



COMMISSIONER FOR HUMAN RIGHTS  
COMMISSAIRE AUX DROITS DE L'HOMME



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## REPORT

**by Nils Muižnieks**  
**Commissioner for Human Rights of the Council of Europe**

Following his visit to the Czech Republic  
from 12 to 15 November 2012

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## **Summary**

Commissioner Nils Muižnieks and his delegation visited the Czech Republic from 12 to 15 November 2012. In the course of this visit the Commissioner held discussions with representatives of the Czech authorities and institutions as well as with members of civil society. The present report focuses on the following human rights issues:

### **I. Protection of the human rights of Roma**

#### **General policy and action for promoting and protecting the human rights of Roma**

The Commissioner regrets that the implementation of the Roma inclusion strategies adopted in the past few years has been hampered until now by structural deficiencies and insufficient allocation of resources. He reiterates that collecting comprehensive statistical data, including on ethnic origin, is critical for setting adequate targets and for monitoring the results of these strategies. The Commissioner stresses the urgent need to involve local authorities in the implementation of the Roma inclusion strategies, and recommends the ratification of Protocol No. 12 to the European Convention on Human Rights, which establishes a general prohibition of discrimination.

#### **The need to address the issue of institutionalised anti-Gypsyism**

The Commissioner is concerned by the overt anti-Gypsyism evidenced in the Czech Republic. He welcomes the authorities' efforts to counter hate speech and urges them to consistently enforce penalties in cases of incitement to discrimination, hatred and violence against Roma. The Commissioner invites the government to actively support and lead the three-year national campaign against racism and xenophobia set to be launched in 2013. He also reiterates the recommendation to the Czech government to remove the pig farm located on the site of the former concentration camp of Lety, where many Roma lost their lives during World War II, and to use and disseminate the Council of Europe's *Fact Sheets on Roma History*, in order to promote better knowledge of Roma history and culture.

#### **Violent hate crimes against Roma**

Roma continue to be the main victims of racially motivated violence in the Czech Republic. The Commissioner welcomes the efforts of the authorities to counter and monitor extremist activities of far right groups. The steps taken by the Ministry of Interior to improve inter-ethnic relations in areas inhabited by members of the Roma community represent significant progress in this sense. The Commissioner notes with particular satisfaction the confidence-building measures initiated by the same ministry, laying the ground for better identification and reporting of racist crimes against Roma, and stresses the importance of ensuring that these crimes are effectively investigated and that their perpetrators are prosecuted to the full extent of the law.

#### **Segregation of Roma children in education**

The Commissioner deeply regrets that five years after the judgment of the Grand Chamber of the European Court of Human Rights (hereafter: the Court) in the case of *D.H. v. the Czech Republic*, Roma children remain segregated in the education system. A significant number of them are still provided less demanding education in schools intended for children with "mild mental disabilities", which are more than twice as costly to the state as mainstream schools, or in Roma-only schools or classes. The Commissioner calls on the authorities to adhere to the Consolidated Action Plan adopted last November and stresses the necessity of a paradigm shift that would put emphasis not on perfecting pupils' capacity tests but on the inclusion of all pupils in mainstream

education and the provision to them of appropriate support, if necessary. The government is urged to commit itself to the phasing out of “practical schools”, draw on the experience of existing good practices of mainstream schools in the country and support action undertaken to this end with adequate funding and effective enforcement mechanisms.

### **Territorial segregation of Roma**

The Commissioner is concerned about the increasing segregation of Roma in marginalised communities. He calls on the authorities to set up concrete goals and a clear timetable for reducing territorial segregation and improving the availability and quality of social housing for those in need. The “Concept of housing policy until 2020” adopted in July 2011 should be accompanied by an enforcement mechanism and adequate funding. Increased co-operation between the various structures entrusted with the implementation of housing projects is essential. The Commissioner welcomes the ratification of the Additional Protocol to the European Social Charter providing for a system of collective complaints under the Charter and encourages the authorities to ratify the Revised European Social Charter.

## **II. The protection of the human rights of persons with disabilities**

### **General policy and action for the protection of the human rights of persons with disabilities**

The Commissioner welcomes the ratification in 2009 of the United Nations Convention on the Rights of Persons with Disabilities (CRPD) and the designation of the Ministry of Labour and Social Affairs as the focal point for matters relating to the implementation of the CRPD. He also welcomes the adoption of the National Plan for the Creation of Equal Opportunities for Persons with Disabilities 2010-2014, which draws on the CRPD, and encourages the authorities to complete the institutional framework for the promotion, protection and monitoring of the implementation of the CRPD.

### **The right to live independently and to be included in the community**

The Commissioner is concerned at the large number of persons with disabilities living in institutions and calls on the authorities to draw up, with the active involvement of persons with disabilities, a comprehensive plan for replacing institutions with community-based services. Pending the transition to community-based alternatives, the authorities are urged to adopt a no-admissions policy to prevent new placements in institutions. The Commissioner stresses that any deprivation of liberty or use of force against persons with disabilities must fully comply with Articles 3 and 5 of the European Convention on Human Rights. The Czech authorities are urged in particular to ensure that in all actions concerning children with disabilities the best interests of the child shall prevail.

### **Legal capacity and the right to make decisions**

The Commissioner is equally concerned about the large number of persons with psycho-social or intellectual disabilities who are totally or partially deprived of legal capacity and are placed under guardianship. The Commissioner welcomes the new Civil Code abolishing, as of January 2014, the full deprivation of legal capacity, and is pleased that this change will translate into the revision of the individual situation of all of the persons concerned. However, the Commissioner is worried about the apparent lack of concrete preparation for such a difficult, but imperative task and urges the authorities to ensure that the new legislation will be implemented without delay. The authorities are also urged to take all necessary measures to stop full deprivation of capacity before the entry into force of the new Civil Code.

### **The right to inclusive education**

The Commissioner is deeply concerned at the fact that a large number of children with disabilities, particularly intellectual disabilities, are still educated according to special programmes, in segregated settings. The Commissioner notes the government's intention to revise the current legislative framework and urges the authorities to adopt inclusive education as a fundamental principle of the education system and to establish ambitious targets for the transfer of children with disabilities from special to ordinary education. To this end, it is essential that the authorities collect comprehensive and accurate data on the number of children excluded from mainstream education.

The report contains the Commissioner's conclusions and recommendations to the Czech authorities and is published on the Commissioner's website along with the authorities' comments.

## Introduction

1. The present report follows a visit to the Czech Republic by the Council of Europe Commissioner for Human Rights ("the Commissioner") from 12 to 15 November 2012.<sup>1</sup> The aim of the visit was to review certain human rights issues in the Czech Republic, focusing on the protection of the human rights of Roma and of persons with disabilities.
2. In the course of his visit the Commissioner held constructive talks with national authorities, including the Prime Minister, Mr Petr Nečas, the Minister of Justice, Mr Pavel Blažek, the Minister of Interior, Mr Jan Kubice, the Minister of Health, Mr Leoš Heger, the Deputy Minister of Education, Youth and Sport, Mr Jiří Nantl, and the Deputy Minister of Labour and Social Affairs, Mr Jan Dobeš. He also met with the Government Commissioner for Human Rights, Ms Monika Šimůnková, the Director of the Agency for Social Inclusion in Roma Localities, Mr Martin Šimáček, and representatives of the Government Council for Roma Community Affairs and of the Government Board for People with Disabilities, as well as with the Ombudsman, Mr Pavel Varvařovský. The Commissioner also had fruitful discussions with representatives of a number of civil society organisations active in the field of human rights protection. He also visited an elementary school in Kladno, as well as the Psychiatric Hospital of Bohnice in Prague.
3. The Commissioner wishes to thank the Czech authorities, and in particular the Ministry of Foreign Affairs and the Permanent Representation of the Czech Republic to the Council of Europe in Strasbourg, for their valuable assistance in organising the visit and facilitating its independent and effective execution. The Commissioner appreciated the Czech authorities' openness to dialogue. He wishes to thank all of his interlocutors, from the national authorities, civil society and the institutions he visited, for their willingness to share with him their knowledge and views.
4. The first section of the present report focuses on the human rights of Roma and tackles the following issues: general policy and action for promoting and protecting the human rights of Roma; the need to address the question of institutionalised anti-Gypsyism; violent hate crimes against Roma; segregation of Roma children in the education system; and the territorial segregation of Roma. The second section focuses on the protection of the human rights of persons with disabilities and tackles the following issues: the legal and institutional framework for the protection of the human rights of persons with disabilities; the right to live independently and to be included in the community; legal capacity and the right to make decisions; and the right to inclusive education.

