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**EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITÉ EUROPÉEN DES DROITS SOCIAUX**

18 June 2018

Case Document No. 3

**European Roma Rights Centre & Mental Disability Advocacy Centre v. the
Czech Republic**
Complaint No. 157/2017

SUBMISSIONS BY THE GOVERNMENT ON THE MERITS

Registered at the Secretariat on 4 May 2018



THE CZECH REPUBLIC

OBSERVATIONS OF THE GOVERNMENT
ON THE MERITS OF COLLECTIVE COMPLAINT

European Roma Rights Centre & Mental Disability Advocacy Centre
v. the Czech Republic
(no. 157/2017)

PRAGUE

4 MAY 2018

1. In its letter of 8 February 2018 the European Committee of Social Rights (“the Committee”) notified the Government of the Czech Republic (“the Government”) that on 23 January 2018, the collective complaint lodged by European Roma Rights Centre and Mental Disability Advocacy Centre (“the complainant organisations”), non-governmental organisations, against the Czech Republic had been declared admissible. In the letter, the Committee also invited the Government to submit their observations on the merits of this collective complaint.

THE FACTS

2. The Government do not agree with the simplifying interpretation, submitted by the complainant organisations, of the statistics on the number of children placed in early childhood medical care institutions and children centres (referred to collectively as “children centres”). The Government submit comments on these statistics below (see § 40 *et seq.*).

3. The Government also do not agree with the claim that in the Czech Republic children are routinely placed in children centres. Quite the opposite, placing a child in an institutional facility is being used as a measure of last resort only (see § 13 *et seq.*).

4. Finally, the Government object to the claim that in the Czech Republic alternatives to institutionalisation are not available. There are a number of such alternatives; they include placement in the care of another person, foster care, and adoption. In particular temporary foster care has been rapidly rising in recent years (see § 76 below).

THE LAW

5. The complainant organisations claim, in particular, that the Czech Republic does not comply with Article 17 of the 1961 European Social Charter (“the Charter”), read in isolation or in conjunction with the prohibition of discrimination embodied in the Preamble of the Charter, on the ground that it has failed to comply with its obligations to refrain from institutionalisation of young children in particular infants under three years of age, and in particular children with disabilities and of Romani origin.

6. The relevant part of the Preamble to the Charter reads as follows:

“The governments signatory hereto, being members of the Council of Europe, (...) Considering that the enjoyment of social rights should be secured without discrimination on grounds of race, colour, sex, religion, political opinion, national extraction or social origin; (...)”

7. Article 17 of the Charter, providing for the right of mothers and children to social and economic protection, reads as follows:

“With a view to ensuring the effective exercise of the right of mothers and children to social and economic protection, the Contracting Parties will take all appropriate and necessary measures to that end, including the establishment or maintenance of appropriate institutions or services.”

I. ALLEGED VIOLATION OF ARTICLE 17 OF THE CHARTER READ IN ISOLATION AND IN CONJUNCTION WITH THE PROHIBITION OF DISCRIMINATION

8. The complainant organisations allege that in contravention of Article 17 of the Charter, the Czech Republic does not ensure effective exercise of the right of mothers and children to social and economic protection in line with the principle of non-discrimination, as

- it does not comply with its obligations to refrain from the institutionalisation of young children, and at the same time in the absence of alternative forms of care routinely places children under the age of three into children centres;
- the institutionalisation concerns especially the most vulnerable children – children of Roma origin and children with disabilities;
- it has failed to put in place non-institutional and family-like alternative forms of care.

(i) **Introductory remarks**

9. In the light of the claims raised in the collective complaint the Government shall only address the issue of substitute family care and of institutional care for children under the age of three rather than for all children placed in institutional care.

10. The Government’s observations are divided into two parts, which corresponds to the principal claims formulated in the collective complaint. In the first part of their observations the Government focus on the allegedly routine placement of children under the age of three in children centres, in particular children with disabilities and children of Roma origin. In the second part of their observations the Government describe the alternatives to institutionalisation, which include placement in the care of another person, foster care, and adoption.

11. For the sake of completeness, the Government add that the placement of children under the age of three in institutional care in the Czech Republic concerns the operation of not only children centres as health facilities controlled by the Ministry of Health but also facilities for children in need of immediate assistance within the meaning of Articles 42 and 42a of Act No. 359/1999 on Social and Legal Protection of Children (“the Children Protection Act”), where such facilities for social and legal protection of children are controlled by the Ministry of Labour and Social Affairs.

(ii) On the alleged routine placement of children under the age of three, in particular children with disabilities and children of Roma origin, in children centres

12. The complainant organisations claim that the current legislation, specifically Articles 43 and 44 of Act No. 372/2011 on Health Care Services and the Conditions for the Provision Thereof (“the Health Care Act”), allows children under the age of three with specific needs or children in specific situations to be regularly and routinely placed in children centres, given the lack of alternatives. They also emphasise that the inappropriate legal framework for the operation of children centres affects children with disabilities and children of Roma origin much more negatively.

13. The Government categorically contest the claim that the current placement of children under the age of three in children centres is a negative practice stemming from the domestic legislation as it nowadays stands. Family care and institutional upbringing, including for children under the age of three, are primarily governed by Act No. 89/2012, the Civil Code (“the Civil Code”), which is based on a clear-cut principle of preference for substitute family care in a family environment.

14. It is to be emphasised that in practice, individualised attention is paid to each and every child’s case, i.e. each and every case is examined on its own merits. In no case, one can talk of a routine placement of children in children centres.

15. The Government describe below the legal framework for institutional care as contained not only in the Health Care Act but also in the Civil Code; it is to be realised that the provisions contained in the Health Care Act constitute *lex specialis* in relation to the *lex generalis* provisions on institutional care contained in the Civil Code. The Government subsequently describe the legal framework for substitute family care as contained in the Civil Code and other pieces of legislation. The Government shall then comment on the statistics submitted by the complainant organisations in their complaint.

a) Provisions on children centres in the Health Care Act

16. As noted above, the complainant organisations have put the substance of their complaint into Articles 43 and 44 of the Health Care Act, which provide for the operation of children centres.

