

Implementation of the Right to Equal Treatment and Protection against Discrimination

Monitoring Report 2020

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Mission of the Defender

Since 2001, the Defender has been defending individuals against unlawful or otherwise incorrect procedure of administrative authorities and other institutions, as well as against their inactivity. The Defender may peruse administrative and court files, request explanations from the authorities and carry out unannounced inquiries on site. If the Defender finds errors in the activities of an authority and fails to achieve a remedy, the Defender may inform the superior authority or the public.

Since 2006, the Defender has acted in the capacity of the national preventive mechanism pursuant to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Defender systematically visits facilities where persons are restricted in their freedom, either ex officio or as a result of dependence on the care provided. The purpose of the visits is to strengthen protection against ill-treatment. The Defender generalises his or her findings and recommendations in summary reports on visits and formulates standards of treatment on their basis. Recommendations of the Defender concerning improvement of the ascertained conditions and elimination of ill-treatment, if applicable, are directed both to the facilities themselves and their operators as well as central governmental authorities.

In 2009, the Defender assumed the role of the national equality body. The Defender thus contributes to the enforcement of the right to equal treatment of all persons regardless of their race or ethnicity, nationality, sex/gender, sexual orientation, age, disability, religion, belief or worldview. For that purpose, the Defender provides assistance to victims of discrimination, carries out surveys, publishes reports and issues recommendations with respect to matters of discrimination, and ensures exchange of available information with the relevant European bodies.

Since 2011, the Defender has also been monitoring detention of foreign nationals and the performance of administrative expulsion.

In January 2018, the Defender became a monitoring body for the implementation of rights recognised in the Convention on the Rights of Persons with Disabilities, also helping European Union citizens who live and work in the Czech Republic. The Defender provides them with information on their rights and helps them in cases of suspected discrimination on grounds of their citizenship.

The special powers of the Defender include the right to file a petition with the Constitutional Court seeking the abolishment of a secondary legal regulation, the right to become an enjoined party in Constitutional Court proceedings on annulment of a law or its part, the right to lodge an administrative action to protect a general interest or to file an application to initiate disciplinary proceedings with the president or vice-president of a court. The Defender may also recommend that a relevant public authority issue, amend or cancel a legal or internal regulation. The Defender advises the Government to amend laws.

The Defender is independent and impartial, and accountable for the performance of his or her office to the Chamber of Deputies, which elected him or her. The Defender has one elected deputy, who can be authorised to assume some of the Defender's competences. The Defender regularly informs the public of his or her findings through the media, web, social networks, professional workshops, roundtables and conferences. The most important findings and recommendations are summarised in the Annual Report on the Activities of the Public Defender of Rights submitted to the Chamber of Deputies.

Foreword

— This Monitoring Report¹ is the first step in a three-year process during which the Defender will systematically monitor the implementation of the right to equal treatment and compliance with the prohibition of discrimination in selected areas comprising Roma education, equal pay for women and men, and procedural issues.

As part of his or her competence in matters concerning the right to equal treatment and protection against discrimination, the Defender monitors developments in specific topical areas in time. So far, however, the Defender has not done so in a systematic manner. A system of regular monitoring reports and pre-set indicators will enable the Defender to monitor and record developments in the selected areas. By observing changing values of the indicators over time, the Defender will be able to record and subsequently evaluate progress in these areas.

The monitoring activity will enable the Defender not only to improve the situation of groups of people affected by the selected issues, but also gain competence in monitoring progress in the protection and enforcement of rights. This will enable the Defender to fulfil more effectively his role as the Czech equality body.

The Defender does not have the mandate of a national human rights institution, which is an independent institution for monitoring and promoting the protection of human rights. Such institutions are established on the basis of the Paris Principles² and have already been established in most European countries. Recently, the possibility of establishing a national human rights institution in the Czech Republic has been discussed at the Government level. There are arguments that the most effective solution with regard to institutional arrangements and funding would be to give the mandate to the Defender. If this were to happen, the Defender would be better positioned to carry out the new mandate also thanks to the monitoring activities presented herein, which are similar in nature to the monitoring activities normally carried out by national human rights institutions.

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1. The monitoring process is conducted in relation to the project "Reinforcing the activities of the Public Defender of Rights in the protection of human rights (with the aim of establishing a National Human Rights Institution in the Czech Republic)", No. LP-PDP3-001. The project is part of Human Rights Programme financed from the 2014-2021 Norway grants through the Czech Ministry of Finance.
 2. Principles relating to the status of national institutions (Paris Principles) adopted by United Nations General Assembly resolution A/RES/48/134 on 20 December 1993.

You have before you the initial monitoring report, which will serve as the starting point for monitoring activities conducted over the following three years. The Defender will subsequently publish two interim monitoring reports. The Defender will conclude his work with a report at the end of the project period. The final report will assess the progress achieved in the individual topics over the period under review and the project's contribution.

Brno, 22 April 2021

JUDr. Stanislav Křeček, signed
Public Defender of Rights
(this report bears electronic signature)

Commitments of the Czech Republic in the area of equal treatment and non-discrimination

The Czech Republic is a party to various international conventions and is part of several international systems that impose obligations on the State in the area of equal treatment and non-discrimination. These are mainly three systems established by the international community – the United Nations (“UN”), the Council of Europe and the European Union (“EU”).

This chapter summarises the Czech Republic’s commitments and obligations under these international systems and conventions concerning the right to equal treatment and non-discrimination. This overview provides the basis for the monitoring activity. On the basis of these commitments and recommendations, the Defender has selected three topics for monitoring – Roma education, equal pay for women and men, and procedural issues.

1. United Nations

The most important conventions relating to the protection of human rights have been adopted in the framework of the United Nations. The Czech Republic was at the inception of most of these conventions or joined them later. Obligations relating to equal treatment and non-discrimination are included in all of them, to some extent. The conventions set out commitments in terms of civil, political, economic, social and cultural rights, the rights of women, ethnic minorities and people with disabilities.

The compliance of countries (States Parties) with the provisions of the conventions is supervised by monitoring committees to which the countries report regularly on the implementation of the conventions. The committees then respond to the country reports by their own recommendations. The most important conventions in the area of equal treatment and non-discrimination are listed below.³ Several conventions of the International Labour Organisation, a specialised agency of the United Nations, are also relevant in this regard.

3. The list does not include the Convention on the Rights of Persons with Disabilities, adopted on 13 December 2006 in New York and promulgated under No. 10/2010 Coll. of International Treaties. The Defender monitors the implementation of this convention independently within the scope of his competence under Section 1 (7) of Act No. 349/1999 Coll., on the Public Defender of Rights, as amended.
4. The Sustainable Development Goals, also known as Agenda 2030, were unanimously adopted by a resolution of the United Nations General Assembly on 21 October 2015 (A/RES/70/1).

However, not all the commitments within the UN system have a legally binding nature. The Sustainable Development Goals are an example of non-binding commitments⁴ and represent a political declaration through which countries commit themselves to taking action and adopting measures to achieve sustainable development. The objectives include, inter alia, achieving gender equality and equal access to education.

The Czech Republic has also agreed to promote the right to equal treatment by joining the Beijing Platform for Action,⁵ which aims to achieve gender equality and advance the status of women worldwide.

1.1 INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

The International Covenant on Civil and Political Rights⁶ is one of two conventions setting out the most general framework for the protection of human rights. It regulates rights associated with the civil and political life of individuals and groups. The obligations of equal treatment and non-discrimination are laid down, in particular, in Articles 2, 3, 24, 25 and 26, which provide that all individuals have the rights recognised in the Covenant, regardless of their status or membership of a particular group.

Compliance with the Covenant is monitored by the Human Rights Committee. Every four years, the States Parties are required to submit regular reports to the Committee on the Covenant's implementation. The most recent concluding observations of the Committee for the Czech Republic⁷ are from 2019 and include the following recommendations regarding the implementation of the right to equal treatment and non-discrimination:

1. The Defender should act as a national human rights institution.
2. The list of protected grounds under the Anti-Discrimination Act⁸ and the list of grounds eligible for sharing the burden of proof should be expanded.⁹
3. Victims of involuntary/forced sterilisation (with an emphasis on Roma women) should be compensated.
4. Mandatory sterilisation of transgender persons should be abolished.
5. The Czech Republic should ratify the Istanbul Convention.¹⁰

1.2 INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

The International Covenant on Economic, Social and Cultural Rights¹¹ is the second of the conventions that together form a universal framework for the protection of human rights. In ensuring economic, social and cultural rights, the obligation of equal treatment and non-discrimination is laid down primarily in Articles 2, 3 and 7, which provide that everyone is entitled to the rights recognised in the Covenant, regardless of status or membership of a particular group.

Compliance with the Covenant is monitored by the Committee on Economic, Social and Cultural Rights. States Parties submit periodic reports on the implementation of the Covenant to the Committee every five years. The

5. United Nations, the Beijing Declaration and Platform for Action, adopted at the 4th United Nations World Conference on Women, 27 October 1995.

6. International Covenant on Civil and Political Rights, adopted in New York on 16 December 1999 and promulgated under No. 120/1976 Coll.

7. Concluding observations of the Human Rights Committee of 6 December 2019, CCPR/C/CZE/CO/4.

8. Act No. 198/2009 Coll., on equal treatment and legal remedies for protection against discrimination and on amendment to certain laws (the Anti-Discrimination Act), as amended.

9. According to the Committee, the Anti-Discrimination Act should also cover the prohibited grounds under the Covenant – colour, language, national and social origin, property, birth or other status. The sharing of the burden of proof should apply in all cases and on all the grounds of discrimination.

10. Convention of the Council of Europe on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention), adopted in Istanbul on 7 April 2011.

11. International Covenant on Economic, Social and Cultural Rights, adopted in New York on 16 December 1966 and promulgated under No. 120/1976 Coll.

Czech Republic submitted its last periodic report at the end of 2019. In early 2020, the Committee published a list of issues¹² for the State to respond to. The list covers the following topics:

1. Whether steps have been taken to ensure that the sharing of the burden of proof applies in all cases and on all grounds of discrimination.
2. What are the procedure and conditions of gender reassignment and the status of the same-sex marriage bill.
3. What is the impact of the Roma Integration Strategy 2020 and the challenges in the area of discrimination against Roma in the fields of education, employment, housing and healthcare and the measures taken to overcome them.

1.3 CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION

By acceding to the Convention on the Elimination of All Forms of Racial Discrimination¹³, States Parties have committed themselves to eliminating discrimination on the grounds of race, ethnicity, colour and national origin.

The Committee on the Elimination of Racial Discrimination monitors States Parties' compliance with the Convention. States Parties send to the Committee their reports on the implementation of the Convention every two years. In its latest concluding observations for the Czech Republic¹⁴, the Committee formulated the following recommendations:

1. The Defender should act as a national human rights institution.
2. The Public Defender of Rights should have the mandate to represent victims of racial discrimination in court.
3. "Colour" and "descent" should be included among the protected grounds under the Anti-Discrimination Act.
4. Victims of involuntary/forced sterilisation (with an emphasis on Roma women) should be compensated.¹⁵
5. The Czech Republic should consider ratifying the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.¹⁶

1.4 CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN

The Convention on the Elimination of All Forms of Discrimination against Women contains commitments to improve the status of women.¹⁷ The Convention requires States Parties to take measures to combat discrimination against women and to promote the advancement of women.

