procedures in violation of the law**. The Council now proposes to the government to admit that there were instances of unlawful sterilizations and to express its commiserations and to commit itself to take steps that would prevent such occurrences in the future. The Council recommends to the government to set up an inter-departmental working committee which may, *inter alia*, inquire into the eventual indemnification of those persons who were unlawfully sterilized. Should these proposals be approved by the government, the committee should submit to the government the results of its activities by the end of 2008.

Information to the recommendations No. 17:

Quote:

„17. The Committee is deeply concerned by consistent information according to which the Roma suffer racial segregation on the State party's territory in the field of education, a situation that the State party does not seem to fully acknowledge. It notes with particular concern that a disproportionately large number of Roma children attend “special schools”. While noting the views of the State party that this results from the vulnerable situation of the Roma and the need to adopt special measures to respond to their needs, and having taken note of the new Education Act, the Committee remains concerned that this situation also seems to result from discriminatory practices and lack of sensitivity on the part of the authorities to the cultural identity and specific difficulties faced by the Roma. Special measures for the advancement of certain groups are legitimate provided that they do not lead, in purpose or in practice, to the segregation of communities. The Committee is also deeply concerned that a disproportionately large number of Roma children are being removed from their families and placed in State institutions or foster care. (Articles 2, 3 and 5 (e) (iii) and (v)).

The State party should increase its efforts to assess the situation of the Roma in the field of education. It should develop effective programmes specifically aimed at putting an end to the segregation of Roma in this area, and ensure that Roma children are not deprived of their right to family life and to education of any type or any level. The Committee, in particular, recommends that the State party review the methodological tools used to determine the cases in which children are to be enrolled in special schools

⁷ The statement of intent with respect to the Act on Specific Healthcare Procedures was submitted by the Ministry of Health of the Czech Republic for an inter-departmental commentary proceeding in December of 2006.

so as to avoid indirect discrimination against Roma children on the basis of their cultural identity..“⁸

Information provided by the Czech Republic:

The government of the Czech Republic is forced to reject any statements to the effect that racial segregation in relation to the Roma children may be taking place. On the contrary, the government believes that in recent years, specifically since 2004, when the new Education Act⁹ became effective, there has been a significant progress in education of the Roma children. The government, acting through the Ministry of Education, Youth and Physical Education responds to the educational needs of these children and provides them with a broad spectrum of supportive measures enabling them to obtain full and complete education. However, the truth is that this is a long-term process.

The supportive measures mentioned above include preparatory classes, assistant teachers for children coming from disadvantaged socio-cultural backgrounds, concepts of early care policies for children from disadvantaged socio-cultural environments, and last but not least, also a number of grant programmes. All these supportive measures were described in detail in the Report, in the written Replies, as well as during the consideration of the Report itself before the Committee.

Additional up-to-date information follows:

In 2007 the subsidies for the creation of the **assistant teacher positions** were provided to 50 more positions than in 2006 (in total there are 380 such positions). The total amount of subsidies provided toward this supporting institution reached CZK 78 million (approximately € 2.6 million).

The report on the realization of the **Early Care Policies**, which is a joint project of the departments of Education, Labour and Social Affairs and Healthcare, will be submitted to the government on 28 March 2008.

With respect to the **grant programmes** please note that in 2006 funding was provided toward 56 projects in the amount exceeding CZK 12,5 million (approximately € 420,000.00). In 2007 the following areas of the Programme for the support of the integration of the Roma communities were promulgated: pre-school preparation for the Roma children, education of pupils from Roma communities in grammar schools and high schools – subsidies to schools with all-day programmes and with significant representation of children from the Roma communities, methodological support of teachers, preparation of didactic materials and specialist studies for the creation of educational programmes, methods and strategies and leisure time and hobby activities for the Roma children and youth in concurrence with their educational needs. Within these thematic areas a total of 63 projects were provided with funding (exceeding approximately CZK 9.8 million, which corresponds to € 327,000.00). The support provided to Roma high school students continues to be disbursed and in 2007 this funding exceeded CZK 11 million (€ 367,000.00).

⁸ Accentuated by the Committee

⁹ Act No. 561/2004 Coll., On Pre-school, Grammar, High School, Vocational and Other Education

Since 1 September 2007 the **Framework educational programme for grammar school level** is being realized. With respect to the education toward toleration the education sphere entitled “Man and Society” is important, which focuses on the prevention of racist, xenophobic and extremist sentiments, education toward toleration and respect for the human rights.