17. Under the above provisions of the law, the citation of which is contained in the complaint, children centres provide health services and maintenance to children, usually children under the age of three, who cannot grow up in a family environment. They are primarily ill-treated, neglected or abused children and those whose development is at risk due to an inappropriate social environment, or children with disabilities. The law lays down that health services and maintenance be provided to such children in children centres, where maintenance is understood to consist of meals, lodging, clothing and educational

activities. In practice, psychological and educational care is also provided to children in children centres in addition to health services, which include medical care, nursing care and rehabilitation care, and social and legal services.

18. The foregoing clearly shows that children centres are facilities where specially trained staff members take care of the general development of children whose development is jeopardised or disrupted due to health or social reasons, or both. The placement of children in such facilities is to be understood as temporary, pending the overall resolution of the situation due to which the children were admitted to such facilities.

19. It is true that the legislation on children centres in the Health Care Act is rather brief, for it is contained in only two provisions, while Article 44 of this law provides basically merely for the contribution to the maintenance of the child, which the persons liable to maintain the child are obliged to pay. The very orientation of children centres and the definition of the situations they are intended to address, and hence their target groups and their basic and ancillary activities are only provided for in Article 43 of the law.

20. In practice, a child can be placed in a children centre not only further to a court's decision but also further to an agreement concluded by and between the facility and the child's legal guardian (which is known as a so-called voluntary placement).

b) Provisions on family care and institutional care in other laws and regulations

• *The Civil Code*

21. As mentioned above, family care and institutional care are primarily governed by the Civil Code,¹ which is based on a clear-cut preference for family care and substitute family care. Under the currently applicable legislation, institutional care in any form is only a measure of last resort **in respect of all children without discrimination on the grounds of age or race**. After all, Article 3 of the Charter of Fundamental Rights and Freedoms prohibits discrimination.² This applies when deciding on the child as regards the interim measure, i.e. to provide only short-term care, as well as when deciding on the merits, i.e. when seeking long-term solutions. It was the same in the previous legislation, Act No. 94/1963 on Family ("the Family Act"), which is no longer in force. The above-mentioned nature of decisions to place children in institutional care as the measure of last resort is, *inter alia*, highlighted by the systematic

¹ The English version is available at <http://obcanskyzakonik.justice.cz/index.php/home/zakony-a-stanoviska/preklady/english> (then click the link *Civil Code*)

² The English version of the Charter of Fundamental Rights and Freedoms is available at, for example, https://www.usoud.cz/fileadmin/user_upload/ustavni_soud/www/prilohy/Listina_English_version.pdf

structuring of the Civil Code, where institutional care is only provided for in the last part dedicated to family law.

22. Article 971 of the Civil Code quite clearly lists the exceptional situations in which a child can be placed in the children centre:

“(1) If the upbringing of a child or the child’s physical, intellectual or mental condition or his proper development are seriously threatened or disrupted to an extent contrary to the interests of the child, or if there are serious reasons for which the child’s parents are unable to provide for his upbringing, a court may, as a necessary measure, also order institutional care. It will do so in particular where previously taken measures have not led to remedy. In doing so, a court shall always consider whether it would not be appropriate to prefer entrusting the child to the care of a natural person.³

(2) Where parents are temporarily unable to provide for the upbringing of their children for serious reasons, a court shall place the child in a facility for children in need of immediate assistance for a period not exceeding six months.

(3) Inadequate housing or property situation of the child’s parents or persons entrusted with the care for the child may not in themselves constitute grounds for a court decision ordering institutional care if the parents are otherwise capable of ensuring proper upbringing of the child and performing other duties arising from their parental responsibility.

(4) In its decision ordering institutional care, a court shall identify the facility in which the child is to be placed. In doing so, it shall take account of the interests of the child and the statement of the body for social and legal protection of children. A court shall ensure that the child is placed as close as possible to the place of residence of the parents or other close persons of the child. This applies even where the court decides to transfer the child to another facility for institutional or protective care.”

23. The Civil Code therefore expressly lays down that subject to the above conditions, it is possible to order institutional care, but the court must always consider whether or not it is appropriate to place the child in the care of a natural person. The same formulation directed towards using institutional care as the last resort is also contained in provisions on the placement of children in the care of another person. Under Article 953 of the Civil Code, if none of the parents or a guardian can personally take care of the child, a court may entrust the child to the care of another person (see § 79 below). Thus, under any circumstances, substitute family care has priority over institutional care. By the same token, the statutory provisions on foster care contain the same principle set out in Article 958 of the Civil Code. Under Article 958, if none of the parents or a guardian can personally care for the child, a court may entrust the child to the care of foster

³ Underlined by the Government.

Placing a child in the care of a natural person is understood to be placement in the care of another person (usually a relative) as well as placement in foster care.

parents. Thus, foster care has obvious priority over institutional care. The court can also place the child in foster care only temporarily (see § 85). Foster care then can be used in situations of taking care of a baby for over a short time after birth as envisaged by Article 27a of the Children Protection Act.

24. The explanatory report to the Civil Code contains the underlying idea of using institutional care as a measure of last resort. The report notes that institutional care should be viewed as a subsidiary arrangement and should only be ordered when the child's situation cannot be resolved in any other manner. The explanatory report relies on the Convention on the Rights of the Child and on the European Convention on Human Rights and also on the case law of the European Court of Human Rights ("the Court"). In the cases of *Wallová and Walla v. the Czech Republic* (no. 23848/04, judgment of 26 October 2006) and *Havelka and Others v. the Czech Republic* (no. 23499/06, judgment of 21 June 2007), the Court evaluated an interference with the right of parents and children to their shared family life in the form of an institutional care order and, referring to its established case law, recalled, *inter alia*, that an opportunity to place the child in an environment more appropriate for his upbringing cannot per se justify the forceful withdrawal of the child from his biological parents. Such an intervention must be strictly necessary with regard to other circumstances. In addition, the State's practice should be such that the existing family relationship can develop, and it should adopt appropriate measures for the purpose of family reunification. The Court considers that ordering institutional care under normal circumstances should be regarded as a temporary measure that will be revoked immediately once the circumstances allow it (see *Havelka and Others v. the Czech Republic*, cited above, § 56). Thus, in the justification for the particular provision the legislature also highlighted the extreme nature of institutional care, including selected human rights standards that necessarily have to be taken into account when considering interferences with the child's rights. The current legislation is therefore fully consistent with the Court's case law.