The Committee on the Elimination of Discrimination against Women monitors compliance with the Convention by States Parties. Periodic reports on compliance with the Convention are submitted by States Parties to the

12. List of issues of the Committee on Economic, Social and Cultural Rights of 17 April 2020, E/C.12/CZE/Q/3.

13. The International Convention on the Elimination of All Forms of Racial Discrimination, adopted in New York on 21 December 1965 and promulgated under No. 95/1974 Coll.

14. Concluding observations of the Committee on the Elimination of Racial Discrimination of 19 September 2019, CERD/C/CZE/CO/12-13.

15. On 1 April 2021, the bill under which victims of forced sterilisations would receive compensation had its first reading in the Chamber of Deputies (document No. 603). Available at: <https://www.psp.cz/sqw/text/tiskt.sqw?o=8&ct=603&ct1=2>.

16. Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, adopted in New York on 18 December 1990.

17. Convention on the Elimination of All Forms of Discrimination against Women, adopted in New York on 18 December 1979, promulgated under No. 62/1987 Coll.

18. Concluding observations of the Committee on the Elimination of Discrimination against Women, 14 March 2016, CEDAW/C/CZE/CO/6.

Committee every four years. The Committee's most recent report¹⁸ in 2016 formulated the following findings and recommendations:

1. The Committee is concerned regarding the low number of gender discrimination lawsuits filed owing to the financial cost of litigation and the difficulty of substantiating incidents of gender discrimination.
2. According to the Committee, inspectorates have a limited capacity to combat gender discrimination, in particular against Roma women and migrant women. Therefore, it recommended that the Czech Republic strengthen the capacity of inspectorates so that they can effectively combat discrimination and empower them to enforce commensurate sanctions.
3. The Committee is concerned about the continuing strong horizontal and vertical segregation of women in the labour market and the gender pay gap.
4. Victims of involuntary/forced sterilisation should be compensated.¹⁹
5. The Czech Republic should ratify the Istanbul Convention.

1.5 OTHER COMMITMENTS

The Czech Republic has made commitments to ensuring equal treatment and combating discrimination also outside the framework of core human rights conventions. No specific recommendations for change have arisen under these other commitments. However, this overview provides a more comprehensive picture of the Czech Republic's commitments in these areas.

INTERNATIONAL LABOUR ORGANISATION CONVENTIONS

The International Labour Organisation (hereinafter also "ILO") is a specialised agency of the United Nations under which labour and employment conventions are negotiated. There are currently nearly 200 of these conventions. A special Committee of Experts on the Application of Conventions and Recommendations oversees the compliance of States with the conventions. Upon request, States Parties submit report to the Committee on the implementation of individual conventions or their provisions. Equal treatment and non-discrimination are covered by several of these conventions ratified by the Czech Republic. These include, for example, the ILO Equal Remuneration Convention (No. 100) of 1951, which recognises the principle of equal pay for equal work, and the ILO Discrimination (Employment and Occupation) Convention (No. 111) of 1958, which recognises the principles of equal opportunities and equal treatment in employment irrespective of status or membership of a group.

SUSTAINABLE DEVELOPMENT GOALS

The Sustainable Development Goals – Agenda 2030 – are a declaration in which countries, including the Czech Republic, have committed themselves to attaining specific goals by 2030 in order to achieve sustainable development. Although these are not legally enforceable rules, they are binding on a political level. Several of the 17 goals are strongly related to the right to equal treatment and non-discrimination.

One of the objectives is **gender equality (No. 5)**. It is concerned primarily with ending discrimination and violence against women and girls in all its forms. The goal also includes a requirement for equal opportunities for women and participation in decision-making processes. The goal of **decent work and economic growth (No. 8)** includes a requirement for equal pay for work of equal value. The goal of **reduced inequalities (No. 10)** aims to promote and empower all people regardless of age, gender, disability, race, ethnicity, descent, religion or economic or other status. It also includes ensuring equality of opportunity, eliminating discriminatory laws, policies and practices and promoting appropriate measures. Finally, the goal of **peace, justice and strong institutions (No. 16)** seeks, inter alia, to promote and enforce non-discriminatory laws and policies to achieve sustainable development.²⁰

19. See footnote 15, *ibid*.

20. For more details, see the information portal of the United Nations Information Centre in Prague [online] [retrieved on 2021-01-05]. Available at: <https://www.osn.cz/osn/hlavni-temata/sdgs/>.

BEIJING PLATFORM FOR ACTION

The Beijing Platform for Action, which is based on the Beijing Declaration adopted at the 4th UN World Conference on Women in 1995, also contains an important political commitment. The Declaration sets out commitments to eliminate discrimination and barriers to women's participation in all spheres of public and private life. The commitments are divided into 12 areas such as education, economic status, access to decision-making and violence against women.

In the context of the implementation of the Platform, countries that have joined the Declaration report every five years to the United Nations Economic Commission for Europe (UNECE) on the implementation of their commitments. The latest report on the implementation of the Declaration was submitted by the Czech Republic in 2020.²¹

2. Council of Europe

The Czech Republic also has commitments to protect human rights under conventions adopted in the framework of the Council of Europe. Similar to the UN system, various monitoring bodies oversee compliance. An overview of the most important Council of Europe conventions and bodies on equality and non-discrimination is provided below.

2.1 EUROPEAN CONVENTION ON HUMAN RIGHTS

The European Convention on Human Rights²² is the basis for regional human rights protection in Europe. If individuals feel that one of their rights under the Convention has been violated, they can apply to the European Court of Human Rights (ECtHR) to rule on the violation, provided that they meet specific requirements.

The Czech Republic has not yet ratified Protocol No. 12 to the Convention, which provides for the general prohibition of discrimination. Article 14 of the Convention also prohibits discrimination. However, this article can only be violated in the context of the enjoyment of the rights and freedoms granted by the Convention. In cases where a judgment is rendered in favour of the victim, the member state must also adopt general measures in addition to individual measures, to ensure that similar violations of rights do not recur in the future. Enforcement of the court's judgments is then overseen by the Committee of Ministers composed of the foreign ministers of the Council of Europe member states.

The Czech Republic currently has one judgment subject to the enhanced form of supervision. This is the case of *D.H. and Others v. the Czech Republic* from 2007, concerning discrimination against Roma pupils in access to primary education.²³ The Committee has repeatedly found it highly problematic that a full one-third of all pupils educated under programmes for pupils with mild mental disabilities are of Roma origin, while the total number of Roma pupils in primary education is around 3%. In 2020, the Committee noted that despite some progress, the Czech Republic still failed to adopt measures to ensure that discrimination against Roma children in education did not occur.²⁴

2.2 EUROPEAN SOCIAL CHARTER

The European Social Charter²⁵ guarantees social and economic rights. Together with the European Convention on Human Rights, it forms the cornerstone of the treaty system for the protection of human rights in the

21. Report on the Implementation of the Beijing Platform for Action 2020 [online] [retrieved on 2021-01-05]. Available at: https://www.vlada.cz/assets/ppov/rovne-prilezitosti-zen-a-muzu/dokumenty/Beijing-25+-National-Review-_english-version_.pdf.

22. Convention for the Protection of Human Rights and Fundamental Freedoms, adopted in Rome on 4 November 1950 and promulgated under No. 209/1992 Coll.

23. Judgement of the Grand Chamber of the European Court of Human Rights of 13 November 2007 in case *D.H. and Others v. the Czech Republic* (application no. 57325/00).

24. Decision of the Committee of Ministers of the Council of Europe of 3 December 2020, CM/Del/Dec(2020)1390/H46-8.

25. European Social Charter, adopted in Turin on 18 October 1962, promulgated under No. 14/2000 Coll. of Int. Tr.

26. Decision of the European Committee of Social Rights of 20 January 2013 in case No. 96/2013, *Association for the Protection of All Children (APPROACH) Ltd. v. Czech Republic*.

27. Decision of the European Committee of Social Rights of 17 May 2016 in case No. 104/2014, *European Roma and Travellers Forum (ERTF) v. Czech Republic*.

member states of the Council of Europe.

Compliance with the Charter is monitored by the European Committee of Social Rights. In addition, certain organisations may lodge a collective complaint with the Committee alleging violation of one of the Charter's articles.

The Committee has found the Czech Republic in violation of the Charter based on five complaints so far. The violations concerned:

1. the absence of a ban on corporal punishment of children (2013); ²⁶
2. the lack of access to housing for Roma people (substandard housing conditions, forced evictions and residential segregation) and the lack of access to healthcare for Roma people (2016); ²⁷
3. sterilisation requirement for official sex reassignment (2018); ²⁸
4. gender pay gap (2019) ²⁹
5. and placement of children under 3 years of age in institutional care (2020). ³⁰

2.3 FRAMEWORK CONVENTION FOR THE PROTECTION OF NATIONAL MINORITIES

By this Convention³¹, the States Parties, including the Czech Republic, undertook to promote full and effective equality of persons belonging to national minorities in all areas of economic, social, political and cultural life, together with conditions that enable them to preserve, express and develop their culture and identity.

Compliance with the Convention is monitored on a regular five-year cycle basis. The last completed cycle so far was concluded with the 2017 Committee of Ministers resolution.³²

In the resolution, the Committee recommended adopting the following measures:

1. bolster efforts to combat manifestations of intolerance, racism, xenophobia and hate speech, and promote tolerance and respectful attitudes amongst the majority population;
2. adopt measures to prevent and combat the discrimination suffered by the Roma;
3. improve the living conditions of the Roma, in particular by creating conditions which would allow moving residents of "residential hostels" into adequate social housing;
4. adopt measures to prevent discrimination against the Roma in education, ensure systematic placing of Roma pupils in mainstream education;
5. expand the powers of the Public Defender of Rights, in particular as regards the possibility of conducting his own investigations and initiating court proceedings.

28. Decision of the European Committee of Social Rights of 15 May 2018 in case No. 117/2015, Transgender-Europe and ILGA-Europe v. Czech Republic.

29. Decision of the European Committee of Social Rights of 5 December 2019 in case No. 128/2016, University Women of Europe (UWE) v. Czech Republic.

30. Decision of the European Committee of Social Rights of 17 June 2020 in case No. 157/2017, European Roma Rights Centre (ERRC) and Mental Disability Advocacy Centre (MDAC) v. Czech Republic.

31. Framework Convention for the Protection of National Minorities, adopted in Strasbourg on 1 February 1995 and promulgated under No. 96/1998 Coll.

32. Resolution of the Committee of Ministers of the Council of Europe of 29 November 2017, CM/ResCMN(2017)8.

33. European Commission against Racism and Intolerance (ECRI). ECRI Report – Czech Republic (sixth monitoring cycle) adopted on 1 October 2020 and published on 8 December 2020 [online] [retrieved on 2021-01-05]. Available at: <https://rm.coe.int/ecri-6th-report-on-the-czech-republic/1680a0a086>.