## I. The protection of the human rights of Roma

### 1. General policy and action for promoting and protecting the human rights of Roma

5. The number of Roma in the Czech Republic is estimated at 150 000 - 300 000, representing between 1.4 and 2.8% of the total population. The Commissioner underlines that the situation of Roma poses some of the most serious and urgent human rights challenges that the Czech authorities are called on to deal with. Despite their relatively small number in the Czech Republic, Roma remain particularly vulnerable to racism and discrimination and find themselves in a situation of exclusion and marginalisation that affects practically all areas of their life.<sup>2</sup>

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<sup>1</sup> During his visit, the Commissioner was accompanied by Mr Nikolaos Sitaropoulos, Deputy to the Director of his Office, and Ms Patricia Ötvös, Adviser.

<sup>2</sup> See, *inter alia*, Report by the Commissioner for Human Rights of the Council of Europe, following his visit to the Czech Republic, 3 March 2011, CommDH(2011)3.

6. The Commissioner welcomes the Roma integration strategies adopted by the Czech authorities in the past years and the institutional framework set up to assist their implementation. The Commissioner regrets, however, that the implementation of the Roma Integration Concept for 2010-2013, which represented a potentially important instrument, was hampered, *inter alia*, by the lack of an enforcement mechanism and of adequate resources. Similar deficiencies have obstructed, until now, the implementation of the Strategy for the Fight Against Social Exclusion 2011-2015, which contains more than 100 measures addressing persons affected by social exclusion, including Roma.<sup>3</sup>
7. The Commissioner is further concerned that the Czech authorities have not as yet introduced a system for collecting statistical data disaggregated by relevant grounds, including ethnic origin. The Commissioner notes the view taken by various stakeholders that the collection of ethnic data is limited by domestic law and is undesirable in view of the risks it may pose to the personal safety of members of the Roma community. Only partial surveys and assessments containing ethnic data were conducted, most recently by the Czech School Inspectorate and the Ombudsman. The Commissioner considers that the absence of adequate statistical data at national level is one of the major impediments to the successful planning and implementation of the Roma inclusion initiatives.
8. As regards the co-ordination of the implementation of the Roma inclusion strategies at national level, the Commissioner considers it necessary for the Czech government to fully support the mandate of the Government Council for Roma Community Affairs, set up as the only inter-ministerial body entrusted to systematically assist the co-operation of ministries in the fulfilment of these strategies.
9. In respect of the situation at local levels, the Commissioner notes the continued difficulties caused by the limited involvement of the regions and municipalities in the implementation of the Roma inclusion strategies, particularly in the areas of special education and housing, where these authorities exercise devolved powers. The Commissioner wishes to stress that local resistance cannot justify the continued exclusion of Roma or other forms of discrimination against Roma. The Commissioner considers that placing public authorities under an enforceable duty to promote equality and to prevent discrimination would represent an important step in promoting the success of the Roma inclusion strategies at local levels.
10. The Commissioner was also informed that the work of Roma mediators is affected by irregular funding, the insecurity of their jobs and the interferences of the local authorities limiting the mediators' possibility to carry out their tasks efficiently.
11. The Commissioner further notes the apparent lack of popular support for the Roma inclusion strategies and recalls that discrimination and social exclusion can be overcome most effectively by comprehensive policies targeting both the Roma and the majority population.
12. In respect of the general protection against discrimination, the Commissioner notes with regret the continued lack in Czech legislation of a mechanism to address those cases of discrimination where it is difficult to identify a victim or which affect an indeterminate number of victims. The Commissioner warmly welcomes the valuable work carried out by the Czech Ombudsman as the national equality body designated by the Anti-discrimination

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<sup>3</sup> Open Society Foundations, Review of EU Framework National Roma Integration Strategies (NRIS) Review, February 2012; European Roma Policy Coalition, Analysis of the National Roma Integration Strategies, March 2012.

Act in force as of 2009.<sup>4</sup> However, he considers that the Ombudsman's mandate could be usefully enhanced by additional powers, such as the adjudication of discrimination-related complaints through legally binding decisions, within the limits prescribed by the law.

### *Conclusions and recommendations*

13. The Commissioner recalls the commitments expressed by the member states of the Council of Europe in the [Strasbourg Declaration on Roma](#) in October 2010, and stresses that policies aimed at Roma inclusion must constitute *political priorities*.<sup>5</sup>
14. The Commissioner welcomes the Roma inclusion strategies adopted by the Czech authorities and urges them to provide adequate funding and to introduce the necessary mechanisms to monitor them and give them effect. The Commissioner encourages the authorities to give particular attention to measures addressing the underlying causes of the marginalisation of Roma and to place the fight against institutionalised anti-Gypsyism (see section below) at the heart of the Roma inclusion strategies.
15. The Commissioner reiterates the importance of introducing a system for collecting ethnic data, with due respect for the principles of confidentiality, informed consent and the voluntary self-identification of persons as belonging to a particular group. The study *'Ethnic' statistics and data protection in the Council of Europe countries* published by the European Commission against Racism and Intolerance (ECRI) in 2007 provides useful guidance in this sense.<sup>6</sup>
16. The Czech authorities are called on to step up their efforts to ensure the active and systematic participation of local authorities in the implementation of the Roma inclusion strategies, in line with [Resolution 333 \(2011\)](#) adopted by the Council of Europe Congress of Local and Regional Authorities. The Commissioner stresses that local resistance to change cannot justify the continued exclusion of Roma.
17. In line with Recommendation CM/Rec(2012)9 of the Committee of Ministers to member States on mediation as an effective tool for promoting respect for human rights and the social inclusion of Roma, the Commissioner encourages the Czech authorities to ensure that the role and responsibilities of mediators are promoted and respected.
18. Lastly, in accordance with ECRI General Policy Recommendation No. 7 on National Legislation to Combat Racism and Racial Discrimination, the Commissioner recommends that the Czech authorities introduce legislation that places all public authorities under a duty to promote equality and eliminate discrimination. The Commissioner also calls on the Czech authorities to ratify Protocol No. 12 to the European Convention on Human Rights, which contains a general prohibition of discrimination.

## **2. The need to address institutionalised anti-Gypsyism**

19. Anti-Gypsyism, a term indicating the specific expression of bias, prejudices and stereotypes that motivate the everyday behaviour of many members of majority groups towards the members of Roma and Traveller communities, is deeply rooted in Europe. Anti-Gypsyism is a crucial factor that prevents the inclusion of Roma in society. Resolute action against it must be central to any efforts to promote the integration of Roma.<sup>7</sup>

<sup>4</sup> Act 198/2009 Coll. of 23 April 2008, Act on Equal Treatment and Legal Means of Protection against Discrimination.

<sup>5</sup> "The Strasbourg Declaration on Roma", CM(2010)133 final, 20 October 2010.

<sup>6</sup> [http://www.coe.int/t/dghl/monitoring/ecri/activities/Themes/Ethnic\\_statistics\\_and\\_data\\_protection.pdf](http://www.coe.int/t/dghl/monitoring/ecri/activities/Themes/Ethnic_statistics_and_data_protection.pdf).

<sup>7</sup> See Council of Europe Commissioner for Human Rights, "[Human Rights of Roma and Travellers in Europe](#)", Strasbourg, 2012, p.39 ff.

