

In Prague, 8. 12. 2014

Dear Commissioner,

We, the undersigned organisations, would like to draw your attention to a serious problem regarding the education of children with special educational needs in the Czech Republic.

The new approach to support children with special educational needs (SEN) introduced by a recent amendment to the School Act has been broadly accepted. The new categorization of children with SEN based, not on diagnoses anymore, but on a system of supportive measures is a progressive step that has the potential to positively influence the education of children with SEN. However, civil society as well as experts supported by Ombudsman would like to express their deep concerns about the attempt to regulate the assessment of intellectual disability in this amendment of the School Act. The two biggest problems are

a) the formulation used in the amendment is vague and allows different interpretations and

b) that there is a lack of standardized instruments and training of people responsible for these assessments in the new procedures.

Indeed, the provision 16a, article 5, second sentence stipulates:

“The evaluation of a child’s or pupil’s mental disability, for the purposes of this law, shall always be based on an evaluation of the adaptive and intellectual capabilities of the child or pupil in the context of his or her development and his or her cultural and social environment.”

Some representatives of the Association of the Special Pedagogues officially declared that, based on this provision, the placement of children with IQ above 70 in schools for children with intellectual disability will be possible again. There is a real danger that school counselling centres responsible for the assessment of intellectual disability will misdiagnose intellectual disability based on the above mentioned provision. Currently there are no up-to-date standardized instruments and procedures for the assessment of adaptive functioning in the Czech Republic as well as standardized procedures for the evaluation of social and cultural background of a child. In addition, the fact that many school counselling centres responsible for the assessment of intellectual disability are integral parts of practical and special schools for children with intellectual disabilities with a single director for the school and the centre makes this threat even more plausible. There is a clear conflict of interests when it comes to the assessment of intellectual disability and the subsequent recommendations for the placement of a child to either mainstream or segregated school.

Furthermore, as showed in the attached analysis conducted by the Czech Society for Inclusive Education (ČOSIV), the number of children with intellectual disability at the age of attendance to basic school **decreased by one third in last 4 years**. This is statistically

impossible and the only explanation is that diagnosis was overused in the past. This decrease can be partly explained by the pressure on the system of assessment centres that followed after the judgment of European Court of Human Rights in the case of D. H. and others vs. Czech Republic (application n°57325/00 from 13 November 2007). However, there are huge disparities between the regions of the Czech Republic some showing a prevalence of intellectual disabilities that is the double than in other regions. As described in the analysis **the strongest identified predictor of mild intellectual disability** in the DISTRICTS OF Czech Republic **is the capacity of so called practical schools** (schools for children with mild intellectual disability).

The data, which reflect the situation of all children in the Czech educational system, shows a positive trend, since the prevalence of intellectual disability in the population of children is getting closer to the international standards. Generally speaking, we can say that assessment procedures are relatively appropriate. However, there are still big concerns about the assessment procedures in the regions with large Roma population such as the Ustecky region. On the other hand, representatives of practical and special schools for children with intellectual disability as well as some municipalities increasingly put pressure to allow the placement of children with other types of impairments (such as attentional disorders or learning difficulties) in schools for children with mild intellectual disability. **The introduction of the new approach to assessment opens up the door for very dangerous and discriminatory steps taken into account the current situation, and the vague provision as stipulated in the amended legislation.**

Therefore, we strongly request the European Commission to ask the Czech government to take out this provision about the assessment of intellectual disability from the new School Act. While we acknowledge the positive changes that the amendment of the School Act will bring, this provision can potentially create many discriminatory situations against children with different ethnic background and disabilities and its application would **go against the letter and the spirit of the Article 24 of the United Convention on the Rights of Persons with Disabilities**, ratified both by the Czech Republic and the European Union. And in view of the letter of formal notice the European Commission sent on 25 September 2014 about the violation of the Council Directive 2000/43/EC of 29 June 2000 (Race Equality Directive), we are concerned that the provision would **have a discriminatory impact on the access of Roma children to education by allowing their disproportional placement into practical schools.**

We would be extremely grateful for your strong support in this matter.

Sincerely,

List of organisations in alphabetical order:



Česká odborná společnost pro inkluzivní vzdělávání (Czech Society for Inclusive Education)



Člověk v tísni (People in Need Czech Republic)



EDUin



European Roma Right Centre



Lumos Czech Republic



Nadace Open Society Fund Praha



SKAV - Stálá konference asociací ve vzdělávání (Standing Conference of Educational Associations)



Společnost pro podporu lidí s mentálním postižením (Inclusion Czech Republic)

Cc. Maria Luisa Cabral, Head of Unit, Persons with Disabilities