2.4 EUROPEAN COMMISSION AGAINST RACISM AND INTOLERANCE

The Commission is the Council of Europe's monitoring body for combating racism, discrimination, xenophobia, antisemitism and intolerance. It issues a monitoring report on its findings every 5 years. The most recent report for the Czech Republic is from October 2020.³³ The Commission recommended, inter alia, the following measures:

1. The Public Defender should be granted the right to initiate court cases.
2. The Public Defender of Rights should have the same powers to obtain evidence in the field of discrimination as in inquiries into public authorities.
3. The requirement of sterilisation for legal recognition of gender reassignment should be abolished.
4. The number of Roma children enrolled in special education should be significantly reduced.
5. All forms of de-facto segregation affecting Roma children in schools should be ended.
6. For the purpose of integration and inclusion of the Roma community, authorities should collect comprehensive and gender-disaggregated data in important areas including education, employment, housing and health while respecting the principles of informed consent, self-identification, confidentiality.

2.5 COUNCIL OF EUROPE COMMISSIONER FOR HUMAN RIGHTS

The Commissioner for Human Rights is an independent institution attached to the Council of Europe. His or her mission is to promote respect for and protection of human rights across the member states of the Council of Europe. As part of his monitoring activities, the Commissioner visited the Czech Republic in 2012 and subsequently issued a report,³⁴ in which he stressed the need to adopt certain steps regarding the rights of the Roma minority.

The recommended measures concern:

1. manifestations of anti-Gypsyism in political and public discourse;
2. segregation of Roma children in education;
3. and residential segregation of the Roma.

The same recommendations were also contained in letters sent by the Commissioner to Czech Prime Ministers over the past few years. The Commissioner also called for compensation for involuntarily sterilised Roma women.³⁵

In 2020, the current Commissioner for Human Rights commented on the execution of the judgment *D.H. and Others v. the Czech Republic*.³⁶ She stated that the problem of prevalence of Roma children receiving

34. Report of the Council of Europe Commissioner for Human Rights of 21 February 2013 following his visit to the Czech Republic from 12 to 15 November 2012, CommDH(2013)1.

35. Letter from the Council of Europe Commissioner for Human Rights to Andrej Babiš and Robert Plaga of 19 December 2018, CommHR/DM/sf 094-2018; Letter from the Council of Europe Commissioner for Human Rights to Bohuslav Sobotka of 7 October 2016, CommHR/NM/sf 042-2016.

36. Submission by the Council of Europe Commissioner for Human Rights in the case of *D.H. and Others v. the Czech Republic* (application no. 53725/00), Judgment of the Grand Chamber of the European Court of Human Rights of 13 November 2007, CommDH(2020)24.

37. Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin; Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation; Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services; Council Directive 97/80/EC of 15 December 1997 on the burden of proof in cases of discrimination based on sex.

38. Cf. European Commission database of infringement cases under EU law [online] [accessed on: 2021-01-05]. Available at: https://ec.europa.eu/atwork/applying-eu-law/infringements-proceedings/infringement_decisions/.

education under the programme with reduced learning outcomes continued and that even after all the efforts made, the situation at the time could not be described as satisfactory. She identified deep-rooted inequalities leading to discrimination in education as one of the main reasons for this situation. She wrote that in addition to measures directly related to education, it was also necessary to address the broader causes of discrimination against Roma people in society, including anti-Gypsyism, poverty, territorial segregation, social exclusion, resistance by a part of the public at large to inclusion and teaching about Roma history and culture as part of educational programmes.

3. European Union

The Anti-Discrimination Act is the keystone of Czech anti-discrimination law. It implements the European directives that set out a general European framework for equal treatment and non-discrimination.³⁷ The European Commission regularly monitors the implementation of directives, including anti-discrimination directives. In the event of poor implementation, the European Commission can then initiate an infringement procedure against the Member State. There are currently around 70 active infringement procedures against the Czech Republic.³⁸ However, this number includes all violations of EU law. For example, in addition to discrimination, these procedures also relate to environmental protection, energy and trade regulations.

3.1 INFRINGEMENT PROCEDURE NO. INFR(2014)2174

In 2014, an infringement procedure was initiated against the Czech Republic in connection with a violation of its obligations under the Racial Equality Directive.³⁹ The European Commission argued that the Czech Republic had not implemented the Directive sufficiently, as discrimination against Roma children in education continued. The procedure follows loosely from the above-mentioned judgment of the European Court of Human Rights in *D.H. v. the Czech Republic* from 2007. However, the scope of the procedure is somewhat broader as the violation concerns the segregation of Roma children in education and, more generally, their access to inclusive education. The infringement procedure is still ongoing and no final decision has been made so far.

39. Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.

Selection of thematic areas

Due to the scope and complexity of the topics covered by the right to equal treatment, the Defender has narrowed down the selection of areas to be addressed in his monitoring activities. An important factor influencing the selection was the nature of the monitoring activity within the time-limited project. This is also related to capacity constraints, where the Defender considers it appropriate to address a limited number of issues in more detail. With the potential establishment of the Defender as a national human rights institution and an increase in staff, it would be possible to monitor the status of human rights protection in the Czech Republic more broadly.

The Defender has selected three thematic areas for closer monitoring:

1. Roma education;
2. equal pay for women and men;
3. procedural issues.

In selecting these areas, the Defender was guided, in particular, by the specific recommendations of the committees monitoring compliance with international human rights conventions and regional human rights bodies described in the previous chapter. In order to be able to deal with the thematic areas in an informed manner, the Defender also considered how the institution had dealt with them in the past. Finally, the nature of the topics themselves – i.e., whether the progress in these thematic areas could be quantitatively and qualitatively tracked – played a role in the selection.

The topic that appeared most frequently in the recommendations concerned **Roma education** in the Czech Republic. ECtHR judgment in the case of D.H. is still subject to “enhanced monitoring”, which means that according to the Committee of Ministers of the Council of Europe, it represents a significant structural problem. The Czech Republic reports to the Committee, on an irregular basis, on the implementation of the judgment and progress in the area. Development of Roma education is also the aim of several measures included in the upcoming Roma Integration Strategy 2021–2030. The Defender has also been paying close attention to it in the long term.⁴⁰ In combination with these factors, the Defender naturally chose Roma education as one of the areas to be monitored.

Another area selected for monitoring is **equal pay for women and men**. This topic was also one of the most frequently mentioned in the recommendations. In 2014, the European Commission issued a recommendation to EU Member States on strengthening the principle of equal pay for men and women through transparency.⁴¹ The topic is also likely to be covered soon in the new Strategy for Gender Equality 2021–2030⁴² and should also be the subject of the Action Plan for Equal Pay that is being prepared by the Ministry of Labour and Social Affairs under the 22% Towards Equality project.⁴³ The Defender is represented in the working group on this plan. The decision of the European Committee of Social Rights in December 2019 was also an important reason for selecting this thematic area. The Committee stated that there was insufficient measurable progress in the Czech Republic in promoting equal opportunities for women and men in the area of equal pay and that the Czech legal system does not ensure transparency of pay, which violates the European Social Charter.⁴⁴ In the light of these reasons and related activities, the Defender has selected this area for monitoring.

For simplicity, the third area to monitor is called **procedural issues**. This is the broadest thematic area; in addition to the regulation of sharing the burden of proof or the subsidiarity of compensation for intangible damage in discrimination disputes, it also concerns the powers of the Defender and the establishment of a national human rights institution in the Czech Republic. Issues in this area were frequently emphasised in the recommendations of the monitoring committees. Addressing them would contribute to more consistent procedural protection for victims of discrimination and to combating discrimination on a systemic level. Within this area, the Defender will monitor the development of the legislation that formally frames the right to equal treatment (unlike the other two areas, where, in addition to legislative developments, the Defender will also monitor material indicators of actual social progress). In addition, the Defender also deals with some of the issues within the scope of his special powers. This area was therefore assessed by the Defender as essential for monitoring.

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40. Cf. for example the Survey conducted by the Public Defender of Rights on the ethnic composition of pupils of former special schools of 30 May 2012, File No. 234/2011/DIS/MČ. Available at: <https://eso.ochrance.cz/Nalezene/Edit/6822>; Recommendation of the previous Public Defender of Rights on inclusive education of Roma and non-Roma children of 12 December 2018, File No. 86/2017/DIS/VB, Ref. No. KVOP-53237/2018. Available at: <https://eso.ochrance.cz/Nalezene/Edit/6670>.
41. Commission Recommendation 2014/124/EU of 7 March 2014 on strengthening the principle of equal pay between men and women through transparency.
42. The Strategy for Gender Equality 2021–2030 has not yet been approved as of 1 March 2021. The Public Defender of Rights has access to the source materials for the development of the strategy on account of his membership in the Government Council for Gender Equality.
43. Ministry of Labour and Social Affairs 22% TOWARDS EQUALITY project [online][retrieved on: 2021-05-01]. Available at: <https://www.mpsv.cz/22-k-rovnosti>.
44. Cf. the reference in footnote 27.

Indicators

The Defender will use indicators in his monitoring activities enabling him to evaluate whether there has been a change in a certain area in a given period. It is a standard tool used to measure progress in a variety of areas, including the protection of human rights.⁴⁵

The indicators described below will allow the Defender to regularly assess progress in the three thematic areas described in the previous chapter – Roma education, equal pay for women and men, and procedural issues. The selected indicators are based on the recommendations of international monitoring bodies and, in particular, on the strategies and plans of other relevant actors (especially government and ministries).

Each of the thematic areas comes with a specific explanation as to how the Defender selected the indicators and how the data needed to monitor them will be obtained. The aim was to select indicators that are sufficiently specific and measurable in order to track concrete progress in follow-up monitoring reports.

1. Roma education

As part of the monitoring of indicators in this area, the Defender intends to identify steps the government can take to ensure that Roma pupils receive primary education under similar conditions as majority children. The indicators are based especially on the judgment of the European Court of Human Rights in *Case of D.H. and Others v. the Czech Republic*.

The Defender has identified three main indicators. Each of them is expressed as a numerical value which changes as equal educational conditions for Roma pupils improve or deteriorate.

A change in the value of indirect indicators has only an indirect effect on the achievement of the objective. These indicators are linked to the adoption of measures that could help achieve equal conditions in the education of Roma pupils. However, these measures in themselves cannot serve as evidence that their adoption automatically had an effect on ensuring equal conditions.

Through indirect indicators, the Defender will qualitatively assess the overall development in the values of the three main indicators. The availability of data required for monitoring some of the indicators may change over

the coming years. In that case, the Defender will evaluate the indicators for which data can be obtained, as well as the change in data availability for those that the Defender will no longer be able to monitor.

1.1 NUMBER OF ROMA PUPILS EDUCATED IN PROGRAMMES WITH REDUCED OUTCOMES

Indicator 1 consists of the following values:

- a. Qualified estimate of the proportion of Roma pupils in primary schools relative to all pupils in primary schools (percentage).
- b. Qualified estimate of the proportion of all Roma pupils educated according to the reduced outcomes of the Framework Education Programme for Primary Education in relation to all pupils educated in the same (percentage).
- c. Qualified estimate of the proportion of Roma pupils educated according to the reduced outcomes of the Education Programme for Primary Education in the 1st grade in relation to all pupils educated in the same programme in the 1st grade (percentage).

Based on the judgment in the case of D.H., the Czech Republic is required to prevent a disproportionate placement of Roma pupils in educational programmes for children with mild mental disabilities and to promote the education of these pupils within the mainstream education system. However, this should not be a matter of simply moving Roma pupils from special schools or from education according to the Framework Educational Programme for Children with Mild Mental Disabilities (hereinafter “FEP PE MMD”) conducted in mainstream schools to education according to the minimum recommended level for reducing the expected outcomes of the Framework Educational Programme for Primary Education (hereinafter “FEP PE RO”) in mainstream schools. Children should be educated according to FEP PE RO only in cases where this is objectively necessary.