25. Article 971 § 2 of the Civil Code focuses on facilities for children in need of immediate assistance. By their nature, such facilities are intended only for the temporary placement of the child for no more than six months. In keeping with the Court's case law (see § 24 above), the following rules have been explicitly introduced into Czech law: inadequate housing and financial circumstances of the child's parents or the persons in whose care the child was placed cannot alone constitute sufficient grounds for a court to decide in favour of institutional care, provided that otherwise, the parents are capable of proper child rearing and of performing other obligations arising from their parental responsibility. This is therefore a major proclamation of the human rights standards that must not be violated.

26. The Government emphasise that even if institutional care is ordered, the justice system's increased attention to the child at risk does not end. The domestic court is always required to review, at least once within every six months, whether there are still grounds for institutional care and whether it is possible to provide

the child with substitute family care (Article 973 of the Civil Code). Institutional care can be ordered for a maximum of three years and it can be extended in exceptional cases only (Article 972 of the Civil Code). In addition, Article 972 § 2 of the Civil Code requires that the court shall immediately revoke institutional care if it is possible to provide the child with care other than institutional care.

27. All of the above mechanisms are therefore very unambiguously directed towards minimising the use of the instruments of institutional care as a means of a last resort. Thus, in no case can there be talk of regular, routine placement of children in children centres, as the collective complaint does for no reasons whatsoever.

• *The Special Judicial Proceedings Act*

28. As regards the procedural rules for courts, in the case of deciding on the care of minor children the applicable rules are primarily set out in Act No. 292/2013 on Special Judicial Proceedings (“the Special Judicial Proceedings Act”). A reflection of the above principles can already be found in, for example, the provisions on interim measures whereby children are transferred to an environment that is appropriate for them. Article 452 of the Special Judicial Proceedings Act lays down that a given measure can only be used when the minor child is found in a situation of lack of proper care, regardless of whether or not there is a person having the right to take care of the child, or if the child’s life, normal development, or other vital interest is at serious risk or has been impaired. In such cases, the court uses an interim measure to regulate the child’s situation for as long as is necessary, ordering that the child be placed in an appropriate environment and specifying such environment in its decision. This appropriate environment is understood to be the upbringing environment at the person or the facility capable of providing proper care to the minor, taking account of the child’s physical and mental condition, and also intellectual maturity, and of making it possible to carry out any other measures as may be required in the interim measure. Such interim measure can also place the child in temporary foster care for the period of time for which the parent cannot bring up the child for serious reasons or at the end of which the child can be placed in pre-adoption care, the parent can grant consent to adoption, or the decision can be made that the parent’s consent to adoption is no longer required. The duration of these measures is strictly limited to one month. They can only be extended in a situation where the proceedings on the merits have been brought. The extension can be repeated, but the aggregate time must not exceed six months. In exceptional cases a different approach can be taken if the evidence process in the proceedings on the merits could not be completed for serious reasons and objective causes.

29. As regards defence against interim measures that have been ordered, an appeal is the ordinary remedy. The courts of the first and second instances are again subject to strict time limits when dealing with this child care instrument. When a motion to revoke an interim measure is lodged, the court must also decide on it expeditiously within seven days. The above rules are intended to prevent extensions of the child’s placement in the environment that was, by the very

nature of the matter, selected as temporary before a suitable solution would be found in the proceedings on the merits.

30. As regards the mechanisms whereby the courts decide on the merits, it is, for example, worth highlighting that a new rule enshrined in Article 471 of the Special Judicial Proceedings Act, which lays down that in matters of courts' wardship of minors the court shall decide with all possible expedition. If no reasons worthy of special consideration exist, the court usually delivers the decision on the merits within six months from the beginning of the proceedings; otherwise, the court shall cite the reasons for which the time limit could not be met in the reasoning of its decision. This rule is to help shorten the proceedings on cases of courts' wardship of minors and have courts address wardship with priority, thereby preventing the extension of the time before an appropriate long-term environment is found.

31. In addition to the above, worth mentioning is also the recent amendment to the law containing the rule ensuring that children can leave institutional care in a short time. Article 473a of the Special Judicial Proceedings Act lays down that the judgment whereby the court of appeal upholds the first instance court's judgment revoking institutional care or rejecting a motion to extend institutional care, or whereby the court of appeal changes the first instance court's judgment to revoke or not to extend institutional care, is enforceable upon the delivery of such judgment.

• *Conclusion*

32. The above illustrates the fact that the current legal provisions in the Czech Republic legally and systematically clearly minimise the solution consisting in a child's placement in institutions. The priority is care by another natural person to whom the child is entrusted under a court decision, including foster parents. On the contrary, child placement in institutions, including children centres, is an extreme step that can only be taken in a situation where no other options can be used. It is also, as a principle, very strictly limited in time because of the very nature of this measure. The court regularly reviews ordered institutional care and in the case of new facts indicating an opportunity to ensure care for the child in a different manner, the court is obliged to revoke institutional care promptly. The above rules are fully in compliance with human rights standards and a violation of the cited provision of the Charter cannot be inferred from them.

33. As mentioned above (see § 14), in practice attention is paid to the case of each child individually and every case is carefully examined taking into account its particular facts and circumstances. There is therefore no routine child institutionalisation at all. Furthermore, the prevention of child withdrawal from family has been reinforced and there is also social work with the biological family. Moreover, children placed in children centres usually return back to their families after some time.

34. The Government therefore regard the complainant organisations' allegation of routine placement of children under the age of three in children centres as completely unfounded.

c) The age limit for placing children in institutional care

35. It is true that Czech law does not regulate the limit on the age of children for placing them in institutional care facilities, although the Czech Republic has been repeatedly criticised for this by international bodies, as the complaint notes.