20. The Commissioner is deeply worried at the overt anti-Gypsyism that has been evidenced in the Czech Republic. In its Third Opinion on the Czech Republic adopted on 1 July 2011<sup>8</sup> the Advisory Committee on the Framework Convention for the Protection of National Minorities (FCNM) noted that according to information obtained from Roma representatives, negative attitudes towards the Roma prevail within majority society, with 86% of those surveyed rejecting Roma people, demanding that they be segregated, and calling for repressive measures against them.
21. Similarly, the Advisory Committee deplored the repeated stigmatisation of Roma in the media and by politicians, leading to the dissemination and reinforcement of prejudices against Roma. Tolerance on the part of the authorities for anti-Roma statements stimulated an attitude of impunity which emboldened far right extremist and neo-Nazi groups in organising anti-Roma marches on a number of occasions.
22. The report on extremism in the Czech Republic in the year 2011<sup>9</sup> prepared by the Ministry of Interior reveals that far right extremist groups increasingly use the Internet to reach out to their audience. Blogs and social media are used for the dissemination of anti-Roma materials as well as for mobilising support for the public events organised by these groups.
23. The Commissioner welcomes the legislative and practical measures taken by the Czech government to counter hate speech, including on the Internet. The Criminal Code which entered into force on 1 January 2010 seems to provide relatively complete protection against hate crimes. The Commissioner welcomed the information received during his visit that the Czech Republic will soon accede to the Additional Protocol to the Council of Europe Convention on Cybercrime concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems.
24. The Commissioner also took note with satisfaction of the fact that the Human Rights Commissioner of the Czech government, Ms Monika Šimůnková, has initiated a dialogue with the most prominent media in the country, aimed at reducing anti-Gypsyism in the media, and that this dialogue has started off successfully.
25. The Commissioner was also pleased to learn that the Ministry of Interior has set up a series of measures for facilitating the reporting, identifying and monitoring of crimes committed through computer systems, including a helpline with direct access by the public to police officers specialised in cybercrime and standing co-operation with independent cybercrime experts and civil society organisations working in the field of crimes committed on the Internet.
26. The Commissioner welcomes in particular the Interior Ministry's ongoing efforts to enhance pluralism and participation of members of national minorities, including Roma, in the Czech police forces. The Minister of Interior noted that two Roma have graduated in 2012 and seven more Roma are expected to graduate from the police academy in 2013, as well as that the police co-operate successfully with a group of Roma assistants. These are important trust-building measures and good practices that reinforce social cohesion and harmonious inter-ethnic relations.
27. However, the Commissioner considers that the authorities still need to make more comprehensive and effective efforts to promote tolerance and anti-discriminatory attitudes throughout the majority population. The Commissioner warmly welcomes the joint initiative

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<sup>8</sup> Advisory Committee on the Framework Convention for the Protection of National Minorities, Third Opinion on the Czech Republic, adopted on 1 July 2011, published on 19 March 2012.

<sup>9</sup> Czech Ministry of Interior, "Report on Extremism and manifestations of racism and xenophobia on the territory of the Czech Republic in 2011", approved by the Czech government on 9 May 2012.



of the Czech Government Commissioner for Human Rights and of the Agency for Social Inclusion in Roma Localities to launch in 2013 a three-year national campaign against racism and xenophobia, targeting mainly young people. The Commissioner invites the government and the Prime Minister, Mr Petr Nečas, to lead this campaign and to fully support the Government Commissioner for Human Rights and the Agency in successfully organising and co-ordinating the campaign.

28. Lastly, the Commissioner notes with regret that the pig farm built in the 1970s on the site of the former Lety (South Bohemia) concentration camp for Romani people has not as yet been removed by the authorities, reportedly because of the costs involved.

#### *Conclusions and recommendations*

29. The Commissioner stresses the essential role played by politicians at national and local level in efforts to eradicate anti-Gypsyism and to promote respect for human rights and social harmony.
30. The Commissioner welcomes the measures taken by the Czech authorities to counter hate speech, including acts committed through computer systems. He urges the Czech authorities to strengthen their initiatives aimed at ensuring that the media do not promote anti-Gypsyism and recommends that they encourage the professional bodies of the media to offer journalists specific training on questions relating to Roma and anti-Gypsyism. In line with ECRI [General Policy Recommendation No. 13](#) on combating anti-Gypsyism and discrimination against Roma, the Commissioner urges the Czech authorities to consistently enforce penalties against those media who incite to discrimination, hatred and violence against the Roma.
31. Lastly, the Commissioner urges the Czech authorities to remove the pig farm located on the site of the former concentration camp of Lety, where many Roma lost their lives during World War II. He also encourages the Czech authorities to translate the *Factsheets on Roma History* prepared by the Council of Europe into the Czech language and to use and disseminate them widely, especially in schools, in order to promote knowledge by the majority population of Roma culture and history.<sup>10</sup>

### **3. Violent hate crimes against Roma**

32. Roma continue to be the main victims of racially motivated violence in the Czech Republic. According to the EU-MIDIS Data in focus report 6: "Minorities as Victims of Crime", based on a survey conducted in the EU member states in 2008, 32% of Roma respondents in the Czech Republic indicated that they had experienced at least one "in-person crime" ("assault or threat, or serious harassment") in the 12 months preceding the date of the survey, that they considered as being "racially motivated".<sup>11</sup> These acts of violence are typically carried out by members of extremist groups, including neo-Nazi organisations, but also by members of the general public, sometimes in the context of demonstrations and patrols organised by extremist groups in Roma neighbourhoods.
33. The Commissioner notes that according to the report on extremism in the Czech Republic in the year 2011 prepared by the Ministry of Interior, far right extremist groups intensified their activities in 2011, as compared to 2010. In 2011 groups belonging to the far right movement organised 123 events, as compared to 80 in 2010. These groups have also become more radical, drawing force from the mainstream debate on socio-economic

<sup>10</sup> The *Factsheets on Roma History* are available at <http://romafacts.uni-graz.at/>.

<sup>11</sup> European Union Agency for Fundamental Rights, EU-MIDIS Data in focus report 6: "Minorities as Victims of Crime", November 2012.

issues, particularly the economic recession and the public's growing dissatisfaction with austerity measures.<sup>12</sup>

34. The Commissioner is very concerned at the reported rise in violent crimes against Roma in 2011 and 2012. In 2011 the Czech Ministry of Interior recorded 69 crimes motivated by hatred against Roma, of which 11 were crimes under the rubric of "violence against a person or an individual". From March to September 2011, anti-Roma demonstrations, marches and rallies attended by hundreds of participants, often led by the National Workers' Party of Social Justice (DSSS), took place in the towns of Nový Bydžov, Krupka, Rumburk, Varnsdorf, Novy Bor and Šluknov. Arson attacks were perpetrated against Roma people living in Býchory and Krtý. In a letter addressed to the Czech authorities in March 2012,<sup>13</sup> the European Roma Rights Centre (ERRC), Amnesty International and Hate is No Solution Coalition (a group of Czech NGOs) reported 23 instances of violent attacks against Roma since August 2011, of which three have resulted in deaths. Further attacks resulting in deaths, and acts of arson have been reported since last April.<sup>14</sup>
35. In its Third Opinion on the Czech Republic (2011) the Advisory Committee on the FCNM noted the successful prosecution of the arsonists found guilty in the Vitkov arson case of 2009, in which one perpetrator was sentenced to 22 years of imprisonment and three other perpetrators were sentenced to 20 years of imprisonment. However, other similar cases of firebomb attacks (e.g. at Opava in June 2008, at Kozolupy in September 2008 or at Zdiby-Brnky in May 2009) have remained unresolved to date. The ERRC has noted that in a number of other cases which received far less media attention, suspects were not identified, or the racial motive of the attack was not confirmed or racial motivation was not found to constitute an aggravating factor in sentencing the perpetrators. In other cases, attackers were given suspended sentences or were sentenced to community labour.<sup>15</sup>
36. In December 2011 the Czech Republic adopted a new Crime Prevention Strategy for 2012-2015, aimed at improving the overall sense of safety and security among the population and reducing inter-ethnic tensions. Within this framework, municipal police forces have appointed crime prevention assistants whose task is to help in identifying and preventing neighbourhood disputes, to engage in a dialogue between the police and the communities involved and to foster a change in society's negative attitude towards socially excluded persons. In 2011 the project received a government subsidy to cover the costs of 104 assistants in 17 towns. The Commissioner welcomes these confidence-building measures and is particularly pleased that in 2012 two Roma students graduated from the police academy and seven more are expected to graduate in 2013.
37. The Commissioner takes note of the assurances given by the Ministry of the Interior that despite its apparent focus on organised extremist crimes, which is due to the increased visibility of the work of the Organised Crime Unit of this Ministry, the regional and local police predominantly focus on community policing and are generally in charge of racist crimes perpetrated by ordinary persons. Official crime statistics recorded by the Ministry of Interior, the prosecutor's offices and the Ministry of Justice contain information on racially motivated crimes, irrespective of the possible affiliation of the perpetrators with an extremist group.
38. Despite these efforts, the Commissioner notes the concerns expressed by NGOs that crimes committed against members of the Roma community in particular remain apparently unreported due to victims' fear of, or lack of trust in the police, fear of negative

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<sup>12</sup> Czech Ministry of Interior, "Report on Extremism and manifestations of racism and xenophobia on the territory of the Czech Republic in 2011", approved by the Czech government on 9 May 2012.