Education of pupils according to FEP PE MMD was discontinued as from 1 September 2016. In the school years 2016/2017 to 2019/2020, pupils with mild mental disabilities were educated according to FEP PE MMD or FEP PE RO, with both programmes running in parallel. At the end of the 2019/2020 school year, education based on FEP PE MMD finally ended as the last groups of pupils who had started their education according to this programme before 2016 graduated. From the school year 2020/2021, pupils with mild mental disabilities are educated only under FEP PE RO.

It should be noted that – formally – there are significant differences between the FEP PE MMD and FEP PE RO. While the first programme introduced the same, blanket reduction of outcomes for all pupils with the diagnosis of mild mental disability, the second framework programme allows for an individualised reduction of expected outcomes according to the needs of the particular pupil. In other areas, the pupil can learn according to the standard expected outcomes. In reality, however, the difference seems blurred. A majority of pupils outside the mainstream education do not continue their studies at a secondary school completed with a graduation examination (maturita). When these pupils complete primary school, they usually continue their education at a secondary vocational school (učiliště).⁴⁶

45. Cf. e.g. the United Nations High Commissioner for Human Rights, Human Rights Indicators: A Guide to Measurement and Implementation [online] [retrieved on: 2021-01-05]. Available at: https://www.ohchr.org/Documents/Publications/Human_rights_indicators_en.pdf.

46. Cf. Office of the Government of the Czech Republic, Department (Agency) for Social Inclusion. Analýza segregace v základních školách z pohledu sociálního vyloučení (An analysis of segregation in primary schools in terms of social exclusion), Prague 2019 [online] [retrieved on: 2021-01-05]. Available at: https://www.socialni-zaclenovani.cz/wp-content/uploads/Analyza_segrecace_2019.pdf; The Defender has obtained similar findings thanks to his membership in the Expert Forum on the implementation of the judgment of the European Court of Human Rights in case D.H. and Others v. the Czech Republic.

47. The latest published qualified estimates of the number of Roma pupils in primary schools are available in the Czech Republic’s report on the execution of the judgement in case D.H. and Others v. the Czech Republic from 2020. Communication from the authorities (07/10/2020) in the case of D.H. AND OTHERS v. the Czech Republic (application no. 57325/00) [online] [retrieved on: 2021-01-05]. Available at: https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016809fe263.

48. Office of the Government of the Czech Republic. Zpráva o stavu romské menšiny za rok 2019 (Report on the status of the Roma minority in 2019) [online]. Prague: Government of the Czech Republic 2020 [retrieved on: 2021-01-05]. Available at: <https://www.vlada.cz/assets/ppov/zalezitosti-romske-komunity/aktuality/Zprava-o-stavu-romske-mensiny-2019.pdf>.

It is therefore necessary to continue monitoring whether, even after the discontinuation of FEP PE MMD, Roma pupils face unequal conditions in education through unjustified reduction of the expected outcomes. If this were the case, equal conditions for the education of Roma pupils would not be realistically ensured.

The data needed to monitor the indicator are reported annually by the Ministry of Education, Youth and Sports (hereinafter “MEYS”) in reports on the qualified estimates of the number of Roma pupils in primary schools, in the Czech Republic’s reports on the execution of the judgement in D.H. for the Committee of Ministers of the Council of Europe and subsequently also in reports on the status of the Roma minority.⁴⁸

Data for previous years are as follows

| | 2016/2017 | 2017/2018 | 2018/2019 | 2019/2020 |
|---|-----------|-----------|-----------|-----------|
| Proportion of Roma pupils in primary schools | 3,6 % | 3,6 % | 3,7 % | 3,5 % |
| Proportion of Roma pupils relative to all pupils receiving education under FEP PE RO | 26,2 % | 24,7 % | 27,5 % | 24,2 % |
| Of those in the 1st grade | — | 17,4 % | 20 % | 14,5 % |

The Defender will compare the data collected in the coming years with the data for the school years obtained so far. However, it should be stressed that these are qualified estimates, not exact statistical data. The data are provided by the schools themselves on the basis of an annual questionnaire distributed by MEYS.

1.1.1 INDIRECT INDICATORS FOR INDICATOR 1

Ensuring objective diagnosis and adequate supporting measures:

- a. Setting a standard for the work of school counselling centres in terms of assessing special educational needs and adequate support for pupils with different living conditions and from different cultural backgrounds (qualitative evaluation).
- b. Percentage of school counselling centres using the WISC-III diagnostic method (percentage).
- c. Changing the regulations so that school counselling staff can carry out examinations of pupils directly in schools (qualitative evaluation).

Pupils with special educational needs (corresponding to their medical condition as well as their cultural background and other living conditions) may be granted supporting measures (including, for example, adjustments to learning outcomes). This helps the pupils attain their educational potential on an equal basis with others.⁴⁹ Granting supporting measures is recommended by the school counselling centres (hereinafter also referred to as “counselling centres”) after examining an individual pupil.

49. Pursuant to Section 16 (9) of Act No. 561/2000 Coll., on preschool, primary, secondary, higher vocational and other education (the Schools Act), as amended.

50. The percentage of school counselling centres using the WISC-III method was 94.7% in the school year 2012/2013; 94.2% in the school year 2013/2014; 93.8% in the school year 2014/2015; and 94.6% in the school year 2017/2018. Data are available in the Czech Republic’s report on the execution of the judgement in case D.H. and Others v. the Czech Republic from 2019. Communication from the authorities (“Comprehensive Evaluation of the Reform of Inclusive Education in Relation to Roma Pupils”) (05/04/2019) in the case of D.H. AND OTHERS v. Czech Republic (application no. 57325/00), [online] [retrieved on: 2021-01-06]. Available at: https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=090000168093de28.

The examination of pupils in the counselling centre is carried out using various tests. Modern diagnostic tools are therefore key to correctly assessing pupils' needs. The expected learning outcomes should not be reduced in respect of some pupils unless this is actually necessary. It is important to diagnose children with social disadvantages so that professionals from the counselling centre can recognise the impact of cultural and social conditions of a child's life on his or her intelligence test results. The pupil's expected educational outcomes should not be reduced because the influence of his/her social environment is mistaken for a mild mental disability.

The most widely used diagnostic method, WISC-III⁵⁰, has been labelled obsolete by the Czech Government because it cannot assess the cognitive functions of a pupil in a comprehensive way. The Government recommends replacing it with newer methods such as WJ-IE, SON-R or WAIS-III.⁵¹

Research also shows that many Roma parents face difficulties in bringing their children for examination at a counselling centre for reasons related to their poverty and distance from the nearest centre. This happens especially in what is known as "socially excluded areas", where Roma families are highly represented (80% to 85% of all residents).⁵² A pupil without a referral from the school counselling centre is unable to obtain supporting measures even if he or she objectively needs them.⁵³ This also has a negative impact on the education of Roma children, as they cannot fully attain their educational potential. The problem of unequal conditions in education can thus be further exacerbated.

The Defender will monitor the implementation of some of the measures proposed as part of the Roma Integration Strategy 2021–2030, namely the setting of a standard for the counselling centres by MEYS and the legislative changes that will allow children to be examined directly at schools. In addition, the proportion of counselling centres still using the WISC-III method will be monitored.

SECURING STAFF POSITIONS IN SCHOOLS:

- a. Adopting measures to ensure systemic funding for staff positions in school counselling centres (special educator, school psychologist) and to ensure regular availability of the positions in all schools through an amendment to Act No. 563/2004 Coll., on pedagogical workers, and other relevant legislation (qualitative evaluation).
- b. Adopting measures to secure the availability of social pedagogue/social worker positions in schools situated in socially excluded areas (qualitative evaluation).

The possibility of increasing the teaching staff (hiring special educators, school psychologists) using grant calls ("templates"),⁵⁴ was supposed to help schools achieve inclusive education (i.e., education of all pupils together, including those with special educational needs). However, the number of teaching staff responsible for educational and psychological counselling has increased in some schools only. The project-based (i.e. temporary) nature of the funding sources may have been one of the reasons why schools did not show much interest in the programme.

Another problem is that teachers in schools situated in socially excluded areas have to deal with many life situations encountered by the pupils, but they are not sufficiently equipped to do so. Instead, a school social worker or a social pedagogue should co-ordinate among the school, parents, the body for social and legal protection of children, and other professionals and institutions if necessary. However, the availability of these staff positions is very limited.

Using this indicator – which is based on the Roma Integration Strategy 2021–2030 – the Defender will monitor the adoption of measures to systematically increase staff positions in school counselling centres at schools and the availability of social workers or social pedagogues at schools in socially excluded areas.

51. *ibid.*, see the previous footnote. The method is also described as outdated in the next Czech Republic's report on the execution of the judgement in case D.H. and Others v. the Czech Republic from 2020. Cf. footnote 47, *ibid.*

52. Office of the Government of the Czech Republic. Zpráva o stavu romské menšiny za rok 2018 (Report on the status of the Roma minority in 2019). Prague: Government of the Czech Republic 2019 [retrieved on: 2021-01-05]. Available at: <https://www.vlada.cz/assets/ppov/zalezitosti-romske-komunity/dokumenty/Zprava-o-stavu-romske-mensiny.pdf>.

53. MOREE, Dana. Cesty romských žáků ke vzdělávání: Dopady inkluzivní reformy (Roma pupil's road to education: impacts of inclusive reforms) [online]. Prague: Nadace Open Society Fund 2019 [retrieved on: 2021-05-01]. Available at: https://osf.cz/wp-content/uploads/2019/06/Cesty_romskych_zaku_ke_vzdelavani_Dopady_inkluzivni_reformy-1.pdf.

54. "Operational Programme Research, Development and Education" Výzva č. 02_20_080 Šablony III – mimo hlavní město Praha (Call No. 02_20_080 Templates III – excluding Prague) [online] [retrieved on: 2021-01-05]. Available at: <https://opvvv.msmt.cz/vyzva/vyzva-c-02-20-080-sablony-iii-mimo-hlavni-mesto-praha.htm>.

ENSURING QUALITY EDUCATION FOR TEACHING STAFF:

- a. Changing the curriculum for the education of pedagogical workers at all faculties of education to train them in the education of students with different cultural backgrounds and living conditions (YES/NO, qualitative evaluation).
- b. Creating a comprehensive module in the system of continuing education for teaching staff in the area of methodological support in relation to Roma children and pupils (YES/NO, qualitative evaluation).

In the current form of pedagogy training at universities, there is little space allocated to working with children with different cultural background and living conditions (a category referred to under the Czech abbreviation “KZV”). Teachers are thus not sufficiently trained for work with Roma children. According to a 2016 survey, 96% of the teachers surveyed believed that pupils with social disadvantages showed signs of mental disability.⁵⁵ However, given the representation of people with disabilities in the general population, this assumption should be disregarded, according to the authors of the research. Slightly fewer of the teachers (84%) surveyed associated Roma ethnicity with social exclusion. This can lead to the stereotype that Roma ethnicity and social exclusion are inseparable.

Opportunities for further education in this topic are limited for pedagogy graduates. There are courses within the system of continuing education for teaching staff (hereinafter “CEPS”) that focus on social disadvantage in general, but there is no module in the area of methodological support in relation to Roma pupils.