36. Government Resolution No. 4 of 4 January 2012 approved the National Strategy to Protect Children's Rights, which includes measures towards introducing a legal ban on the placement of children of a specific age in institutional care. Furthermore, Government Resolution No. 1033 of 23 November 2016 approved the suggestion of the Government's Council for Human Rights to integrate the services for children at risk and to regulate the conditions for the provision of residential services to these children. The above Resolution imposed the Minister of Labour and Social Affairs to cooperate with the Minister of Education, Youth and Sports and the Minister of Health to lay the proposals for the required changes before the cabinet by 30 June 2017. On the basis of the above Government Resolution, the Ministry of Labour and Social Affairs drew up a plan for legislating on the integration of the social prevention services, services providing residential care to children, social and health services and educational and other services for children at risk and their families, falling within the competences of the above three Ministries, or within the competences of the Ministry of Labour and Social Affairs only, and on the introduction of an age limit under which child placement in institutions would not be allowed. However, the cabinet did not adopt this paper. The cabinet also did not adopt the Action Plan for Pursuing the National Strategy to Protect Children's Rights for 2016–2020, which also envisaged the introduction of an age limit for placing children in institutional care.

37. Despite the above, the placement of children in children centres is strictly regulated, while also considering child placement in a different environment, in particular substitute family care (see § 12 *et seq.* above). Children centres very closely cooperate with bodies for the social and legal protection of children and with courts. All diagnostic and therapeutic processes arranged and carried out at children centres aim at transferring the child to one of the forms of family care as soon as possible. The issue of placed children is being addressed in a comprehensive manner, which is also borne out by the fact that the majority of children leave for various forms of family care as shown in the Annual Report of the Institute of Health Information and Statistics of the Czech Republic ("the Institute") on children centres' operation for 2013–2016 (see Enclosure 1).

38. The Government believe that it should be emphasised that in children centres, high-quality, all-round, and safe care is provided to children within the limits of collective care for children, and this care seeks to return as many

children as possible to a form of family care so that children have the best possible conditions for their development. In children centres, the number of children per care-giving nurse is also declining, which is a significant shift to a higher quality compared with the past. It should be noted that children centres have evolved and broadened the range and improved the quality of the services that they provide to children and their families. Most children centres, now usually called children centres, also provide opportunities for mothers to stay with their children there and also respite services and out-patient services primarily for families with children with disabilities. However, residential collective care for children at risk is the core of their mission.

39. It has turned out in practice that the meeting of the tasks of the National Strategy in 2012–2015 had favourable impacts. The most important of them was the decline in the number of children placed in institutional care, including children centres, and a rise in the number of children placed in substitute family care (see § 53 *et seq.* below).

d) Statistical data on children placed in children centres

• *Introductory remarks*

40. Complainant organisations claim that especially children with disabilities and children of Roma origin are being placed in children centres. This claim is based on the Institute's data. The complaint alleges that the number of institutionalised children with disabilities and children of Roma origin is not declining and stays at around 40% and 24% respectively.

41. The Government primarily consider it to be necessary to emphasise that Czech law does not contain any provisions that would imply a different treatment of disabled children or Roma children and that would, either as such or in consequence thereof, result in any discrimination against these groups of children (see § 21 above).

42. It is appropriate to oppose strongly against comparing the proportion of Roma children and children with disabilities in children centres with the proportion of such children in total population and then concluding, on the basis of such comparison and the disproportion identified, that these groups of children are discriminated against. Such comparison is inappropriate and misleading because in the present case, the proportion of these groups of children in children centres should be compared with their proportion in the part of the population in which family care fails for one reason or another.

43. Furthermore, child placement in children centres follows the constitutionally enshrined principle of equality and children are not differentiated by their ethnic origin and type of disability. In practice, however, it can be more difficult, for objective reasons, to facilitate a form of substitute family care for children with disabilities and children of Roma origin if such children cannot be taken care of in the environment of their natural family. Despite the above, however, the number of children with disabilities in temporary foster care is

gradually rising (see § 64 below). Data on the number of children of Roma origin placed in temporary foster care are not available, because it is not allowed to record details about race and ethnicity in the relevant registers.

44. Furthermore, the submitted statistics have to be viewed with a certain caution and taking account of the brief that had specified the data that were to be collected. The Government note that the complainant organisations have submitted only selected data to the Committee. The Government shall supply the Committee with a more comprehensive overview of the number of children admitted to children centres. Those data will clearly show the positive trend, i.e. the considerable decline in the number of children being placed in such facilities. The rising numbers of children in temporary foster care is also related to the above (see § 64 below).

45. The Institute's tersely presented data, written in the table contained in the complaint, do not make it possible to automatically infer the basis/the manner on/in which the selected features of the children were determined. For example, in the case of determining whether a child is of Roma origin the confirmation of this feature depends on the employed method to a considerable degree. The complaint includes, for comparison, information about the proportion of people of Roma origin in the population of the Czech Republic, but it would only be possible to compare these two percentages if a similar method had been employed for identifying the persons in a given group. Otherwise, the sets of data are not comparable and because of the very nature of the matter, it is not feasible to derive from them conclusions of a disproportionate representation of children of Roma origin in children centres. The statistics therefore fail to provide sufficiently reliable information as a basis supporting the claim of indirect discrimination against children with disabilities and children of Roma origin. Except for the Institute's statistics, the complainant organisations do not support their claims by any arguments.

46. It can similarly be noted that the ombudsperson, to whose reports the complainant organisations refer, did not obtain from her visits to the children centres any more detailed findings of whether predominantly Roma children or disabled children are placed in children centres, because that was not the object of the inquiry.⁴ The foregoing shows that at the domestic level, obviously no need has arisen for the ombudsperson to conduct inquiry as to whether or not predominantly the above groups of children are placed in children centres, as the complaint alleges.

47. Similarly, the Lumos international organisation, in its report published in April 2018, to which attention is paid below (see § 65), did not collect data on children with disabilities and children of Roma origin for the purpose of its latest report on the numbers of children in children centres (a summary of the report in English is attached in Enclosure 2).

⁴ In 2013, a summary report on these visits was issued; it is available at https://www.ochrance.cz/fileadmin/user_upload/ochrana_osob/2013/NZ-25_2012-kojenecke-ustavy.pdf

48. The Government comment on the details below (see § 60 *et seq.*).

- *Number of children centres*

49. Information in the public domain shows that the number of children centres in the Czech Republic is continuously declining.

50. While in 2010, there were 34 children centres, in 2012 there were 33, in 2015 there were 31, and in 2018 the number of children centres dropped to 26. For example, the Zlín Region and the Southern Bohemian Region have no children centres now.

51. As the number of children centres declines, the number of places in these institutions is also declining, naturally. In 2010, children centres had 1,963 places while in 2015 they had 1,470 places and in 2016 the figure was 1,396 (see Enclosure 1).