A newly established **Agency for Social Integration in Roma Localities** (hereinafter the “Agency”) aims to, *inter alia*, help the Roma children to fully integrate in the education system. The task of the Agency is to formulate strategies to prevent and limit social exclusion in the specific localities within the Czech Republic, in co-operation with the local municipalities, non-profit organizations, education organizations, employers and other partners on the regional and local levels. The main aim of these strategies is the formation and realization of complex projects which will address the local needs. The pilot project of the Agency was approved by the government on 23 January 2008.¹⁰

In the area of education of Roma children with social handicap¹¹ the Agency will offer projects focusing on:

- pre-school preparation of the Roma children (integration into nurseries or pre-schools for children with social handicap),
- co-operation between the teachers and parents,
- increasing the competences of the parents to develop the potential of their children (for instance through individual and group counselling, clubs for parents in the community centres etc.),
- co-operation with the parents and the children in preparation for school,
- individual and group after-school lecturing in families and community centres,
- remedies for learning disabilities,
- preparation of children for high school, and other.

On 13 November 2007 a **judgment of the European Court of Human Rights was issued in the matter of D. H. and Others v. Czech Republic** (complaint of the Roma children on the discriminatory enrolment into special schools, tried in accordance with Article 14 of the European Convention on Human Rights and Fundamental Freedoms in connection with Article 2 of the Protocol No. 1, which guarantees the right to an education; the applicants asserted that they were subject to discrimination in exercising their right to obtain education on the grounds of their race and ethnic origin). The Grand Chamber decided by thirteen votes against four that in the present case each of the applicants were subject to breaches of the Article 14 of the Convention in connection with Article 2 of the Protocol No. 1, and that the Czech Republic is to pay to each of the 18 applicants the amount of € 4,000.00 as damages for moral injury and to all applicants jointly the amount of € 10,000.00 as compensation of the costs of the proceedings.

Czech Republic, as the party to the European Convention on Human Rights and Fundamental Freedoms, is prepared to adopt such individual and general measures within the meaning of

¹⁰ By its resolution No. 85 dated 23 January 2008

¹¹ In this field the Agency will co-operate with the projects of the Centre for Integration of Minorities of the Teaching and Psychological Counselling Institute. Within this project the Roma children from socially disadvantaged backgrounds take part in after-school lecturing with “mentors” coming from the ranks of university and college students.

the enforcement of this decision without regard to the fact that it considers the verdict of the grand Chamber of the European Court of Human Rights in Strasbourg to be inadequately harsh and dangerously global in relation to the issues discussed therein.

The recommendations of the Committee, and also the verdict of the Grand Chamber, concern exclusively the Roma population. Czech Republic wishes to reiterate its warning and draw the attention to the risks stemming from these recommendations which do not take into account the fact that the citizens of the Czech Republic have the right to freely choose their nationality, respectively their association with an ethnic group. This known fact makes the logic of the enforceability of the Decision of the grand Chamber, as well as the logic of the fulfilment of the recommendation of the Committee somewhat problematic as both indirectly assume the obligation of the State to “identify” a Czech Republic citizen as a Roma.

Following onto the said decision as well as on the recommendations of the Committee to review the methodological tools used in determination of enrolment of children into special schools, the government of the Czech Republic intends to take a number of steps.

One of the planned steps it to apply the **new strategies for education of pupils with social handicap** in mainstream schools utilizing the measures directed at the support of their education. Simultaneously, the transfers of the Roma pupils will be solved, again with the utilization of the said measures directed at their support, from schools/classrooms created specifically for pupils with health handicap into mainstream schools. The concept materials are ready to be submitted for public discussion and its subsequent implementation into practice.

Czech Republic is in the process of preparation of **new strategies for the enrolment of the Roma pupils into the special education regime**. This new measure will be implemented in consequence to the finalisation and implementation into practice of a new battery of tools for evaluation of specific educational needs of pupils from minority and ethnic backgrounds, with priority for the Roma ethnic group, which will better reflect the specifics of the said group of pupils.

Recently, a new **draft amendment of the Education Act**¹² and of the relevant implementing regulation was prepared. This amendment will newly define the legal ground for a refined determination of categories of children/pupils/students with social handicap and the conditions for compliance with educational needs of such socially handicapped pupils in the mainstream course of education in the context of the judgement of the Grand Chamber. The draft anticipates, *inter alia*, the explicit definition of the inter-departmental co-operation of the Ministry of Education, Youth and Physical Education with the Ministry of Labour and Social Affairs in the context of social intervention directed at the support of socially handicapped families and of school achievements of socially handicapped pupils, and also anticipates co-operation of bodies involved in the social and legal protection of children with schools and school counselling institutions. Adoption of other measures is also anticipated to support early care for children from socially handicapped environments in nurseries and to promote this concept among the Roma families so they accept this offer for pre-school education of their children.

¹² Act No. 561/2004 Coll., On Pre-school, Grammar, High School, Vocational and Other Education