The Defender will use this indicator, based on the proposed Roma Integration Strategy 2021–2030, to monitor whether students of pedagogy degree programmes at universities are trained to work with pupils with different living conditions and cultural background and whether a comprehensive module in the CEPS system is available and focused on working with Roma pupils.

1.2 NUMBER OF ROMA PUPILS IN PRESCHOOL EDUCATION

Indicator 2 consists of the following values:

- a. Proportion of Roma pupils in the compulsory year of preschool education in relation to all pupils in that year (percentage).
- b. Proportion of Roma pupils in the non-compulsory years of preschool education in relation to all pupils in those years (percentage).

Participation in preschool education is associated with a smoother transition to primary education. Equal access to preschool education is thus directly related to equal access to education in primary schools. Preschool education helps children make up for their disadvantages resulting, for example, from an insufficiently motivating environment and the parents’ lower options and abilities to be proactive and spend time with their children.

Starting in the 2017/2018 school year, compulsory preschool education was introduced for children who are at least 5 years old by the start of the school year. However, expert research shows that one year of preschool attendance is not enough to increase readiness for primary education.⁵⁶ Only longer preschool education leads to increased success in primary education. That is why it is also important to monitor how many Roma pupils attend other levels of preschool education in addition to the compulsory year.

55. KALEJA, Martin. (Ne)připravený pedagog a žák z prostředí sociální exkluze ((Un)prepared teachers and pupils in the environment of social exclusion). Opava: Silesian University, Faculty of Public Policies, 2015. ISBN 978-80-7510-160-0.

56. Research summarised in PROKOP, Daniel. Slepé skvrny: o chudobě, vzdělávání, populismu a dalších výzvách české společnosti (Blind spots: poverty, education, populism and other challenges in Czech society). Brno: Host 2019. ISBN 978-80-7577-991-5.

57. See footnote 48, ibid.

58. Czech Statistical Office. Chart – Number of children in kindergartens in the Czech Republic as of 28 August 2020 [online] [retrieved on: 2021-01-05]. Available at: <https://www.czso.cz/csu/czso/graf-pocet-deti-v-materskych-skolach-v-ceske-republice>.

59. Ministry of Education, Youth and Sports. Report on qualified estimates of the numbers of Roma pupils in primary schools in the school year 2019/2020. The report is available to the Defender, but it is not publicly available. However, the estimated proportion of Roma children in the first year of primary education is comparable – 3.5% in the school year 2019/2020. See footnote 48, ibid.

Until now, these values have been published in the annual Information on the Implementation of the Roma Integration Strategy up to 2020. The Defender expects that in the coming years, these data will be collected and published as part of the information on the implementation of the new Roma Integration Strategy 2021–2030.

In the school year 2019/2020, kindergarten headteachers reported qualified estimates according to which 7,065 Roma children attended kindergartens in that school year,⁵⁷ which corresponded to 1.9 % of the total number of children in preschool education (364,909 children).⁵⁸ The proportion of Roma children relative to all children attending compulsory primary education is 3.5 %.⁵⁹

These figures show that the overall attendance of Roma children in preschool education is roughly 1.6 percentage points lower than their participation in primary education. In theory, however, the proportion of Roma children attending preschool and primary education should be roughly similar. If this is not the case, the causes of this situation must be identified.

In its Report on the Status of the Roma Minority in 2018, the Government stated that 97% of all children subject to the obligation to attend the compulsory year of preschool education do so.⁶⁰ The remaining 3% include, with reference to the findings of the Czech Schools Inspectorate, children from socially and economically disadvantaged backgrounds.⁶¹ Given the overrepresentation of the Roma in socially excluded areas, children who do not attend the compulsory year of preschool education are predominantly Roma.⁶²

In the Report on the Status of the Roma Minority in 2019, however, the Government stated that 3.3% of all children over the age of 5 attending the last year of kindergarten were Roma.⁶³ The Government thus estimated that the compulsory preschool education was attended by most Roma children.

A comparison of the data included in the two reports creates a discrepancy as to the extent to which Roma children participate in compulsory preschool education.

As for the non-compulsory years, the Government states in its Report on the Status of the Roma Minority in 2019 that 1.37% of children attending non-compulsory years of kindergarten in school year 2018/2019 were Roma.⁶⁴ That is a small proportion compared to the Roma share of 3.5% of all children in primary education.

Estimates of the proportion of Roma pupils in relation to the total number of pupils in preschool education

| | 2017/2018 | 2018/2019 | 2019/2020 |
|--------------------------------|-----------|-----------|-----------|
| In the compulsory year | 3,73 % | 3,77 % | 3,51 % |
| In non-compulsory years | 1,29 % | 1,37 % | 1,23 % |

The Defender’s goal is to identify steps that can be taken to ensure that Roma children participate in all years of preschool education to the same extent they attend primary education. Indirect indicators will also be used by the Defender to monitor other phenomena related to more equal access to preschool education for Roma children.

60. See footnote 52, ibid.

61. Czech Schools Inspectorate. Dopady povinného předškolního vzdělávání na organizační a personální zajištění a výchovně-vzdělávací činnost mateřských škol za období 1. pololetí školního roku 2017/2018 (Impact of mandatory preschool education on the organisation, staffing and educational activities of kindergartens in the 1st semester of school year 2017/2018), Prague, May 2018, [online] [retrieved on: 2021-01-05]. Available at: <https://www.csicr.cz/getattachment/494adcd7-2e4b-40a7-b564-383d964ce14d/TZ-Dopady-povinneho-predskolniho-vzdelavani.pdf>.

62. See footnote 52, ibid, p. 28.

63. See footnote 48, ibid.

64. See footnote 48, ibid.

1.2.1 INDIRECT INDICATORS FOR INDICATOR 2

FINANCIAL AND TRANSPORT ACCESSIBILITY OF KINDERGARTENS FOR ROMA CHILDREN:

- a. Sufficient preschool education capacity (qualitative assessment).
- b. Addressing the catchment area issue – ensuring conditions for the attendance of Roma children with an actual place of residence different from their officially recorded place of permanent residence in a financially accessible, close-enough kindergarten (qualitative evaluation).
- c. Conducting an investigative survey into the barriers to the inclusion of children from excluded areas in the compulsory year of preschool education and publishing the resulting recommendations by the Ministry of Education, Youth and Sports in co-operation with the Technology Agency of the Czech Republic (qualitative evaluation).
- d. Ensuring financial support for children from socially excluded areas in the form of free lunches or paying the fees for preschool education (qualitative evaluation).

The capacity of kindergartens in the Czech Republic is very unevenly distributed. Among the larger cities, there is a shortage of available places in Prague, Ostrava, Pilsen and Liberec, while Brno has sufficient capacity.⁶⁵ The shortage of places in many parts of the country means that some children cannot attend public kindergartens at all. And when children do get a place in a kindergarten, there are sometimes too many of them in the classroom, which can reduce the quality of preschool education there.

This more general problem is connected to the problem of catchment areas, which directly affects Roma children. Many of them have their permanent residence registered in a different municipality than where they actually live. However, places in catchment kindergartens are linked by the law to the children's place of permanent residence. Kindergartens in the vicinity of the actual residence, which tend to be the most accessible for parents in terms of transport and financial costs (but are not considered "catchment kindergartens" due to the difference between the registered and actual place of residence), are not required to accept such children (e.g. due to full capacity).

Children from socially excluded areas also face other specific barriers to participation in preschool education. While many of these obstacles have not yet been accurately mapped, one of the known reasons for the low attendance of children from socially excluded areas (and many Roma children) in preschool education is its financial cost.⁶⁶

These indirect indicators are based on the Report on the execution of the judgement in case D.H. and Others v. the Czech Republic of 2019, the Inclusion Action Plan 2019–2020, and the proposed Roma Integration Strategy 2021–2030. The Defender will use them to monitor whether the capacity of kindergartens has been increased, whether the problem of catchment areas has been addressed, whether an investigative survey has been carried out, and whether the issue of financial cost of preschool education has been addressed.

1.3 NUMBER OF SCHOOLS WITH A HIGH PROPORTION OF ROMA PUPILS

Indicator 3 consists of the following values:

- a. Number and share of primary schools with over 34% Roma pupils (absolute number and percentage).

65. Ministry of Labour and Social Affairs *Analýza dostupnosti zařízení péče o děti v předškolním věku se zaměřením na mateřské školy a dětské skupiny* (Analysis of the availability of preschool childcare facilities with a focus on kindergartens and children's groups), 2020 [online] [retrieved on: 2021-01-05]. Available at: http://www.dsmpsv.cz/images/ke_stazeni/Anal%C3%BDza_dostupnosti_z%C5%99%C3%ADzen%C3%AD_p%C3%A9%C4%8De_o_p%C5%99ed%C5%A1koln%C3%AD_d%C4%9Bti.pdf.

66. For more on the problem of the financial cost of preschool education, see: *Člověk v tísni*. Soubor doporučení pro tvorbu lokálních koncepcí předškolního vzdělávání (A set of recommendations for the development of local approaches to preschool education), 2015, p. 20-21 [online] [retrieved on: 2021-01-05]. <https://www.clovekvtsni.cz/media/publications/452/file/1433496587-ucebnice-web.pdf>; Společnost Tady a teď, o. p. s. *Zavedení povinného posledního roku předškolního vzdělávání před zahájením školní docházky (Studie proveditelnosti)* (The introduction of the compulsory last year of preschool education (Feasibility Study)), Pilsen 2015, especially pp. 96–98 [online] [retrieved on: 2021-01-05]. Available at: http://tadyated.org/wp-content/uploads/2015/10/studie_1_final.pdf.

- b.** Number and share of primary schools with over 50% Roma pupils (absolute number and percentage).
- c.** Number and share of primary schools with over 75% Roma pupils (absolute number and percentage).
- d.** Number and share of primary schools with over 90% Roma pupils (absolute number and percentage)

Segregation, i.e. the separation of Roma pupils from non-Roma pupils (in separate classes or schools), is a phenomenon closely related to the education of Roma children. Every child should have an equal opportunity to receive good education, which can be achieved through different ways appropriate to the child’s individual needs. These needs may be linked to the family environment in which the child grew up (e.g. in a socially excluded area), his or her participation in preschool education, or whether he or she speaks good Czech. The best interests of the child must always be taken into consideration and the educational method that best suits the child’s educational needs must be chosen.

Schools with higher numbers of Roma pupils may be preferred by Roma parents themselves. The reason is that they often attended such a school themselves and therefore perceive it as the safer option for their children because of the predominantly Roma classmates with the associated lower incidence or complete absence of bullying or racism.⁶⁷ The above-standard level of services provided in schools with a higher proportion of Roma pupils (such as preparatory classes; lower class sizes leading to more personalised teaching; and the presence of teaching assistants) can also play a role.⁶⁸ At the same time, segregation limits contact between pupils from different backgrounds, which can carry various consequences. Some of those were also described by the Defender in recommendations based on a survey.⁶⁹ The proportion of Roma and non-Roma pupils in schools must therefore be monitored so that the educational process is effective and each child has access to quality education.

Under this indicator, the Defender will monitor the number of primary schools in which the proportion of Roma pupils exceeds 34, 50, 75 and 90 per cent, respectively. The figures are published annually by MEYS in its reports on qualified estimates of the numbers of Roma pupils in primary schools.