52. The fact that the number of children admitted to children centres is declining is absolutely crucial (see below).

- *Numbers of admitted children*

53. The Institute's statistics contained in the complaint specify that in 2010, children centres admitted 2,077 children, while in 2015 it was only 1,666 children. The Institute's statistics in Enclosure 1 show that in 2016, children centres admitted 1,396 children.

54. As regards the age of the admitted children, it should be added that under Article 43 of the Health Care Act, children centres are intended for children of up to three years usually. It can therefore happen, and it does normally happen in practice indeed, that also older children live in such institutions. However, the statistics kept by the Institute do not reflect the age of the children admitted, only their number. The Lumos report mentioned above (see § 47)⁵ was created on the basis of data obtained from each of the children centres and notes that the number of children admitted to children centres cannot be interpreted as information about the number of children under the age of three placed in institutional care. The most recent statistics compiled by this organisation, which obviously collected data differentiating the age of children, show that in early 2018 children centres hosted 441 children (without mothers) in the mode of the health service designated as 'children's homes for children under the age of three'.

55. It follows from the above that in the past years, the number of children under the age of three placed in children centres was also very likely smaller than shown by the Institute's official statistics, because these facilities also serve older children and the statistics showed the number of all children using the services of such facilities.

56. It can be summarised that the numbers of children specified in the complaint as those admitted to children centres do not reflect the actual situation

⁵ Available at <http://www.ditearodina.cz/images/Lumos.pdf>

as regards the number of children under the age of three. The foregoing only confirms the fact that no children, let alone children under the age of three, are being routinely placed in children centres. Such placement is only carried out following a thorough consideration of available alternatives, in particular the option of placement in the care of the broader family or in substitute family care (see § 13 *et seq.* above).

57. The Lumos report (see Enclosure 2) notes that the numbers of the youngest children placed in children centres have been reduced to the minimum, including the Regions marked by considerable social problems such as the Moravian Silesian Region. The report also notes that the development of and preference for alternatives to placing children under the age of three in children centres have played the key role in the success of half of the Czech Regions in reducing the numbers of the youngest children in children centres to the very minimum.

- *Structure of admitted children*

58. As noted above (see § 20), children are admitted to children centres under a court decision or under an agreement between the children centre and the parents, or subject to the parents' consent.

59. It can be read from the Institute's statistics (see Enclosure 1) that out of the total number of children admitted in 2013 (1,740), 1,207 children were admitted subject to the parents' consent, 474 children were admitted under a court's interim measure, and 59 children were admitted under a court's judgment ordering institutional care. In 2015, children centres admitted 1,666 children; of those, 1,212 subject to the parents' consent, 361 under a court's interim measure, and 93 on the basis of a court's order for institutional care. In 2016, children centres admitted 1,559 children; of those, 1,266 were admitted subject to the parents' consent, 250 under an interim measure and 43 based on ordered institutional care. It is clear from the above that only a minority of children are placed in children centres on the basis of a court's decision.

- *Children with disabilities*

60. As regards the complainant organisations' claim that especially children with disabilities (and children of Roma origin) are placed in children centres, the Government first of all notes that the Institute's statistics included in the complaint speak of children with special needs rather than of disabled children, which definitely is not the same.

61. The Institute's instructions for completing statistical forms⁶ note that children with special needs can be regarded as children who exhibit deficiencies in their vital and social functions due to their physical or mental condition, congenital or acquired defects, or chronic disease, and need special help and support from society. Children are included from the day of their birth regardless

⁶ Available at http://www.uzis.cz/system/files/a410_help_14.pdf

of whether or not they are kept in records of children with physical, mental and sensory defects. The category of children with special needs is therefore broader than the category of children with disabilities.

62. The Czech Health Statistics Yearbook 2016 (page 116)⁷ issued by the Institute refers, as do the Institute's statistics submitted in the complaint, to children with special needs. In 2015, children centres admitted 694 such children, and in 2016, they admitted a similar lower number of 681 children.

63. As regards the health reasons for placement, these should be considered to include not only the need for permanent or long-term special nursing care but also, for example, the child neglect and abuse syndrome, the use of addictive drugs by the mother, etc. In every case, these are reasons connected with the grounds for removing the child from his biological parents' care.

64. No other official statistics are available. Since 2014, the Ministry of Labour and Social Affairs has been monitoring the feature of disability, but only in the context of child placement in substitute family care. The number of children with disabilities who have been placed in substitute family care of any form is not broken down by the age of the children, and the proportion of children under the age of three therefore cannot be determined. In any case, the statistics show that in 2015, the number of health disadvantaged children placed in substitute family care was 88 and in 2016 the number rose to 94 (see the table below⁸ and § 92).

Type of care	Total number of children		Total number of children with disabilities		Proportion of children with disabilities (%)	
	2015	2016	2015	2016	2015	2016
Care before adoption	412	458	4	4	0,1	0,1
Adoption	302	377	3	3	0,1	0,1
Care of a natural person	1 254	1297	9	23	0,1	0,2
Pre-foster care	271	194	7	7	2,0	3,6
Foster care	1 941	1892	39	29	2,0	1,5
Temporary foster care	614	692	13	10	2,1	1,4
Personal care of the guardian of a child	374	380	13	18	3,5	4,7
TOTAL	5 168	5290	88	94	1,7	1,8

⁷ Available at <http://www.uzis.cz/system/files/zdroccz2016.pdf>

⁸ Source: Annual reports of the Ministry of Labour and Social Affairs on the exercise of social and legal protection of children for the respective calendar year

65. Official data on the total number of children with disabilities who end up outside their parents' care are not available.