<sup>13</sup> <http://www.errc.org/cms/upload/file/czech-republic-letter-violence-1-march-2012.pdf>.

<sup>14</sup> <http://www.errc.org/cms/upload/file/attacks-list-in-czech-republic.pdf>.

<sup>15</sup> "Imperfect Justice. A report by the European Roma Rights Centre", March 2011.

consequences, or because of the belief that the crime will not be investigated properly.<sup>16</sup> Research by NGOs also reveals that prosecutors are not aware of, or do not use the available manual published by the Office of the Prosecutor General on investigating and prosecuting hate crimes.<sup>17</sup> The Commissioner noted with interest the assurances given by the Minister of Justice, Mr Pavel Blažek, regarding the introduction in the near future of a uniform, simplified system of legal aid expected to facilitate the adequate assistance of victims of discrimination and racist offences in all relevant proceedings.

#### *Conclusions and recommendations*

39. The Commissioner underlines the importance of ensuring that hate crimes committed against Roma and members of other minorities are effectively investigated and that the perpetrators of such crimes are prosecuted. Sentences imposed should be effective, proportionate and appropriate to the offence committed, in accordance with the Council of Europe Committee of Ministers' [Guidelines on eradicating impunity for serious human rights violations](#).
40. The Commissioner recalls that according to the case law of the European Court of Human Rights in this matter, "where there is suspicion that racial attitudes induced a violent act it is particularly important that the official investigation is pursued with vigour and impartiality, having regard to the need to reassert continuously society's condemnation of racism and ethnic hatred and to maintain the confidence of minorities in the ability of the authorities to protect them from the threat of racist violence".<sup>18</sup>
41. The Commissioner also recalls the measures suggested by ECRI in its [General Policy Recommendation No. 11](#) on Combating Racism and Racial Discrimination in Policing,<sup>19</sup> which include the adoption of a broad definition of a "racist incident" and encouraging victims and witnesses of racist incidents to report such incidents. The Commissioner welcomes the confidence-building measures already put in place by the Ministry of Interior and recommends that it further develop the current framework for dialogue and co-operation between the police and members of the Roma community.
42. The Commissioner encourages the Czech authorities to continue to develop the training of those involved in the criminal justice system on matters related to the investigation, prosecution and sentencing of racist crimes. The Commissioner also considers it important that the Czech authorities continue to monitor closely the activities of extremist right-wing groups, particularly in light of the recent radicalisation of their activities.

#### **4. Segregation of Roma children in the education system**

43. By its judgment of 13 November 2007 in the case of *D.H. and Others v. the Czech Republic* the Grand Chamber of the European Court of Human Rights challenged the disproportionate placement of Roma children in "special schools" providing less demanding education designed for children with disabilities. The Grand Chamber found that this practice discriminated against Roma children in respect of their right to education and

<sup>16</sup> See European Union Agency for Fundamental Rights, EU-MIDIS "Main results report", 2009, pp. 169-170. According to the report, 87% of Roma respondents in the Czech Republic told interviewers that they did not report assault or threat because they had no confidence in the police; 53% because they had a negative attitude towards the police; and 51% were afraid of "intimidation from the perpetrators".

<sup>17</sup> *Ibidem*.

<sup>18</sup> *Nachova and Others v. Bulgaria*, judgment of the Grand Chamber of 6 July 2005, §160; see also *Šečić v. Croatia*, judgment of 31 May 2007, §§ 67-69.

<sup>19</sup> ECRI General Policy Recommendation N°11: Combating racism and racial discrimination in policing, CRI(2007)39, October 2007. The Czech language version of this Recommendation is available at [http://www.coe.int/t/dghl/monitoring/ecri/activities/GPR/EN/Recommendation\\_N11/REC11-2007-39-CZE.pdf](http://www.coe.int/t/dghl/monitoring/ecri/activities/GPR/EN/Recommendation_N11/REC11-2007-39-CZE.pdf).

required the Czech Republic to take effective measures to put an end to this situation and provide reparation to the victims of this human rights violation.

44. The Commissioner is deeply worried that five years after the Court's judgment the situation of Roma children remains essentially the same. A significant number of Roma pupils continue to be taught a reduced curriculum either in schools for children with "mild mental disabilities", which are more than twice as costly to the state as mainstream schools, or in mainstream Roma-only schools or classes, where teaching standards are *de facto* lower. During the Commissioner's visit it was widely accepted by his interlocutors that graduates of the above schools as a rule end up unemployed and dependent on state benefits. The Commissioner believes that this vicious circle of segregated education, that costs the country so much both financially and socially, must be ended.
45. The Commissioner regrets that the implementation of the National Action Plan for Inclusive Education (NAPIE) adopted by the government for this purpose in March 2010 has practically stopped since the expert group set up to assist the Ministry of Education in fulfilling this Plan resigned in May 2011, citing the government's lack of political will to develop an inclusive education system.
46. As part of the NAPIE, some legislative amendments have been in place since September 2011. However, the legislation currently in force<sup>20</sup> still allows the (temporary) placement of a significant percentage of pupils without disabilities in classes established for children with disabilities. To date, no specific and measurable targets have yet been fixed for transfers of children from special to ordinary education and for the overall desegregation of the school system.
47. It is worrying that no comprehensive statistical data collected at national level are available at present regarding the exact number of Roma children included in special education programmes. According to two partial surveys conducted by the Czech School Inspectorate,<sup>21</sup> the proportion of Roma children included in programmes for pupils with special educational needs dropped from 35% in 2010 to 26.4% in 2012. In a study released in June 2012, covering 67 "practical schools" (former "special schools"),<sup>22</sup> the Ombudsman estimated that Roma children constituted 32% to 35% of the pupils enrolled in special education and concluded that this over-representation constituted indirect discrimination in their access to education.
48. The Ombudsman's report further noted that the "special schools" formally abolished since 2005 continued to function with the same profile, although they were re-named either as "elementary schools" or as "practical elementary schools". Many interlocutors pointed out to the Commissioner that this inconsistency in naming schools creates confusion among parents as to the nature of the programmes in which their children are enrolled.
49. The Commissioner considers that the use of partial surveys does not form a sufficiently solid basis from which to work towards developing a fair, inclusive education system. The Commissioner reiterates that in order to establish concrete targets for desegregation and to be able to assess progress, a clear monitoring system must be put in place, based on comprehensive and up-to-date statistical data disaggregated by ethnicity, as well as disability and gender.

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<sup>20</sup> Decree No. 73/2005 on the education of children, pupils and students with special educational needs and exceptionally gifted children, pupils and students.

<sup>21</sup> Czech School Inspection Authority, "Thematic Report – Compendium of results from the thematic control activity in practical elementary schools", March 2010, and "Thematic Report - Progress in Transformation of Former Special Schools in the School Year 2011/2012", July 2012.

<sup>22</sup> Survey of the Public Defender of Rights into the Ethnic Composition of Pupils in Former Special Schools – Final Report, June 2012.