THE VALUES FOR PREVIOUS SCHOOL YEARS ARE AS FOLLOWS

| | 2018/2019 | 2019/2020 |
|---|------------------|------------------|
| Total number of primary schools | 4 169 | 4 189 |
| with over 34% share of Roma pupils | 147 (3,5 %) | 133 (3,2 %) |
| with over 50% share of Roma pupils | 70 (1,7 %) | 69 (1,6 %) |
| with over 75% share of Roma pupils | 31 (0,7 %) | 34 (0,8 %) |
| with over 90% share of Roma pupils | 13 (0,3 %) | 16 (0,4 %) |

67. Cf. footnote 53, ibid

68. Cf. footnote 46, ibid. (An analysis of segregation in primary schools in terms of social exclusion)).

69. Recommendation of the Public Defender of Rights on inclusive education of Roma and non-Roma children of 12 December 2017, File No. 86/2017/DIS/VB. Available at: <https://eso.ochrance.cz/Nalezene/Edit/6670>.

70. Cf. footnote 46, ibid. (An analysis of segregation in primary schools in terms of social exclusion)), especially pp. 69-88.

1.3.1 INDIRECT INDICATORS FOR INDICATOR 3

PREVENTING FURTHER SEGREGATION OF PRIMARY SCHOOLS AND REDUCING EXISTING SEGREGATION THROUGH EFFECTIVE CONTROL OF THE SCHOOLS' FOUNDERS

- e. Supervision of municipalities (as the founders) by the Ministry of the Interior to draw school districts in a manner that excludes segregation (qualitative evaluation).
- f. Proposing desegregation measures in the framework of the post-2020 action plan for inclusive education (qualitative evaluation).

One of the most common causes of segregation in education is the action or inaction of the founder (typically a municipality), especially in the form of inappropriately drawn school districts.⁷⁰ The desire to educate children in a segregated fashion may also come from some parents, and certain municipalities respond to those wishes. This can create asymmetrical school districts, where certain houses, streets or areas are assigned to a more distant school. The Ministry of the Interior is responsible for supervising whether the contents of the relevant municipal ordinances establishing school districts are in accordance with the law.

Schools themselves can only desegregate at the classroom level, i.e. if Roma and non-Roma children happen to be educated in separate classes. The responsibility for desegregating schools rests with the founders.

These indicators are based on the draft Roma Integration Strategy 2021–2030 and the Inclusion Action Plan 2019–2020. The Defender will use them to monitor how segregation is combatted through supervision of the founders by the Ministry of the Interior and desegregation of existing schools.

2. Equal pay for women and men

By monitoring indicators in this area, the Defender will observe developments in the area of equal pay for women and men and pay transparency in the Czech Republic.

The Defender will monitor the “gender pay gap” and the implementation of measures proposed in the new Strategy for Gender Equality 2021–2030 and the envisaged Action Plan for Equal Pay. The Defender will also monitor the implementation of the European Commission Recommendation on pay transparency of 2014.

Indirect indicators are used to monitor developments in this area more comprehensively. These are not directly related to equal pay in the sense that a change in the value of any of them would result in a more equal pay for women and men. However, all the measures that the Defender will monitor have some impact on promoting a fairer position of women in the labour market and pay transparency, which the Defender sees as a means of ensuring equal pay.

The Defender will assess the indicators in relation to the Strategy for Gender Equality 2021–2030, the Action Plan for Equal Pay, and other future Government documents in the area of equal pay for women and men and pay transparency.

2.1 GENDER PAY GAP IN THE CZECH REPUBLIC

The gender pay gap (hereinafter also “GPG”) expressed as a percentage is a direct indicator. The GPG is the difference between the average gross hourly earnings of men and women expressed as a percentage. In 2018, the gender pay gap in the Czech Republic was 20.1%.⁷¹ This means that in 2018, women in the Czech Republic earned on average one-fifth less than men. More recent data are not available yet.

71. European Institute for Gender Equality. Gender Statistics Database – Gender Pay Gap [online] [retrieved on: 2021-01-05]. Available at: https://eiqe.europa.eu/gender-statistics/dqs/indicator/eustrat_sege1619_gpaygap_tesem180.

72. *ibid.*, see the previous footnote.

The GPG in the Czech Republic was 21.5% in 2016 and 21.1% in 2017. The gap is gradually narrowing over time. However, it is still larger than the EU average of 14.8% in 2018.⁷² There has not been significant progress in its reduction, let alone elimination.

This situation has many causes, ranging from different notions about the roles of women and men in society, the position of women on the labour market, female overrepresentation in low-paid jobs, to the lack of legal regulation and insufficient motivation on the part of employers to address the pay gap.

The Defender considers the GPG to be the key indicator of progress in this area. It is an umbrella figure that can be used to observe where a country stands in the area of pay and gender, while also allowing for international comparison. The gender pay gap in 2018, i.e. 20.1%, serves as the base value. This is the most recent value available. Due to the difficulty of data collection and processing, the GPG values tend to become available with one to two years of delay.

2.1.1 INDIRECT INDICATORS

- a. Approval of the Action Plan for Equal Pay (YES/NO).
- b. Implementation of the Action Plan for Equal Pay (YES/NO with regard to individual objectives).

The Ministry of Labour and Social Affairs is currently developing an action plan for equal pay that should include measures to combat pay discrimination, pay transparency and the use of tools such as Logib (an analytical tool that allows to compare pay conditions with respect to women and men).⁷³ The Office of the Public Defender of Rights also applied testing using the Logib system in 2019.⁷⁴

The Office of the Public Defender of Rights is represented in the working group on the development of the Action Plan. The Ministry of Labour and Social Affairs (hereinafter “MLSA”) currently plans to finalise the Action Plan during 2021 or 2022. Specific measures that will make up the Action Plan are still being discussed.

Under this indicator, the Defender will monitor whether and when the Action Plan is approved. The Defender will then also monitor the implementation of the proposed measures.

- c. Preparing a policy for continuous systematic salary/pay increases in female-dominated fields (YES/NO).

Female-dominated fields mean occupations in which women make up most of the workforce, such as education, health and social services. The rank and file positions in these fields have historically been associated with lower prestige, which corresponds to the low salaries found there today.⁷⁵

One of the reasons why women generally earn less than men is that men have historically been, and still are, more likely to be employed in better paid positions. Women are then more likely to face difficulties getting into these higher paid positions because they have not historically been represented there.⁷⁶ They are thus more likely than men to work in less skilled service jobs that tend to be less remunerated (e.g. as teachers, medical staff and social workers).

In the new Strategy for Gender Equality 2021-2030, the Government proposes to develop a policy for continuous salary/pay increases in female-dominated fields. This is an important measure that has the potential to reduce

73. Logib is a standardised analytical tool that can be used to track the gender pay gap in a specific organisation using regression analysis methods. For more about Logib, see Deloitte Advisory, s.r.o. Legislativní možnosti rovného odměňování žen a mužů (Legislative options for equal pay for women and men) [online] Prague: Ministry of Labour and Social Affairs 2020, p. 78 [online] [retrieved on: 2021-05-01]. Available at: <https://www.rovnaodmena.cz/www/img/uploads/5138eb161.pdf>.

74. See the press release of then Public Defender of Rights of 4 November 2019 [online] [retrieved on: 2021-05-01]. Available at: <https://www.ochrance.cz/aktualne/tiskove-zpravy-2019/kancelar-ombudsmanky-prosla-uspesne-testovanim-platove-rovnosti/>.

75. For more information and historical context, cf. the analysis of the Ministry of Labour and Social Affairs. KŘÍŽKOVÁ, Alena, POSPÍŠILOVÁ, Kristýna, MAŘÍKOVÁ, Hana, MARKOVÁ VOLEJNÍČKOVÁ Romana. Rozdíly odměňování žen a mužů v ČR (Gender pay gap in the Czech Republic) [online]. Prague: Ministry of Labour and Social Affairs 2018, pp. 18-26 [online] [retrieved on: 2021-01-05]. Available at: <https://www.rovnaodmena.cz/www/img/uploads/34c5639c.pdf>.

76. The term “glass ceiling” has been used to describe the situation of women hitting obstacles in their professional growth and career due to a systemic bias in favour of men. Cf. e.g. MALÁČOVÁ, Jana. Možnosti řešení nerovného odměňování žen a mužů (Options for addressing pay inequalities between women and men). In: Proceedings of the International Conference on Unequal Gender Pay. Blanka PLASOVÁ, Kateřina HODICKÁ. Brno: Genderové informační centrum NORA, o. p. s., Office of the Public Defender of Rights 2016, p. 39 [online] [retrieved on: 2021-01-05]. Available at: https://www.ochrance.cz/fileadmin/user_upload/DISKRIMINACE/Knihovna/Sbornik_NORA_CZ.pdf.

the gender pay gap by making female-dominated fields more financially rewarding, so that more women can earn salaries comparable to those received by men.

- d.** Introducing tax incentives for employers providing part-time jobs for parents of children up to 3 years of age and persons caring for dependent family members (YES/NO).

Part-time jobs provide an opportunity to work for people who are unable to work full-time due to other commitments. They can only choose between a part-time job and no job at all. Parental leave is mostly taken by women and women are also more often involved in caring for family members. Women are therefore at greater risk of losing their earnings. This has a knock-on effect in terms of widening the gender pay gap.

The measure was considered as part of the Strategy for Gender Equality 2021–2030, but it is not included in the approved version. Regardless, the Defender will monitor it. The aim of the measure is to encourage employers to create part-time positions. The incentive should be financial, in the form of tax benefits. In fact, the costs associated with part-time jobs tend to be proportionally higher compared to those associated with full-time jobs due to the same administrative burden and employee benefits.⁷⁷ Therefore, financial incentives for employers to create part-time jobs may be a step in the right direction.

- e.** Amendment to the Civil Service Act making work in the civil service more flexible – possibility to freely divide a systematised allocated position into part-time positions, modification of the so-called supplementary position (YES/NO).

The current Civil Service Act⁷⁸ does not permit the division of a service position into multiple part-time positions. It only allows for a reduction in working hours, maintaining one position per person.

However, greater flexibility in the provision of part-time work would enable women on parental leave or women caring for a close person to return to work at least on a part-time basis. This would benefit them not only in terms of being able to earn an income but also in terms of maintaining and gaining experience and qualifications. These are factors that could contribute to reducing the gender pay gap.

- f.** Introducing an obligation to publish information about the salary/pay in job advertisements (YES/NO).

There is currently no legal obligation for employers to disclose the remuneration associated with jobs offered via job advertisements. Non-disclosure of remuneration indicates a lack of transparency and can exacerbate pay inequalities in society, not only between women and men.

Stating the amount of remuneration would help applicants to negotiate their salary/pay based on their individual characteristics (education, experience, skills, etc.) and not to undercut themselves. It would be appropriate to indicate either the amount of the remuneration or its range.⁷⁹

Introducing this obligation would contribute to pay transparency in general, but especially in advertising and recruitment as the first stages of the employment process. The obligation is legally required, for example, in neighbouring Slovakia and Austria.⁸⁰

Introducing an amendment to labour legislation to introduce such an obligation, which should only apply to larger employers, is a task within the framework of the Strategy for Gender Equality 2021–2030.

- g.** Introducing a legislative provision on the nullity of a confidentiality clause on remuneration in employment contracts (YES/NO).