66. It follows from the above that the statistics included in the complaint are quite debatable and ambiguous. In no case can it be claimed that children with special needs are all children with disabilities. The Government's claim is supported by the April 2018 report of the Lumos international organisation (see Enclosure 2). The report notes that in its inquiry, the organisation did not ask a question about the numbers of children with special needs, because although the reports on children centres' operations published by the Institute contain the numbers of children with special needs, the informative value thereof is limited. The reason is that the instructions for completing the statement of activities (see § 61 above) contain a very broad specification of when "health reasons" can be written in the statement as the reason for admitting the child, and the specification of children "with special needs" is equally broad. As the report notes, the inquiry carried out or the official statistics cannot provide an answer to the question of what part of the 441 children under the age of three and placed in children centres in 2018 has a health condition, a chronic disability or other serious special needs. The report also notes the following:

"Thanks to the immense commitment of parents with children with disabilities and the health and social services provided in the community, almost all children, including those with the most serious special needs, are now already growing up in their own or substitute families. Of the 30,000 children who were, according to the [social security employed] medical officer, entitled to a care-giver allowance due to their dependence on assistance provided by another person (i.e., for example, a health condition), only approximately 500 were growing up in institutions other than children's homes for children up to the age of three, i.e. 98% of them were growing up in a family."⁹

67. As to the other aspects, the Government refer to §§ 40 to 48 above.

• *Children of Roma origin*

68. As regards the number of children of Roma origin in children centres, the submitted data of the Institute, which records Roma children placed in children centres, cannot be compared with other data, for no other data are available. The Ministry of Labour and Social Affairs does not collect data on ethnicity in any manner.

⁹ Lumos's estimate on the basis of: information 1) that in 2016 there were 30,000 beneficiaries of the caregiver allowance under the age of 18 (see the Statistical Yearbook on Labour and Social Affairs, page 141, available at https://www.mpsv.cz/files/clanky/31493/Statisticka_rocenka_z_oblasti_prace_a_socialnich_veci_2016.pdf); and 2) that in homes for persons with disabilities, at the beginning of 2018 there were 408 children (found by enquiring under Act No. 106/1999); and 3) an estimate that children's homes included in the school system will not host more than 100 children with disabilities, because they are not equipped for that (not counting light forms of disability such as slight mental disability)

69. We can read in the Czech Health Statistics Yearbook 2016 (page 116)¹⁰ issued by the Institute that the number of children of Roma origin in children centres is declining. In 2005, there were 523 children, and in 2010 there were 433 children. Between 2015 and 2016, the number of admitted children of Roma origin dropped significantly. In 2015, 406 Roma children were placed in children centres while in 2016 the number of admissions was 349 (see Enclosure 3). Data for 2017 are not yet available.

70. The complainant organisations claim that the number of children of Roma origin admitted to children centres is constant and that Roma children have a disproportionate representation in them. The Government have compared, in percentage terms, the decline (unfortunately, an increase between 2005 and 2010) in the number of all children admitted between 2005 and 2016 and made the same comparison as regards children of Roma origin. In their findings, the Government have relied on the Institute's statistics (Enclosure 3). Between 2005 and 2010, between 2010 and 2015, and between 2015 and 2016, the number of children of Roma origin declined at all times. The overall decline between 2005 and 2016 is as much as 33.27%. A comparison of these data concerning children of Roma origin with data covering all children yields the following: while between 2005 and 2016 the number of admitted children declined "only" by 15.59%, the number of children of Roma origin declined by the above 33.27%. Similarly, while between 2005 and 2010 the total number of admitted children increased, unfortunately, by 12.45%, the number of admitted children of Roma origin dropped by 17.21%. Between 2015 and 2016 the total number of admitted children declined by 6.42% while the decline for children of Roma origin was sharper, down by 14.04%.

71. Thus, in the respective years, children of Roma origin accounted for 28.3%, 20.8%, 24.4% and 22.4% of all the children admitted, but the decline in the number of children of Roma origin is much more significant than the decline in the number of all admitted children. It can therefore be concluded that the number of children of Roma origin was decreasing at a much faster rate than the number of all children.

	Between years 2005 a 2010	Between years 2010 a 2015	Between years 2015 a 2016	Between years 2005 a 2016
Proportion of number of Roma children to all admitted children	28,3 %	20,8 %	24,4 %	22,4 %
Decrease (–) or increase of number of admitted children in %	12,45 %	–20,8 %	–6,42 %	–15,59 %
Decrease (–) or increase of number of admitted Roma children in %	–17,21 %	–6,24 %	–14,04 %	–33,27 %

¹⁰ Available at <http://www.uzis.cz/system/files/zdrroccz2016.pdf>

72. As to the other aspects the Government refer to §§ 40 to 48 above.

73. The complainant organisations' claim concerning children of Roma origin is therefore manifestly ill-founded. As the Government note in the foregoing, the removing of any children from families, including those of Roma origin, and their placement in collective care is only used as a measure of last resort (see §§ 23, 24, 27 and 32 above). The Government are also convinced that they have demonstrated that the number of children of Roma origin in children centres is declining, and even at a faster rate than the number of all admitted children.

e) Conclusion

74. It can be agreed that the issue of institutional care falls within the ambit of Article 17 of the Charter, since Article 17 provides for an obligation of the State to take all appropriate measures, including the establishment or maintenance of appropriate institutions or services for mothers with children. On the contrary, it does not require the abolishment of children centres. The Government's opinion is that the very existence of children centres, assessed on an isolated basis without taking into account the applicable legislation that builds on a clear-cut preference of family care to institutional care, which is only a solution of last resort, cannot be regarded as a violation of the obligations under the Charter. The Government also urge the Committee to take into account the declining number of children under the age of three admitted to children centres when the Committee adopts its decision.

75. As regards the alleged discrimination against children with disabilities and children of Roma origin, the Government regard this claim of the complainant organisations as unfounded. Without differentiating at all, the legislation prefers family care to institutional care for all children and provides all children with a high standard of protection of their rights. Discrimination against the above groups of children cannot be inferred from the Institute's statistics cited in the complaint. The complainant organisations have not offered any other backgrounds to support their allegations. The Government have, on the contrary, demonstrated that the number of children of Roma origin in children centres is declining.

(ii) On the alleged lack of alternatives to institutional care

76. The complainant organisations also allege a lack of alternatives to institutional care in children centres. The Government hold the opposite view. Alternatives to institutional care include temporary foster care and long-term foster care, care of another natural person, and adoption, including inter-country adoption.

77. The amendment to the law on the social and legal protection of children, enacted in Act No. 401/2012 with effect from 1 January 2013, has helped to improve the quality of working with children at risk and their families, requiring the best interest of the child to constitute one of the fundamental aspects of social and legal protection. It also sets out that preference shall be given to measures that

ensure the proper upbringing and favourable development of the child in his family environment and, should this not be possible, in substitute family environment. The amendment also clarifies the conditions for the facilitation of adoption and foster care, and sets out the criteria for the preparation and continued education and accompanying of foster parents. It now also includes provisions on the foster care allowance, which were earlier contained in a different law, and the rights and obligations of foster parents and other persons providing substitute family care, including their right to support and ancillary services, and on the aspect of the monitoring of performance and evaluation of foster care.