50. The report prepared by the School Inspectorate in 2012 further underlines that no measures have been put in place to enable an accurate and independent assessment of a child's learning needs prior to his or her placement in a special programme. The Commissioner notes that various stakeholders have made repeated calls to the Czech authorities to significantly change the assessment procedures.<sup>23</sup>
51. While the Commissioner understands these concerns, he does not believe that the perfecting of the testing system should lie at the heart of reforming an education system that, as it now stands, tends to exclude, rather than to include. A paradigm shift that would place emphasis on the assessment of pupils' needs and on the provision to them of appropriate support is necessary instead. This requires the government's will and sustained commitment.
52. The Commissioner believes that it is crucial to ensure that when tests are applied they are used to identify, to the best degree possible and in a non-discriminatory way, the support that a child needs in his or her education in order to succeed in an inclusive setting. Such tests should be combined with adequate funding to ensure that the support mechanisms can in fact be put in place. The Commissioner understands that no financing system has been developed until now for supporting the necessary phasing out of "practical schools" and the inclusion of disadvantaged children in mainstream education.
53. The Commissioner wishes to draw attention to the pilot research project "From Segregation to Inclusion: Roma Pupils in the United Kingdom", which showed that Roma children previously enrolled in special education in the Czech Republic and in Slovakia did well in mainstream education in the United Kingdom, despite initial difficulties caused by not speaking the English language. The report on this project, published in November 2011,<sup>24</sup> pointed out the support that Roma children and their parents were given by the schools in the United Kingdom and the fact that Roma parents valued their children's feeling of being welcome and the absence of anti-Roma sentiments and racism expressed by non-Roma children and teachers. The Commissioner was pleased to learn that professionals from the Karlovy Vary region in western Czech Republic visited the United Kingdom in 2012 to draw on the experience of a school in Leicester in providing inclusive education.
54. In respect of future measures, the Commissioner welcomes the Consolidated Action Plan - "Equal Opportunities" adopted by the Czech government last November, which sets out important steps for ensuring that ethnicity and social background no longer have an impact on the placement of children in any specific education programme.
55. The short-term measures envisaged by the Consolidated Action Plan include the abolishment of the placement of children without disabilities in classes for pupils with disabilities and the revising of the testing tools so as to transform them into an aid for the inclusive education of pupils. From 2014 onwards the Action Plan foresees the introduction of records and statistics for monitoring the ethnicity of children educated according to a reduced syllabus.
56. The Commissioner considers that these major measures have the potential to bring about important developments. However, as noted by civil society organisations, the Consolidated Action Plan does not clarify how it will achieve the effective inclusion of Roma children in mainstream education and how it will put an end to their current segregation in

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<sup>23</sup> OSCE – ODIHR, "Equal access to education for Roma children", Field assessment visit to the Czech Republic, 26 October 2012.

<sup>24</sup> [http://equality.uk.com/Education\\_files/From%20segregation%20to%20integration.pdf](http://equality.uk.com/Education_files/From%20segregation%20to%20integration.pdf).

Roma-only schools and classes in the context of mainstream education.<sup>25</sup> The Commissioner believes that the Consolidated Action Plan needs to be accompanied by a detailed schedule including clear targets and indicators for monitoring the desegregation process, as well as the funding required for this purpose.

57. The Commissioner learned during his visit that educating a child in a “practical school” costs 2.5 times more than educating him or her in a mainstream school. The Commissioner considers that the funds currently spent for sustaining a very costly separate stream of education can be successfully used in the future for ensuring adequate support for children who need it, in a mainstream school setting.
58. The Commissioner is aware that the current segregated system has significant support from the public and a number of education professionals. During his visit the Commissioner took note of the view held by some stakeholders that “integration leads to disintegration” – that is, to the withdrawal of non-Roma children by their parents from schools attended by Roma children and the consequent transformation of those schools into Roma-only schools functioning at a fraction of their capacity. At the same time, the Commissioner was informed that segregation is often a result of parental choice, which is influenced, *inter alia*, by the lack of adequate information given to Roma parents regarding the nature of “practical schools” and the opportunities available to young people after graduating from such schools.<sup>26</sup>
59. Other factors that were reported to the Commissioner as supporting segregation are the territorial segregation of Roma, which leads to high percentages of Roma children being enrolled in schools located in their excluded communities; the wish of Roma parents to protect their children from hostility by non-Roma peers and educators; the low number of Roma children attending preschool education (around 30%);<sup>27</sup> the poor co-operation between mainstream schools and Roma parents, particularly where teaching assistants are not present; and the inability of Roma parents to help and support their children in learning in mainstream schools.
60. The Commissioner considers that the complexity of this problem demands not only a reform of the education system, but also the implementation of profound, long-term, effective measures aimed at combating institutionalised anti-Gypsyism, poverty and social exclusion, as well as at overcoming the resistance to change by various stakeholders. It is particularly important that the Czech authorities ensure that teachers and school administrators are trained in the relevant human rights standards, including non-discrimination, and take measures for combating racism in schools, including violent attacks on Roma children.

#### *Conclusions and recommendations*

61. The Commissioner wishes to draw the Czech authorities’ attention to the long-term, serious societal risks and costs associated with the fact that quality education is not equally accessible by all. The Commissioner regrets that the previous commitments of the Czech government to set up an inclusive education system have not been fulfilled so far. The

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<sup>25</sup> Amnesty International, “Comments to the Consolidated Action Plan for the execution of the judgment of the European Court of Human Rights in the case of *D.H. and Others v. the Czech Republic*”, 28 November 2012.

<sup>26</sup> See also Ad hoc Committee of Experts on Roma Issues (CAHROM), Thematic report by the CAHROM thematic group of experts on inclusive education for Roma children as opposed to special schools (following the CAHROM thematic visit to the Czech Republic and Slovakia on 1-5 October 2012), 29 November 2012.

<sup>27</sup> See European Union Agency for Fundamental Rights (FRA), UNDP: “The situation of Roma in 11 Member States. Survey results at a glance”, 2012.

Commissioner hopes that the Consolidated Action Plan will provide the Czech authorities with a new impetus to put their commitments into practice.

62. To this end, the Czech authorities should set a concrete timetable and a clear budget for the transfer of Roma children from special to ordinary education and for the overall desegregation of the school system. For this purpose they should ensure that up-to-date statistical data are collected at national level, disaggregated by relevant categories, including ethnic origin.
63. The Czech authorities should further adopt specific measures to facilitate the transition process and support Roma children and their parents during this process. In this context the Commissioner wishes to stress the principle underlined by the Court in the *D.H.* case that parental consent to placement in a special education programme does not waive the right of a child not to be discriminated against.<sup>28</sup> In accordance with the [Strasbourg Declaration on Roma](#), the Commissioner invites the Czech authorities to promote Roma children's attendance of mainstream preschool education and the presence of teaching assistants in all schools where they are needed.<sup>29</sup>
64. The Commissioner considers that it is important that the efforts turned to fine-tuning the testing system do not undermine the paradigm shift needed to ensure that testing is not used to single children out for segregation, but to support them, to the extent required by each individual pupil, in coping successfully in mainstream education.
65. The Commissioner underlines the importance of fighting violence and prejudice against Roma in schools. In line with ECRI's General Policy Recommendation No. 10 on combating racism and racial discrimination in and through school education,<sup>30</sup> the Commissioner calls on the Czech authorities to ensure that school staff systematically receive initial and on-going training in issues relating to human rights and protection from racial discrimination, and that human rights education is an integral part of the school curriculum at all levels and across all disciplines, from nursery school onwards. The Commissioner recommends the revision of school textbooks so as to ensure that they reflect Roma history and the contribution of Roma to society.
66. The Commissioner believes that it is imperative that the steps towards establishing an inclusive education system be taken consistently and coherently. It is crucial that the Czech government send out an unmistakable signal to all stakeholders that the goal is to have a single, inclusive education system. The Commissioner calls on the authorities to ensure continuity in sustaining the Consolidated Action Plan newly adopted by the government and to adhere to the deadlines set out in the Plan. In this context, the Commissioner recalls the decision of the Council of Europe Ministers' Deputies adopted on 6 December 2012, which reiterates the importance of rapidly obtaining concrete results in the implementation of the Plan.<sup>31</sup>

##### **5. Territorial segregation of Roma**

67. The Commissioner is seriously concerned about the increasing segregation of Roma in marginalised communities. The ECRI follow-up report on the Czech Republic of 2012<sup>32</sup>

<sup>28</sup> *D.H. and Others v. the Czech Republic* [GC], §§ 202-204.

<sup>29</sup> "The Strasbourg Declaration on Roma", para. 33, CM(2010)133 final, 20 October 2010.