77. Cf. the results of the qualitative analysis conducted by the Ministry of Labour and Social Affairs. Deloitte Advisory, s. r. o. Po stopách nerovné odměny (On the trail of unequal pay) [online]. Prague: Ministry of Labour and Social Affairs 2020, p. 38 [retrieved on: 2021-01-05]. Available at: <https://www.rovnaodmena.cz/www/img/uploads/5119e4579.pdf>.

78. Act No. 234/2014 Coll., on the civil service, as amended.

79. In the 2018 Annual Report, then Defender recommended introducing this obligation to the Chamber of Deputies as part of her legislative recommendations. Public Defender of Rights, Annual Report 2018, Brno 2019, File No. 18/2019/S. Available at: <https://eso.ochrance.cz/Nalezene/Edit/6796>.

80. For more information on the Austrian system, cf. the analysis of the Ministry of Labour and Social Affairs. See footnote 73, *ibid.*, p. 68.

81. See footnote 79, *ibid.*

82. See footnote 41, *ibid.*

Employment contracts often stipulate that male and female employees cannot talk with others about their remuneration. However, this exacerbates the problem of non-transparency in remuneration and may contribute to widening of the gender pay gap.

The Labour Code does not expressly provide for the invalidity of such arrangements. However, in the vast majority of cases, the arrangements are not justified by any legitimate interests on the part of the employer.⁸¹

Introducing an amendment to the Labour Code to provide for the prohibition of confidentiality clauses is a task within the framework of the Strategy for Gender Equality 2021–2030.

h. Implementing European Commission Recommendation 2014/124/EU (YES/NO).

In 2014, the European Commission issued a recommendation to strengthen pay transparency.⁸² It stated that gender pay inequalities pertaining to exactly the same work were already almost non-existent. However, the legal framework for applying the principle of equal pay for work of equal value is different.

According to the European Commission, the application of this principle is hindered by a lack of transparency in pay systems and a lack of legal certainty on the concept of work of equal value. It identifies transparency in remuneration as key to the effective application of the principle of equal pay. The Commission has therefore formulated four measures that EU Member States should put in place to promote pay transparency.

As the first measure, the Commission recommends ensuring the right of employees to obtain information on pay levels, i.e., to be able to find out what pay is generally associated with a particular position. This information should be broken down by gender and include complementary or variable components such as bonuses or non-financial rewards in addition to the basic remuneration.

Under the second measure, employers with 50 employees and over should inform employee representatives and social partners (in particular, trade unions) about the average remuneration for each type of position. This information should also be broken down by gender.

The third measure concerns the introduction of pay audits in companies and organisations with more than 250 employees. These audits should include an analysis of the proportion of women and men in each category position, an analysis of the job evaluation and classification system used and detailed information on pay differentials on grounds of gender.

The last proposed measure concerns ensuring that equal pay issues are discussed at the appropriate level of collective bargaining.

The Commission recommends to introduce one or more of these measures. The Strategy for Gender Equality 2021–2030 sets the goal of adopting at least one of them.

3. Procedural issues

Within this area, the Defender will monitor indicators that relate to general aspects of anti-discrimination law and procedural issues in anti-discrimination lawsuits.

The indicators are largely based directly on the recommendations of the monitoring bodies of the international conventions listed in the introductory chapter summarising the Czech Republic's commitments in the area of the right to equal treatment and non-discrimination.

83. Act No. 349/1999 Coll., on the Public Defender of Rights, as amended.

84. Act No. 99/1963 Coll., the Code of Civil Procedure, as amended.

85. Cf. mandates of national human rights institutions in the European Union in Annex III to the report of the European Union Agency for Fundamental Rights (FRA) of 16 March 2020, Strong and effective national human rights institutions: challenges, promising practices and opportunities [online] [retrieved on: 2021-01-05]. Annex III was updated in October 2020. Available at: <https://fra.europa.eu/en/publication/2020/strong-effective-nhris>.

86. Resolution of the Government Council for Human Rights on the establishment of a national human rights institution of 29 October 2019 [online] [retrieved on: 2021-01-05]. Available at: <https://www.vlada.cz/assets/ppov/rlp/cinnost-rady/zasedani-rady/usneseni-NHRI.docx>.

Given the legal nature of this area, the Defender will only monitor changes of legislative nature. Therefore, the Defender will pay particular attention to the Government meetings and the legislative process in the Czech Parliament. The main regulations that the Defender will monitor include the Anti-Discrimination Act, the Public Defender of Rights Act⁸³ and the Code of Civil Procedure.⁸⁴

3.1 INTRODUCING A LEGISLATIVE BASIS FOR A NATIONAL HUMAN RIGHTS INSTITUTION IN THE CZECH REPUBLIC IN ANY FORM

National human rights institutions are independent institutions established under the Paris Principles adopted by the United Nations. Their mission is to promote and contribute to the protection of human rights. To this end, they are given a mandate and corresponding powers by the individual countries. The Czech Republic, however, lacks a national human rights institution and is the last such country in the European Union.⁸⁵

The Government Council for Human Rights has already recommended that the Government adopt a resolution to establish a national human rights institution in the Czech Republic.⁸⁶ According to the Council, this mandate should be given to the Defender.

Under this indicator, the Defender will monitor the talks and the legislative process regarding the creation of a national human rights institution. The Defender will focus especially on the way in which the national human rights institution will be incorporated in the Czech legal order, i.e., whether a new institution will be created or the mandate will be given to an existing institution. The Defender will also monitor the conditions under which such an institution should operate.

3.2 LEGISLATIVE EXPANSION OF THE LIST OF PROTECTED GROUNDS UNDER THE ANTI-DISCRIMINATION ACT

The Anti-Discrimination Act currently provides protection against discrimination on eleven specified grounds.⁸⁷ This means that their list is exhaustive, or in other words, closed. The monitoring bodies of international human rights conventions recommend that the list of protected grounds be extended to include, inter alia, colour, language, social background and property.

Similar lists of protected characteristics take various forms in the anti-discrimination laws of different countries. For instance, the Slovak anti-discrimination legislation⁸⁸ also provides protection against discrimination on grounds of colour, language and political beliefs. Moreover, the list is non-exhaustive, which means that any other similar status, albeit not expressly mentioned in the law, is also protected. It is difficult to say whether it is better to have an open or a closed list. There are advantages and disadvantages to both forms of legal regulation.

The Defender will monitor the legislative process in this respect following the recommendations of the individual conventions' monitoring committees.

87. Pursuant to Section 2 (3) of the Anti-Discrimination Act, the protected characteristics include the following grounds: race, ethnicity, nationality, sex, sexual orientation, age, disability, religion, belief or worldview, and citizenship status (under certain conditions).

88. Act No. 365/2004 Coll., on equal treatment in certain areas and protection against discrimination, amending and supplementing certain other laws (Anti-Discrimination Act).

89. In accordance with Section 133a of the Code of Civil Procedure.

90. Annual Report on the Activities of the Public Defender of Rights in 2015 [online] [retrieved on: 2021-01-05]. Available at: https://www.ochrance.cz/fileadmin/user_upload/ESO/Souhrnna-zprava_VOP_2015.pdf. Annual Report of the Public Defender of Rights on Protection against Discrimination in 2017 [online] [retrieved on: 2021-01-05]. Available at: https://www.ochrance.cz/fileadmin/user_upload/DISKRIMINACE/Vyrocní_zpravy/Vyrocní_zprava_o_ochrane_pred_diskriminaci_2017.pdf.

91. Chamber of Deputies document 424/0; 8th electoral term of the Chamber of Deputies of the Parliament of the Czech Republic. Bill sponsored by a group of deputies: Monika Červíčková, Helena Válková, Radka Maxová, Roman Onderka, Ivan Jáč, Eva Fialová, Jiří Mašek, Karla Šlechtová, František Kopřiva, Olga Richterová, Věra Procházková and Ondřej Veselý, amending Act No. 198/2009 Coll., on equal treatment and legal remedies for protection against discrimination and on amendment to certain laws (the Anti-Discrimination Act), as amended.

3.3 LEGISLATIVE EXPANSION OF THE LIST OF GROUNDS FOR SHARING THE BURDEN OF PROOF IN THE CODE OF CIVIL PROCEDURE

The burden of proof is the duty to produce evidence of an alleged fact. Sharing of the burden of proof thus means distributing the duty to produce evidence aimed to confirm or refute various alleged facts between the two parties to the dispute.

Under the Code of Civil Procedure, the burden of proof in discrimination litigation is shared only in certain protected areas and only in relation to certain grounds.⁸⁹ In cases not covered by the Code, the discriminated person must prove that the discriminatory conduct did occur and that it was motivated by one of the protected grounds. This may discourage some victims of discrimination from going to court in the first place.

It is desirable that all victims of discrimination have the same procedural means of protection. The Public Defender of Rights has long recommended to consolidate the rules for shifting the burden of proof.⁹⁰ This change is also contained in the proposed deputies' amendment to the Anti-Discrimination Act from 2019.⁹¹ However, it is yet to proceed to the stage of first reading in the Chamber of Deputies.

3.4 INTRODUCING A LEGISLATIVE PROVISION ALLOWING THE PUBLIC DEFENDER OF RIGHTS TO REPRESENT VICTIMS OF DISCRIMINATION IN COURT PROCEEDINGS

The Defender is the national equality body and, under the law, contributes to the promotion of the right to equal treatment of all persons regardless of certain protected individual characteristics. The Defender thus provides methodological assistance to victims of discrimination in filing their applications to initiate proceedings on grounds of discrimination.⁹² However, the Defender himself is not authorised to represent victims of discrimination in these court cases. Currently, the Defender co-operates with the Pro Bono Alliance, an association of lawyers who provide free legal representation in selected cases.

The European Commission has also called for national equality bodies to be allowed to represent victims of discrimination.⁹³ It stated that this power, together with litigation in public interest, was necessary to enable national equality bodies to tackle systemic discrimination in cases they select because of their recurring nature, their seriousness or the need for legal clarification.

The Defender will monitor whether and how the granting of powers to the Defender is discussed and whether a legislative proposal to amend the relevant regulations is drafted.

92. Pursuant to Section 21b of the Public Defender of Rights Act.

93. Commission Recommendation (EU) 2018/951 of 22 June 2018 on standards for equality bodies.

94. Pursuant to Section 66 (3) of Act No. 150/2002 Coll., the Code of Administrative Justice, as amended.

95. Pursuant to Section 10 (1) of the Anti-Discrimination Act.

96. See footnote 91, *ibid*.

97. Cf. the statement of the coalition of advocacy NGOs promoting the right to inclusive education of 30 November 2015 [online] [retrieved on: 2021-01-05]. Available at: <https://llp.cz/wp-content/uploads/actio-popularis.pdf>.

98. Excerpt from the summary report on the activities of the Public Defender of Rights in 2013, dated 18 March 2014, File No. 4/2014/PDCJ. Available at: <https://eso.ochrance.cz/Nalezene/Edit/726>.

99. Chamber of Deputies document 379/0; 7th electoral term of the Chamber of Deputies of the Parliament of the Czech Republic. Government bill amending Act No. 349/1999 Coll., on the Public Defender of Rights, as amended, and other related laws.