78. This amendment to the law on the social and legal protection of children has quickly resulted in a rapid increase in the number of children placed in temporary foster care: according to sources of the Ministry of Labour and Social Affairs, this number increased from 33 children in 2013 to 540 children in 2016.

79. In addition to temporary foster care, other viable options for addressing the situation of a child ending up outside the care of his biological parents are also considered. Adoption as a lasting solution of the situation of the child cannot be excluded. Considerations also include inter-country adoption, because the Czech Republic is a State signatory to the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption of 29 May 1993, under which the inter-country adoption process takes place. Other options include long-term foster care, etc.

a) Placing the child in the care of another person

80. This form of child care mainly concerns cases where the carer is to be a relative of or a person close to the child or his parents. An early return of the child to his natural family is assumed. An advantage of this form of care is that the carer and the child know each other, usually a family tie exists between them, and the transfer of the child to substitute care is not so challenging emotionally.

81. Placing children in the care of another person is covered by Article 953 *et seq.* of the Civil Code. Article 953 § 2 expressly lays down that entrusting a child to the care of another person takes precedence over institutional care for the child.

b) Foster care

• *Introductory remarks*

82. Foster care is a special form of care in a family for a child at risk, covered by Article 958 *et seq.* of the Civil Code. It is always subsidiary to the child's natural family while taking precedence over institutional care, i.e. child placement in children centres (Article 958 § 2 of the Civil Code).

83. The purpose and objective of foster care is a temporary rather than permanent arrangement, to which intensive social work with the family in crisis is tied and runs in parallel. It is one of the alternatives of assistance in the family.

84. The current form of foster care is short-term, medium-term and long-term, and it is always related to impediments in the child's family, which prevent his parents from personally caring for the child, and also related to the child's needs, interests and wishes (Article 959 of the Civil Code).

85. A special form of foster care is temporary foster care (Article 958 § 3 of the Civil Code). The Government shall pay greater attention to it, because it is a quite new solution in the form regulated by the above-mentioned amendment (see § 77 *et seq.* above) while playing a crucial role in the care of the youngest children (see § 93 below).

- *Temporary foster care*

86. Temporary foster care as a special type of substitute family care is provided for in the Civil Code under Article 958 § 3, which refers to a separate statute for details, namely the Children Protection Act (Article 27a *et seq.*). The substance of fostering consists of personal care of the child by the foster parent in case none of the parents or the guardian is able to take care of the child personally. As any other form of substitute family care, it is always subsidiary to the natural family while taking precedence over institutional care.

87. Article 959 of the Civil Code emphasises the time limitation of foster care for the duration of the impediment preventing the parents from personally caring for the child. The foster parents are obliged to maintain relationships with the biological family and enable the child's contact with his parents so that, in the ideal case, foster care can be revoked and the child returned to his parents' personal care. The duration of foster care is individual and depends on the child's needs. Temporary foster care has its specificities. It is limited in time to no longer than one year, with the exception of a shift in time in case siblings are placed in foster care one by one; but even in the case of siblings, the one-year limit for the sibling who was the last to be entrusted must not be exceeded.

88. Unlike long-term foster care, no facilitation process precedes temporary foster care. The people who can provide this care are registered in separate lists kept by Regional Authorities.

89. Temporary foster care was introduced into the Czech system of substitute family care as early as 1 June 2006 through an amendment to the Family Act (Act No. 134/2006 of 14 March 2006). Initially, its use was limited in practice because of the requirement placed on candidates for this care, who had to be ready at any time to immediately accept a child into their short-term care while the period in which they did not have a child in their care was not financially covered. Before the effect of Act No. 401/2012, amending the Children Protection Act and bringing a change by way of remuneration for foster parents also in periods when they do not take care of any child, this type of care was therefore carried out only rarely (see § 77 above). The above-mentioned Act No. 401/2012 implemented a policy change in temporary foster care, and not only as regards funding, with effect from 1 January 2012. The explanatory report on the amendment to the law on the social and legal protection of children justifies the

reinforcement of the position of temporary foster care as an alternative to child placement in institutional care, to which the Czech Republic had committed itself in the National Strategy to Protect Children's Rights 2012–2015 (see §§ 36 and 39 above).

90. Statutory conditions apply to child placement in temporary foster care, namely that in this form of care, a child can be entrusted only to people kept on the list of persons allowed to provide temporary foster care and only on the basis of a motion filed by the authority for the social and legal protection of children.

91. The numbers of children who were placed in temporary foster care as at the end of the respective year can be found in the table below. The data are shown since 2006, i.e. since the enactment of this substitute family care arrangement (in the Family Act since 1 June 2006 until the effective date of the Civil Code). Following the adjustment of the conditions for temporary foster care provision, this arrangement for short-term substitute family care has taken root in the system of social and legal protection of children.

92. The number of placed children with disabilities is also gradually rising, despite the initial settings for temporary foster care, which had not envisaged care for children with disabilities.

Number of children placed in temporary foster care according to statistics of the Ministry of Labour and Social Affairs			
	Placing in the given year	Number of children placed in temporary foster care as at 31 December	Of those children with disabilities
2006	4	4	0
2007	0	4	0
2008	12	26	1
2009	7	33	4
2010	0	0	0
2011	6	15	0
2012	41	29	0
2013	169	108	2
2014	450	302	5
2015	614	543	12
2016	692	540	15
2017	730	605	21

93. The statistics of the Ministry of Labour and Social Affairs show that gradually, temporary foster care is successfully being used for children who need immediate short-term help, in particular those between birth and two years of age. Since 2014, the number of children under the age of two placed in temporary foster care is continuously rising. While in 2014 their number was 370, 513 children were placed in care of this type in 2017. The Government add for

completion that the number of older children placed in this form of care is also rising.