<sup>30</sup> ECRI General Policy Recommendation No. 10 on combating racism and racial discrimination in and through school education, CRI(2007)6, 15 December 2006.

<sup>31</sup> 1157 (DH) meeting, 4-6 December 2012, Decisions adopted at the meeting, CM/Del/Dec(2012) 1157/8/03 December 2012.

<sup>32</sup> ECRI Conclusions on the implementation of the recommendations in respect of the Czech Republic subject to interim follow-up, CRI(2012)27, 23 March 2012.

revealed that there is a growing number of socially excluded localities, estimated at 400, most of them inhabited by Roma.

68. The Commissioner welcomes the acknowledgement in the Roma Integration Concept for 2010-2013 of the risks posed by territorial segregation, including the rise in extremism and strained relations between the majority population and the Roma. However, the Commissioner notes with concern the apparent lack of a coherent strategy for preventing the creation of new segregated areas and for reducing the number of existing ones.
69. The challenges and risks posed by territorial segregation are most often compounded by the problem of inadequate housing. In 2012 the local authorities continued to evict Roma families, especially from centrally located buildings, leading them to settle in insalubrious conditions, usually in peripheral areas. One example is the case of more than 40 Roma families living in rented housing in Prednadrázi Street in Ostrava. On 3 August 2012 the Ostrava authorities reportedly delivered a 24-hour eviction notice to these families, while they offered alternative housing to only 14 families.<sup>33</sup> The Commissioner notes that Roma continue to face discrimination on the housing market and evicted families generally end up in informal accommodation without tenure or in hostels where they are forced to pay excessive rates.
70. The Commissioner welcomes the “Concept of housing policy until 2020” adopted in July 2011, which addresses the issue of social housing in the Czech Republic. However, he notes the concerns expressed by ECRI that the proposals included in the Housing Concept have remained largely on paper and that the housing projects being carried out in practice are isolated and depend on the political will of municipalities, who exercise devolved powers in this area. The United Nations Committee on the Elimination of Racial Discrimination has been particularly concerned at the possibly limited effectiveness of the government’s response to some of the decisions and acts of local and regional authorities in respect of evictions or the allocation of housing.<sup>34</sup>
71. The Commissioner is worried at the apparent lack of co-ordination at national level in respect of the implementation of the Housing Policy. The Commissioner understands that until now only a few local authorities have set up their own systems or sought to address the allocation of social housing with the assistance of the Agency for Social Inclusion.
72. The Commissioner encourages the Czech authorities to set up a comprehensive strategy accompanied by a detailed plan and a clear timetable for reducing territorial segregation and improving the availability of social housing for those in need. Increased co-operation between the various structures entrusted with the implementation of housing projects is essential in this sense. The Commissioner believes that this strategy should address the underlying causes of territorial segregation, including poverty and racial discrimination against the Roma.
73. The Commissioner welcomes the ratification by the Czech authorities of the Additional Protocol to the European Social Charter, which entitles social partners and non-governmental organisations to lodge collective complaints regarding the violations of the Charter in states which are parties to it.

#### *Conclusions and recommendations*

74. The Commissioner draws the Czech authorities’ attention to the 2005 [Recommendation](#) of the Committee of Ministers of the Council of Europe on improving the housing conditions of

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<sup>33</sup> <http://www.amnesty.org/en/news/czech-republic-roma-families-imminent-risk-forced-eviction-2012-08-03>.

<sup>34</sup> Concluding observations of the Committee on the Elimination of Racial Discrimination - Czech Republic, CERD/C/CZE/CO/8-9, 14 September 2011.



Roma and Travellers in Europe, which contains recommendations regarding the general principles, legal frameworks and monitoring systems related to housing policies. In this context, the Czech authorities are also called upon to ratify the Revised European Social Charter.

75. The Commissioner urges the Czech authorities to increase their efforts to counter practices that lead to the territorial segregation of Roma. To this end, the Czech authorities should ensure that local or regional initiatives aimed at relegating Roma to segregated areas are prevented.
76. The authorities should further develop the current Concept of Housing Policy until 2020 so as to put in place a comprehensive strategy incorporating clear and enforceable obligations for the authorities to reduce territorial segregation and improve the availability of social housing. The Czech authorities should ensure that representatives of the Roma communities are actively involved in this process.
77. The Commissioner considers that the Czech authorities should address as a priority the improvement of material living conditions in Roma settlements. This includes providing adequate access to drinking water, electricity, sewage and waste removal, as well as transportation and roads.
78. Lastly, whilst the Commissioner acknowledges the local authorities' autonomy in housing matters, this cannot justify the territorial segregation of Roma or their discrimination in the allocation of social housing. The Commissioner encourages the Czech authorities to support the work of the Agency for Social Inclusion of Roma Localities in promoting local partnerships aimed at desegregating Roma localities and improving living conditions in Roma settlements. The Commissioner calls on the Czech authorities to provide the Agency with a stronger platform so that it can carry out its activities in all the localities where intervention is needed.

## **II. The protection of the human rights of persons with disabilities**

### ***1. The legal and institutional framework for the protection of the human rights of persons with disabilities***

79. The Commissioner welcomes the ratification by the Czech Republic of the United Nations Convention on the Rights of Persons with Disabilities ("CRPD") in 2009 and its preparations for the ratification in the near future of the Optional Protocol to the CRPD.<sup>35</sup> The Commissioner also welcomes the adoption by the government of the National Plan for the Creation of Equal Opportunities for Persons with Disabilities 2010-2014, which draws on the CRPD. The Czech authorities are invited to draw inspiration from the Council of Europe Disability Action Plan 2006-2015<sup>36</sup> in defining the concrete actions aimed at enhancing the independence, freedom of choice and quality of life of persons with disabilities.
80. The Commissioner is encouraged by the work of the Government Board for People with Disabilities ("the Board"), established in 1991 by the government as its co-ordinating, initiative and advisory body for disability issues. The Commissioner notes with satisfaction that the Board is chaired by the prime minister and its members include representatives of

<sup>35</sup> National Report submitted by the Czech Republic to the UN Human Rights Council for the 14<sup>th</sup> session of the Universal Periodic Review, 22 October – 5 November 2012.

<sup>36</sup> Recommendation Rec(2006)5 of the Committee of Ministers to member states on the Council of Europe Action Plan to promote the rights and full participation of people with disabilities in society: improving the quality of life of people with disabilities in Europe 2006-2015.

ministries, social partners and organisations of persons with disabilities. The main advisory body of the Board is the Czech National Disability Council (“the Council”), which represents more than 100 organisations of persons with disabilities comprising over 250 000 persons with disabilities.

81. The Commissioner notes with satisfaction that in compliance with article 33 (1) of the CRPD, the Czech Republic has designated the Ministry of Labour and Social Affairs as the government focal point for matters relating to the implementation of the CRPD. However, the Commissioner regrets that consensus was not reached regarding the designation of an independent mechanism to promote, protect and monitor the implementation of the CRPD, pursuant to Article 33 (2) of the CRPD.<sup>37</sup>
82. The Commissioner noted the view expressed by the Council during his visit that some of the concerns related to the protection of the rights of persons with disabilities were not sufficiently reflected in the National Plan for the Creation of Equal Opportunities for Persons with Disabilities 2010-2014. These concerns were outlined by the Council and other civil society organisations in an Alternative Report submitted to the United Nations Committee on the Rights of Persons with Disabilities in November 2011.<sup>38</sup> Both the Board and the Council have shared with the Commissioner their concerns regarding the respect of the rights of persons with disabilities to inclusive education, to live in the community, to make decisions and to work.
83. In terms of the general protection against discrimination, the Commissioner notes that the Anti-discrimination Act prohibits discrimination on the grounds of disability. However, the Commissioner notes the concerns expressed by his interlocutors that the definition of discrimination based on disability in Czech legislation is narrower than the definition provided by the CRPD. The Commissioner further notes that motivation based on disability is not covered by either the general or the specific aggravating circumstances provided for by the Criminal Code, whereas other motives, such as religion, class, or real or perceived race are considered aggravating circumstances. The Commissioner is pleased to note that the Czech government currently runs the “National Development Programme of Mobility for All” aimed at meeting EU standards of accessibility of transport, public buildings and other public places.
84. In respect of the collection of data and statistics pursuant to Article 31 of the CRPD, the Czech Statistical Office is tasked with developing gradually a system of statistical information on persons with disabilities, in co-operation with the Ministry of Health, the Ministry of Education and the Ministry of Labour and Social Affairs. A sample survey was carried out in 2007, while the survey planned for the year 2011 was postponed.<sup>39</sup> The Commissioner understands that there is currently no system in place for collecting comprehensive statistical data on persons with disabilities. Civil society organisations have expressed their concerns that although partial data are collected, the limited access to them creates barriers for the participation of civil society in the implementation of the CRPD.