3.5 INTRODUCING A LEGISLATIVE PROVISION ALLOWING LEGAL ENTITIES ACTIVE IN THE AREA OF PROTECTION AGAINST DISCRIMINATION / THE PUBLIC DEFENDER OF RIGHTS TO LODGE ANTI-DISCRIMINATION ACTIONS IN PUBLIC INTEREST

Legal actions in public interest are used to protect the interests of society as a whole and can be brought by designated entities, even though they themselves have suffered no violation of their rights. The Defender may bring an action in public interest (*actio popularis*) only against a decision of an administrative authority in proceedings before administrative courts.⁹⁴

Currently, only specific victims of discrimination who have been affected by discriminatory conduct can seek protection against discrimination in court.⁹⁵ However, discrimination is a problem with a societal significance and does not only affect people in individual cases. Protection against discrimination is a public interest. It is thus desirable that the right to bring an anti-discrimination action in public interest also be available to entities that are dedicated to protecting the rights of persons against discrimination.

A draft amendment to the Anti-Discrimination Act has already been submitted to the Chamber of Deputies. In the amendment, the Deputies propose to introduce the right of legal entities established to protect the rights of victims of discrimination to bring an anti-discrimination lawsuit in public interest.⁹⁶ The draft amendment is yet to proceed to the stage of first reading in the Chamber of Deputies.

Some NGOs have proposed that this right be granted to the Public Defender of Rights, who acts as the national equality body, by means of an amendment to the Public Defender of Rights Act.⁹⁷ In 2014, the Public Defender of Rights issued a legislative recommendation that the Defender be authorised to bring anti-discrimination actions in public interest.⁹⁸ The Government responded by a resolution where it promised to incorporate this power in the amendment to the Public Defender of Rights Act that was being prepared at the time. The bill submitted at the beginning of 2015 has reached its third reading in the Chamber of Deputies. However, it was withdrawn at the beginning of 2017.⁹⁹

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100. According to Item 22 (1) and (2) of the Court Fees Rates, which forms an annex to Act No. 549/1991 Coll., on court fees, as amended. If the appeal seeks compensation for intangible damage up to CZK 200,000, the fee amounts to CZK 2,000. If this limit is exceeded, the fee is set at 1% of the amount claimed. In the case of non-pecuniary compensation, the fee for the appeal is CZK 2,000.
101. Act No. 296/2017 Coll., amending Act No. 99/1963 Coll., the Code of Civil Procedure, as amended, Act No. 292/2013 Coll., on special court proceedings, as amended, and certain other laws.
102. Cf. recommendations included in Decision-making of Czech courts in discrimination disputes 2015-2019, a survey conducted by the Public Defender of Rights in 2020 [online] [retrieved on: 2021-01-05]. Available at: https://www.ochrance.cz/fileadmin/user_upload/DISKRIMINACE/Vyzkum/2020-vyzkum_judikatura-DIS.pdf.
103. An amendment to the Court Fees Act, including a reduction in the fee for appeals in discrimination cases, has recently been discussed in the Chamber of Deputies (document 767) of the Parliament of the Czech Republic. However, the amendment was rejected by the Chamber on 29 January 2021 because it included a general increase in court fees. Unfortunately, this also meant an abandonment for the time being of the proposal for reduction in the fee for appeals in discrimination cases. Available at: <https://www.psp.cz/sqw/text/tiskt.sqw?O=8&CT=767&CT1=0>.
104. Pursuant to Section 10 (1) and (2) of the Anti-Discrimination Act.
105. Article 15 of Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin provides that "Member States shall lay down the rules on sanctions applicable to infringements of the national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are applied. The sanctions, which may comprise the payment of compensation to the victim, must be effective, proportionate and dissuasive." Similar provisions are also laid down in Article 17 of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation and Article 8d of Directive 2002/73/EC of the European Parliament and of the Council of 23 September 2002 amending Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions.

3.6 LEGISLATIVE REDUCTION OF THE COURT FEE PAID FOR APPEALS IN ANTI-DISCRIMINATION DISPUTES

The filing of appeals in discrimination cases is currently governed by the general rules for court fees paid for appeals.¹⁰⁰ The general rules also previously regulated the amount of the fee for filing an anti-discrimination action. The fee amounted to CZK 2,000 or 1% of the amount of compensation for intangible damage claimed if it exceeded CZK 200,000. However, the 2017 amendment created a new item in the Court Fees Rates for filing an anti-discrimination action, setting a flat fee of CZK 1,000.¹⁰¹

As part of the consolidation, a uniform flat rate would also be appropriate for fees in appellate proceedings.¹⁰² This would prevent the fee from being increased in cases where the victim perceives a significant interference with his or her rights and thus seeks a higher amount of compensation for intangible damage. The amount of the fee could deter a victim of discrimination from filing an appeal altogether. Therefore, it would also be appropriate to reduce the fee from the current amount of CZK 2,000 (or 1% if the compensation for intangible damage sought exceeds CZK 200,000) to CZK 1,000.¹⁰³

3.7 LEGISLATIVE ABOLITION OF SUBSIDIARITY OF COMPENSATION FOR INTANGIBLE DAMAGE

According to the Anti-Discrimination Act, a discriminated person has the right to primarily seek in court that the perpetrator desist from discrimination, remedy the consequences of the discriminatory conduct and provide reasonable satisfaction. Only if these remedies are not sufficient, the discriminated person is, secondarily, entitled to compensation for intangible damage in money.¹⁰⁴ However, this contradicts EU law, which provides that compensation for intangible damage in money should, in principle, always be granted by the court.¹⁰⁵

Compensation for intangible damage is claimed by the majority of plaintiffs. However, the Defender's survey shows that courts usually grant it only in a limited amount or not at all.¹⁰⁶ In most cases, the courts consider awarding other claims under the Anti-Discrimination Act to be a sufficient remedy. Nevertheless, compensation for intangible damage must be seen as an equivalent claim. It should always serve as a deterrent to the party which committed unlawful discrimination. Logically, this can only be achieved if the sanctions are sufficiently severe.

Conclusion

— The recommendations of the monitoring committees of international conventions and other monitoring bodies indicate that the Czech Republic should aim to improve the situation in the area of equal treatment, especially as regards Roma education and equal pay for women and men. In addition to these two, the Defender has also identified and defined a group of procedural issues that cover several cross-cutting topics.

Over the next three years, the Defender will use indicators to monitor whether and, if so, how much progress has been made in these three areas. The Defender will issue the next monitoring report in 2022.

Overview of indicators and their initial values

| Paragraph | Description of the indicator | Initial value |
|-----------|--|-----------------------|
| 1.1.a. | Qualified estimate of the proportion of Roma pupils in primary schools relative to all pupils in primary schools | 3,5 % (2019/2020) |
| 1.1.b. | Qualified estimate of the proportion of all Roma pupils educated according to the reduced outcomes of the Framework Education Programme for Primary Education in relation to all pupils educated in the same | 24,2 % (2019/2020) |
| 1.1.c. | Of those in the 1st grade | 14,5 % (2019/2020) |
| 1.1.1.a. | Setting a standard for the work of school counselling centres in terms of assessing special educational needs and adequate support for pupils with different living conditions and from different cultural backgrounds | NO |
| 1.1.1.b. | Percentage of school counselling centres using the WISC-III diagnostic method | 94,6 % (2017/2018) |
| 1.1.1.c. | Changing the regulations so that school counselling staff can carry out examinations of pupils directly in schools | NO |
| 1.1.1.d. | Adopting measures to ensure systemic funding for staff positions in school counselling centres and to ensure regular availability of the positions in all schools | NO |
| 1.1.1.e. | Adopting measures to secure the availability of social pedagogue / social worker positions in schools situated in socially excluded areas | NO |
| 1.1.1.f. | Changing the curriculum for the education of pedagogical workers at all faculties of education to train them in the education of students with different cultural backgrounds and living conditions | NO |
| 1.1.1.g. | Creating a comprehensive module in the system of continuing education for teaching staff in the area of methodological support in relation to Roma pupils | NO |
| 1.2.a. | Proportion of Roma pupils in the compulsory year of preschool education in relation to all pupils in that year | 3,51 % (2019/2020) |

| Paragraph | Description of the indicator | Initial value |
|-----------|---|-----------------------|
| 1.2.b. | Proportion of Roma pupils in the non-compulsory years of preschool education in relation to all pupils in those years | 1,23 % (2019/2020) |
| 1.2.1.a. | Sufficient preschool education capacity | not specified |
| 1.2.1.b. | Addressing the catchment area issue – ensuring conditions for the attendance of Roma children with the real place of residence different from their officially recorded place of permanent residence in a financially accessible, nearby kindergarten | not specified |
| 1.2.1.c. | Conducting an investigative survey into the barriers to the inclusion of children from excluded areas in the compulsory year of preschool education and publishing the resulting recommendations by the MEYS in co-operation with the Technology Agency of the Czech Republic | NO |
| 1.2.1.d. | Ensuring financial support for children from socially excluded areas in the form of free lunches or paying the fees for preschool education | not specified |
| 1.3.a. | Number of primary schools with over 34% Roma pupils | 133 (2019/2020) |
| 1.3.b. | Number of primary schools with over 50% Roma pupils | 69 (2019/2020) |
| 1.3.c. | Number of primary schools with over 75% Roma pupils | 34 (2019/2020) |
| 1.3.d. | Number of primary schools with over 90% Roma pupils | 16 (2019/2020) |
| 1.3.1.a. | Supervision of municipalities (as the founders) by the Ministry of the Interior to ensure that they draw school districts in a manner excluding segregation | not specified |
| 1.3.1.b. | Proposing desegregation measures in the framework of the post-2020 action plan for inclusive education | NO |
| 2.1. | Gender pay gap in the Czech Republic | 20,1 % (2018) |
| 2.1.1.a. | Approval of the Action Plan for Equal Pay | NO |
| 2.1.1.b. | Implementation of the Action Plan for Equal Pay | NO |
| 2.1.1.c. | Preparing a policy for continuous systematic salary/pay increases in female-dominated fields | NO |
| 2.1.1.d. | Introducing tax incentives for employers providing part-time jobs for parents of children up to 3 years of age and persons caring for dependent family members | NO |
| 2.1.1.e. | Amendment to the Civil Service Act making work in the civil service more flexible – possibility to freely divide a systematised allocated position into part-time positions, modification of the so-called supplementary position | NO |
| 2.1.1.f. | Introducing an obligation to publish information about the salary/pay in job advertisements | NO |
| 2.1.1.g. | Introducing a legislative provision on the nullity of a confidentiality clause on remuneration in employment contracts | NO |
| 2.1.1.h. | Implementing European Commission Recommendation 2014/124/EU | NO |
| 3.1. | Introducing a legislative basis for a Czech national human rights institution in any form | NO |
| 3.2. | Legislative expansion of the list of protected grounds under the Anti-Discrimination Act | NO |
| 3.3. | Legislative expansion of the list of grounds for sharing the burden of proof in the Code of Civil Procedure | NO |
| 3.4. | Introducing a legislative provision allowing the Public Defender of Rights to represent victims of discrimination in court proceedings | NO |

| Paragraph | Description of the indicator | Initial value |
|------------------|---|----------------------|
| 3.5. | Introducing a legislative provision allowing legal entities active in the area of protection against discrimination / the Public Defender of Rights to lodge anti-discrimination actions in public interest | NO |
| 3.6. | Legislative reduction of the court fee paid for appeals in anti-discrimination disputes | NO |
| 3.7. | Legislative abolition of subsidiarity of compensation for intangible damage | NO |



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