Number of children according to their age placed in temporary foster care during the year according to the statistics of the Ministry of Labour and Social Affairs						
	0–2 years	3–5 years	6–9 years	10–14 years	15–17 years	Total
2014	370	39	20	19	2	450
2015	477	55	39	38	5	614
2016	510	77	53	39	13	692
2017	513	101	55	36	25	730

94. For a long time now, the most frequent way of terminating temporary foster care is the transfer of the child to a different form of long-term substitute family care (foster care, guardianship with the guardian providing personal care, or care of another person). The statistical reports do not make it possible to differentiate between facilitated substitute family care and care provided by relatives. A considerable percentage of the children were also adopted. Compared with the past years, the number of children returning from temporary foster care back to the care of their parents is rising.

Number of children by way of termination of temporary foster care according to statistics of the Ministry of Labour and Social Affairs						
	To parents	Other form of substitute family care	Adoption	Institution	Legal age	Elsewhere
2014	28	72	71	3	1	5
2015	49	156	93	9	1	11
2016	71	181	81	17	1	15
2017	85	254	113	21	1	17

95. The total number of people put on the list of persons allowed to provide temporary foster care is rising. In 2017, there were 900 such persons who could provide temporary foster care.

Number of persons who can exercise temporary foster care			
	Total number of persons who can exercise temporary foster care	Increased	Decreased
2013	153		
2014	421	313	45
2015	654	377	85
2016	799	352	141
2017	900	345	217

*c) Adoption**• Adoption in the Czech Republic*

96. Adoption of a minor child is one of the traditional concepts in Czech family law. Adoption is mainly provided for in the law on the social and legal protection of children (in particular Articles 3, 25 and 26, and 35), the Civil Code (Article 794 *et seq.*), and the Special Judicial Proceedings Act (Article 427 *et seq.*).

97. No decision can be made on the adoption of a child if there is a close relative of the child who is willing and able to take care of the child and files a motion with the court in this respect. Adoption is therefore a solution subsidiary to child care by his own parents and his relatives.

98. The Czech legislation knows only complete adoption, which means that a child that has been adopted ceases, upon the finality of the adoption judgment, to be a relative in the family of his origin and becomes a member of the adoptive family. Adoption is, in relation to international agreements, treated as irrevocable as a principle.

• Inter-country adoption

99. The Office for International Legal Protection of Children (“the Office”) facilitates inter-country adoption. In adoption facilitation, the Office strictly complies with domestic legislation (see § 76 above) as well as international agreements, in particular the Convention on Protection of Children and Co-operation in Respect of Inter-country Adoption of 29 May 1993.

100. Where no suitable family is found in the Czech Republic for a child who finds himself or herself outside the care of his biological parents the Office looks for a suitable substitute family abroad. The principle of subsidiarity – inter-country adoption being an alternative means of care under Article 21 § b of the Convention on the Rights of the Child – is therefore consistently applied. In the Czech Republic, suitable care is sought for six months from the day on which the child becomes adoptable. Detailed information can be found on the Office’s website (in English)¹¹ and in the Guideline for the Facilitation of Inter-country Adoption of 15 April 2016.¹² Having facilitated inter-country adoption, the Office monitors the child’s situation in the new family until the legal age of the child.

101. The Office facilitates on average 35 adoptions every year. Since 2000, it has facilitated the adoption of some 628 children to countries that are State signatories to the Convention on Protection of Children and Co-operation in Respect of Inter-country Adoption.

¹¹ More information at <https://www.umpod.cz/en/adoption/>

¹² Available at https://www.umpod.cz/fileadmin/user_upload/osvojeni/Metodicke_doporuceni_pro_mezinarodni_osvojeni.pdf

d) Conclusion

102. National law provides a number of alternatives to institutional care. In addition to placing the child in the care of another person (a relative), the child can be placed in foster care, either on a temporary basis or for the long term, and adoption is also used. Temporary foster care is currently one of the available and frequently used alternatives to institutional care. In the system of substitute family care, it has proved its worth and is playing well its role in the system of care for children separated from their parents. The number of children placed in temporary foster care is continuously rising. This option mainly concerns the youngest children. The statistics of the Ministry of Labour and Social Affairs show that the largest number of such children can be found in the age brackets between birth and two years. The complainant organisations' claims that the Czech Republic lacks alternatives to the institutional care of the youngest children are therefore completely unfounded. By the same token, the claim that the alternatives to institutional care envisaged in the law are not being used in practice is also unfounded.

III. AS TO THE JUST SATISFACTION CLAIM

103. The complainant organisations demand EUR 10,000 on the grounds of the costs of the legal representation.

104. In line with the reply of the President of the Committee of Ministers' Deputies of the Council of Europe to the President of the European Committee of Social Rights, dated 28 April 2017, relying on a thorough debate on the issue of compensation for costs in collective complaints procedures by the Rapporteur Group on Social and Health Questions (GR-SOC) on 23 March 2017, the Government note that there is no legal grounds for awarding just satisfaction to the complainant organisations either under the Additional Protocol to the Charter providing for a System of Collective Complaints or in the Explanatory Report to the Protocol.

105. However, even in the hypothetical situation that such legal grounds existed it would always have to be established that such expenses were actually incurred and reasonable as to quantum (see *Confédération française de l'encadrement CFE-CGC v. France*, collective complaint no. 56/2009, decision on the merits of 23 June 2010, §§ 87 to 89; see also the judgment of the Court cited therein concerning, *inter alia*, the matter of costs of the proceedings in *Nikolova v. Bulgaria*, no. 31195/96, judgment [GC] of 25 March 1999, § 79). That said, the complainant organisations' proposal is manifestly excessive and is not supported by any evidence.

106. In any case, however, even if the Committee finds that there has been a violation of the Charter or the Protocol the Committee does not have the competence to decide about costs of the proceedings or to award the complainant organisations any other financial compensation.

OVERALL CONCLUSION

107. In the light of the above the Government of the Czech Republic in their observations to the collective complaint propose that the Committee hold that Article 17 of the Charter has not been violated nor in isolation neither in conjunction with the prohibition of discrimination on grounds of ethnic origin or state of health.

Petr K o n ů p k a
Deputy Agent of the Government
signed electronically

ENCLOSURES

1. Annual Report of the Institute of Health Information and Statistics of the Czech Republic on children centres' operation for 2013–2016
2. Summary of the Lumos international organisation report of April 2018 in English
3. Page 116 of the Czech Health Statistics Yearbook 2016

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