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<sup>37</sup> Committee on the Rights of Persons with Disabilities, Implementation of the Convention on the Rights of Persons with Disabilities. Initial reports submitted by States parties under article 35 of the Convention - Czech Republic, CRPD/C/CZE/1, 1 November 2011.

<sup>38</sup> “Alternative report for the UN Committee on the Rights of Persons with Disabilities – Czech Republic”, November 2011, submitted by the Czech National Disability Council and other NGOs.

<sup>39</sup> Committee on the Rights of Persons with Disabilities, Implementation of the Convention on the Rights of Persons with Disabilities. Initial reports submitted by States parties under article 35 of the Convention - Czech Republic, CRPD/C/CZE/1, 1 November 2011.

### *Conclusions and recommendations*

85. The Commissioner welcomes the adoption by the Czech government of the National Plan for the Creation of Equal Opportunities for Persons with Disabilities 2010-2014. He encourages the authorities to fully support the mandate of the Government Board for People with Disabilities and the role of the National Disability Council as the main advisory body of the Board. The Commissioner further recommends that the Czech authorities set up or designate an independent mechanism for promoting and monitoring the implementation of the CRPD, as required by Article 33(2) of the convention.
86. The Commissioner calls on the Czech authorities to extend protection against hate crimes under the Criminal Code by ensuring that motivation based on disability is included in the general or specific aggravating circumstances provided by the Code.
87. The Commissioner recommends that the Czech authorities improve the existing system of data collection regarding persons with disabilities and increase the availability of such data so as to enable them to formulate and implement policies under the CRPD obligations, in consultation and co-operation with the representatives of persons with disabilities.

### **3. The right to live independently and to be included in the community**

88. As of 2011 almost 60 000 persons with psycho-social disabilities in the Czech Republic live in institutions, separated from the rest of society.<sup>40</sup> Reports indicate in particular that many psychiatric patients are admitted to hospitals and treated against their will due to the lack of preventive, community-based services and the lack of a legal prerequisite of exhausting all less restrictive facilities<sup>41</sup> and of adequate safeguards against arbitrary deprivation of liberty. The formal nature of the procedures put in place for the judicial review of involuntary hospitalisations results in court decisions confirming almost all such hospitalisations.
89. This issue was highlighted by the European Court of Human Rights in 2011 in the case of *Župa v. The Czech Republic*.<sup>42</sup> The Commissioner wishes to recall the Court's case law, according to which the detention of a person considered to be of "unsound mind" must be subject to thorough scrutiny by domestic courts, in accordance with the purpose of Article 5, paragraph 1 of the European Convention on Human Rights, which is to prevent persons from being deprived of their liberty in an arbitrary fashion.
90. The Commissioner notes in particular the concerns expressed by his interlocutors in respect of the institutionalisation of children with disabilities and the absence of updated and clear statistical data reflecting their situation. For example, the Commissioner notes that according to the above-mentioned Alternative Report, in 2006 there were 10 517 young persons in institutions "for disabled youth". Partial data are available for 2009, when more than 4 000 children were staying in institutions governed by the Ministry of Education, Youth and Sports.
91. The Commissioner welcomes the provisions of the new Civil Code scheduled to enter into force in 2014, which will introduce improved procedural safeguards for persons

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<sup>40</sup> In respect of persons with psycho-social disabilities, statistical data published by the Institute of Health Information and Statistics of the Czech Republic show that in the year 2011 there were 18 796 patients in psychiatric units of general hospitals, 39 873 patients in psychiatric institutes for adults, and 1 003 children in psychiatric hospitals for children (see the "Czech Health Statistics Yearbook" for the year 2011).

<sup>41</sup> European Union Agency for Fundamental Rights, "Involuntary placement and involuntary treatment of persons with mental health problems", June 2012.

<sup>42</sup> Judgment of 26 May 2011.

hospitalised involuntarily, including the obligation for health care facilities to ensure that the persons admitted have received a sufficient explanation about their placement therein.

92. During his visit the Commissioner was informed that the Ministry of Health has announced its intention to de-institutionalise psychiatric services. However, civil society organisations have expressed their concern that the working group established by the Ministry does not include civil society, particularly patients' or carers' organisations.
93. As concerns the social care services, the Commissioner notes with satisfaction the adoption in 2007 of the "Concept to support the transformation of residential social services into other types of social services provided in the user's natural community and enhancing the user's social inclusion in society". The transformation process is co-ordinated by the Ministry of Labour and Social Affairs.
94. Although the Commissioner welcomes these initiatives, he is concerned by the apparent lack of co-ordination between the initiatives adopted by the Ministry of Health and the Ministry of Labour and Social Affairs, despite the acknowledged need for an integrated approach to de-institutionalisation.
95. A particular issue of concern regarding institutionalised persons is the disproportionate use of restrictions and restraints, which has been extensively documented by the Ombudsman in his capacity as the national preventive mechanism in the Czech Republic under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.<sup>43</sup>
96. The Commissioner recalls the 2012 judgment of the European Court of Human Rights in the case of *Bureš v. The Czech Republic*, in which the Court highlighted that "[i]n respect of persons deprived of their liberty, recourse to physical force which has not been made strictly necessary by their own conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3 of the Convention."<sup>44</sup>

#### *Conclusions and recommendations*

97. The Commissioner underlines that pursuant to Article 19 of the CRPD, the Czech Republic is under an obligation to take measures in order to ensure that persons with disabilities are not obliged to accept a particular living arrangement, and have access instead to a range of in-home, residential and other community-based arrangements including the personal assistance necessary to support independent living.
98. The Commissioner wishes to stress the importance of ensuring that disability is not treated as a ground for arbitrary deprivation of liberty and that recourse to physical force in respect of persons with disabilities deprived of their liberty does not violate the prohibition of torture and other forms of ill-treatment, provided for by Article 3 of the European Convention on Human Rights.
99. The Czech authorities are urged to ensure that in all actions concerning children with disabilities the best interests of the child shall prevail. Pending de-institutionalisation, the Commissioner draws the Czech authorities' attention to the Council of Europe Committee of Ministers' [Recommendation \(2005\)5](#) on the rights of children living in residential institutions, according to which member states should adopt measures to ensure, *inter alia*, that the child's right to respect for his or her human dignity and physical integrity is

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<sup>43</sup> Public Defender of Rights, Report on follow-up visits to psychiatric clinics, 3 November 2010; Public Defender of Rights, Report on Visits to Homes for the Disabled, October 2009.

<sup>44</sup> *Bureš v. The Czech Republic*, judgment of 18 October 2012, § 86.

observed and that parents are supported as much as possible with a view to harmoniously reintegrating the child in the family and society.

100. The Commissioner welcomes the initiatives taken by the Ministry of Labour and Social Affairs and the Ministry of Health in addressing the right of persons with disabilities to live independently and to be included in the community. The Commissioner calls on the Czech authorities to strengthen the co-operation between the medical and the social care professional bodies and to draw up a comprehensive plan for replacing institutional services with community-based services, with measurable targets, clear timetables and budgets and a strategy to monitor progress. The plan should be designed and implemented with the active involvement of persons with disabilities. Pending the transition to community-based alternatives, the Czech authorities are urged to adopt a no-admissions policy to prevent new placements of persons with disabilities in institutions.<sup>45</sup>

#### **4. Legal capacity and the right to make decisions**

101. The Commissioner is concerned at the large number of persons with disabilities in the Czech Republic who are totally or partially deprived of their legal capacity. In 2011, according to government data, in the Czech Republic there were more than 5 700 persons with restricted capacity and over 26 000 persons fully deprived of legal capacity.<sup>46</sup> Each year around 2 000 persons are stripped of their legal capacity.<sup>47</sup>
102. Deprivation and restriction of legal capacity result in full or partial guardianship, which is regulated by the Civil Code. The deprivation or restriction of legal capacity leads to a presumption of incompetence in matters relating to, *inter alia*, the right to have a family (marriage and parental rights), the right to integrity (including consent to medical treatment), contractual matters and the right to vote and to be elected.
103. During his visit the Commissioner noted the concerns expressed by the Ombudsman and by civil society organisations regarding the generalised practice of the courts to fully deprive persons with disabilities of their legal capacity, despite their *de facto* ability to perform a series of the acts required in daily life. The Commissioner further noted the concerns expressed by his interlocutors in respect of the lack of effective safeguards available to persons placed under guardianship against violations of their rights committed by guardians.
104. The Commissioner warmly welcomes the legislative changes adopted by the government abolishing the full deprivation of legal capacity as of 1 January 2014 and introducing a system of supported decision-making, as an alternative to the guardianship system based on substitute decision-making. He is particularly pleased that these changes will translate into the revision of the individual situation of all of the persons currently subjected to measures affecting their legal capacity. However, he is seriously worried by the apparent lack of adequate preparation of the ground for this indispensable task.

#### *Conclusions and recommendations*

105. The Commissioner recalls that the European Court of Human Rights has noted that the non-recognition of a person's legal capacity severely limits his or her human rights and that full deprivation of legal capacity is a very serious interference with the right to private life

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<sup>45</sup> See Council of Europe Commissioner for Human Rights, "The right of people with disabilities to live independently and to be included in the community", Issue paper, 13 March 2012.

<sup>46</sup> Alternative Report for the UN Committee on the Rights of Persons with Disabilities – Czech Republic, November 2011, submitted by the National Disability Council and other NGOs.

<sup>47</sup> <http://www.mdac.info/en/Czech-Republic>.

protected by Article 8 of the Convention. The existence of a mental disorder, even a serious one, cannot by itself justify incapacitation.<sup>48</sup>

106. The Commissioner urges the Czech authorities to step up their preparations for the entry into force of the new Civil Code, on 1 January 2014, in order to ensure that the changes provided for by the new legislation can be immediately implemented. The authorities are also urged to take measures preventing the full deprivation of capacity of persons with disabilities before the Code enters into force.
107. The Commissioner calls on the Czech authorities to further review the existing legislation in light of article 12 of the CRPD, in order to establish a single system recognising that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life.
108. As long as the guardianship regime still remains in place, the Czech authorities are urged to ensure that persons placed under guardianship have effective access to judicial review proceedings to challenge the guardianship or the way it is administered. Similarly, effective safeguards must be put in place to ensure that support provided under the supported decision-making system respects the preferences of the person receiving it, is free of conflict of interest and is subject to judicial review.<sup>49</sup>
109. As concerns the right to vote, the Commissioner recalls the Recommendation of the Committee of Ministers of the Council of Europe on the participation of persons with disabilities in political and public life,<sup>50</sup> which states that persons with disabilities, including intellectual impairments, should not be deprived of eligibility and voting rights by any law limiting their legal capacity, by any judicial or other decision or by any other measure based on their disability, cognitive functioning or perceived capacity.

##### **5. The right to inclusive education**

110. The Commissioner is deeply concerned at the continuing segregation in the education system of children with disabilities. A significant number of these children, particularly children with intellectual disabilities, are educated according to special programmes in mainstream schools, “practical schools” or “special schools”,<sup>51</sup> segregated from their peers.
111. According to the Alternative Report mentioned above, in the 2010/2011 school year 70 723 pupils with disabilities and disadvantaged pupils attended primary education, of which 34 497 were enrolled in classes providing special education and 36 226 were individually integrated in mainstream primary classes. Only 1 119 children with psycho-social or intellectual disabilities were integrated in mainstream education.
112. The Commissioner notes that Czech legislation does not yet contain the concept of “inclusive education”. The law recognises the right of all persons to equal access to education and the consideration of the individual needs of every person. However, civil

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<sup>48</sup> See *Shtukhaturov v. Russia*, judgment of 27 March 2008; *Salontaji-Drobnjak v. Serbia*, judgment of 13 October 2009; *Berková v. Slovakia*, judgment of 24 March 2009.

<sup>49</sup> See Council of Europe Commissioner for Human Rights, “Right to legal capacity for persons with intellectual and psychosocial disabilities”, Issue paper, 20 February 2012.

<sup>50</sup> Recommendation No (2011)14 of the Committee of Ministers to member states on the participation of persons with disabilities in political and public life, adopted by the Committee of Ministers on 16 November 2011.

<sup>51</sup> The current “special schools” (providing “special education” under Decree no. 73/2005 of 9 February 2005 on the education of children, pupils and students with special educational needs and exceptionally gifted children, pupils and students, as amended by Decree no. 147/2011) are not intended for children with “mild mental disabilities”, who are now included in “elementary schools” or “practical elementary schools” (previously called as well “special schools”).

society organisations have pointed out that the concept of “individual integration” laid down in Czech legislation includes not only the integration of children with disabilities or disadvantaged children in mainstream settings, but also in special schools. Therefore, individual integration is considered as one of the possible methods of special education. Another concern expressed by civil society organisations is related to the lack of funding for the support measures needed by children with certain disabilities that are not mentioned or defined in the Education Act.<sup>52</sup>

113. The Commissioner further notes that the Consolidated Action Plan submitted by the Czech Republic to the Committee of Ministers, which concerns the execution of the *D.H.* judgment as well as broader measures meant to ensure equal opportunities in education, envisages the revision and possible re-evaluation of the framework education programme for children with “mild mental disabilities”. However, the Consolidated Action Plan does not include a clear commitment to abolish special schools for children with disabilities and to transfer them to mainstream education where appropriate support should be available.
114. The Commissioner is aware that the primary purpose of the Consolidated Action Plan is to address the elimination of discrimination in education on the ground of ethnicity or social background. However, he urges the Czech authorities to take steps in order to fully align the national education system with the requirements of Article 24 of the CRPD, which prohibits the exclusion of persons with disabilities from the general education system and obliges states parties to ensure that children with disabilities can access an “inclusive, quality and free primary education and secondary education on an equal basis with others in the communities in which they live.” These steps should be based on comprehensive, accurate statistical data regarding children with disabilities included in special education programmes.
115. In relation to the above, the Commissioner notes with concern the findings of the United Nations Committee on the Rights of the Child (CRC) of June 2011 according to which the current legislation allows schools to refuse to provide integrated education on the basis of insufficient material resources and that parents of children with special educational needs are required to contribute to the extra cost of providing their child with education in a mainstream environment.<sup>53</sup> The CRC recommended that the Czech Republic effectively provide mainstream education for children with disabilities; amend its legislation to prohibit schools from refusing children on the grounds of insufficient material resources; and provide socio-economic support to children with disabilities regardless of their age.

#### *Conclusions and recommendations*

116. The Commissioner underlines that the lifetime exclusion of persons with disabilities from society often begins with their exclusion from mainstream education, which further reinforces and validates their marginalisation in the later stages of their lives.
117. The Commissioner urges the Czech authorities to adopt inclusive education as a fundamental principle of the “Strategy for the Development of the Education System to 2020” currently under preparation and to ensure that children with special educational needs effectively benefit from individual support and reasonable accommodation in mainstream settings, in line with article 24 of the CRPD. The authorities are encouraged to adopt legislative and other necessary measures in order to make possible the transition to inclusive education, including provisions establishing an enforceable obligation on mainstream schools to reasonably accommodate children with special educational needs.

<sup>52</sup> Act No. 561/2004 Coll., Education Act.

<sup>53</sup> Committee on the Rights of the Child, Consideration of reports submitted by States parties under article 44 of the Convention Concluding Observations: Czech Republic, CRC/C/CZE/CO/3-4, 17 June 2011.

118. Such measures should be accompanied by a clear and ambitious timetable and an adequate budget. The concrete plans for the transfer of all children to mainstream education should be based on comprehensive, up-to-date statistical data concerning children with disabilities enrolled in special education.