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Case Document No. 4

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

RESPONSE FROM THE COMPLAINANT ORGANISATIONS TO THE GOVERNMENT'S SUBMISSIONS ON THE MERITS

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Written response of the European Roma Rights Centre and Validity Foundation (Mental Disability Advocacy Centre), assisted by Forum for Human Rights, to the Observations of the Czech Government on the merits of the collective complaint

European Roma Rights Centre (ERRC) and Mental Disability Advocacy Centre (MDAC) v. Czech Republic

No. 157/2017

I. Introduction

1. By its letter of 7 May 2018, the European Committee of Social Rights (*hereinafter* "the European Committee") provided the complainant organisations with the Written Observations of the Czech Government (*hereinafter* "Government's Observations") on the merits of Complaint No. 157/2017 (*hereinafter* also "the collective complaint"), and invited the complainants to submit their written response in reply by 10 July 2018. The complainants, together with FORUM, reviewed the Government's Observations and hereby respectfully submit their comments.

2. In the present comments, the complainant organisations address the merits only to the extent that they (as they are set forth in the collective complaint) need to be clarified, refined or enlarged upon in light of the Government's Observations. The fact that the complainant organisations do not address all the issues and omit some of the questions means only that the relevant issues were extensively addressed in the original complaint and the complainant organisations have nothing substantially new to add to that analysis. Hence, the complainant organisations ask the European Committee not to interpret their silence on any of the questions as consent with the Government's position.

II. General comments

3. The complainant organisations note, at the outset, that in their opinion the Government have misinterpreted the substance of the collective complaint. It seems that the Government put forward three main arguments; however, none of them directly relate to the merits of the collective complaint. First, they disagreed with the statistics and their interpretation (see paras. 40-71 of the Government's Observations), even though these data were collected by the Government's own statistical office. Further, the Government argued that the institutionalisation of young children is always a measure of last resort (see paras. 21-31 of the Government's Observations), although the complainant organisations claimed that institutional care is *per se* harmful to children, and especially to young children, and that the Government, being aware of this fact, has failed to take any effective measures to deinstitutionalise the existing system. And third, the Government produced an overview of provisions providing for substitute family care in

the Czech Republic (see paras. 80-101 of the Government's Observations), even though it seems to be irrelevant for the complaint.

4. The complainant organisations thus take this opportunity to reiterate here the structure of their argument. In the collective complaint, they argued that there is an existing practice of institutionalisation of very young children based on the law which allows for routine placement in early childhood care institutions. It concerns predominantly the most vulnerable children in the population, namely Romani children and children with disabilities. This has been proven by the data collected by the Government's official authority, which the complainant organisations relied upon in *bona fide* (paras. 9-11 of the collective complaint). The Czech Ombudsperson moreover discovered that as many as 72 % of children are being institutionalised for more than six months (see para. 12 of the collective complaint). This institutional care was characterised by the Ombudsperson by these troubling words: "children have anything but love" (see para. 14 of the collective complaint).

5. Various experts have shown and different human rights authorities emphasised, that institutional early childhood care is *never* appropriate for young children as it cannot provide a sufficient degree of satisfaction of the child's developing emotional needs and well-being. It was described as a form of violence against children. The psychological research has been known for decades and it has not been disputed by the Government.

6. Moreover, the Government did not dispute that there has been an effort to put an end to early childhood care institutions in the Czech Republic, especially by the Government's Human Rights Council and eventually also by the Ministry of Social Affairs, at the latest since 2012 (see para. 15 of the collective complaint). However, as other authorities disagreed (see paras. 15-16 of the collective complaint), these efforts to close down early childhood care institutions, as the Government in their Observations also admitted, have not been implemented (see para. 36 of the Government's Observations). Indeed, the Government could not identify any policy or measures providing a reasonable time-frame for deinstitutionalisation, and would ensure measurable progress consistent with the maximum use of available resources.

7. It appears obvious to the complainant organisations that the situation of institutionalised children in the Czech Republic requires legal and practical measures. However, the Government has failed to take concrete and targeted steps to de-institutionalise the existing system of early childhood care, affecting especially Romani children and children with disabilities, or to establish appropriate community-based and family-like services. There is therefore a violation of Article 17 of the Social Charter, read alone or in conjunction with the Preamble of the Social Charter.

III. The Government's failure to address relevant human rights standards

8. Before turning to the Government's arguments in more detail, the complainant organisations first underscore that the Government in their submission completely omitted reference to the relevant international law standards, including the legal obligations of the Czech Republic under international human rights treaties. The Government is silent not only when it comes to the universal standards of UN authorities, especially as interpreted by the UN Committees (the CRC Committee, the CERD Committee and the CRPD Committee) and the UN Special Rapporteur on the Right to Health, but in particular in relation to concrete observations and recommendations adopted by these bodies in respect of the discharge of its legal obligations by the Czech Republic.

9. The complainant organisations, considering the importance of the UN CRPD, as well as other treaties, and its interpretative value for the European Committee's jurisprudence, takes this opportunity to again quote the express recommendation made in 2015 by the UN CRPD Committee, in order to underline the seriousness and relevance of all raised complaints:

   > "… the Committee urges the State party to abolish the placement of children under 3 years of age in institutionalized care as soon as possible."[1]

10. So far, this recommendation has not been implemented and no concrete and targeted steps have been taken (see para. 29-31 below).

11. Further, the complainant organisations note that the Government also completely omitted the Council of Europe standards, especially the recommendations of the Committee of Ministers CM/REC(2010)2 and CM/Rec(2011)12, and the Council of Europe's Strategy for the Rights of the Child (2016-2021), as well as the jurisprudence of the European Committee providing for an obligation take any relevant measures fulfilling the criteria of (i) a reasonable time-frame, (ii) measurable progress and (iii) financing consistent with the maximum use of available resources.[2]

IV. Statistics and their interpretation

12. In relation to statistics, the complainant organisations note that the Government made several distinct arguments. First and foremost, the Government disputed the data provided by the complainant organisations in their collective complaint, calling them for example "selective" and "unreliable" (see paras. 44-45 of the Government's Observations). This argument is surprising. The data presented in the collective complaint were collected by the State authority, namely the Institute of Health Information and Statistics of the Czech Republic (hereinafter "the Institute"). This Institute is an official Government body, founded and run by the Ministry of Health.[3] Therefore, the collective complaint is based on incontrovertible official statistics and the complainant organisations had no reason to disregard or doubt these official statistics. Moreover, it must be noted that the Government themselves relied on the same data collected by the very same Institute (see annex no. 1 of the Government's Observations). They did not produce any alternative statistical evidence on children in early childhood care institutions. Other statistics presented by the Government are irrelevant as the merits of the complaint do not concern the issue of substitute family care (para. 64 of the Government's Observations), nor foster care (para. 92 of the Government's Observations).

13. However even assuming (which the complainant organisations deny) that these data may not be completely reliable, the figures nevertheless reveal a dominant trend,[4] showing a high number of institutionalised children, as well as disproportionate representation of Romani children and children with disabilities, that has been confirmed by the respondent State and its own authorities (see paras. 15 and 16 of the collective complaint), as well as by the independent supervisory bodies (see paras. 12 and 43-45 of the collective complaint).

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[1] Concluding observations of the UN CRPD to the Czech Republic, CRPD/C/CZE/CO/1, 15 May 2015, para. 40.

[2] See, mutatis mutandis, Association international Autisme-Europe (AIAE) v. France, Complaint No. 13/2002, decision on the merits of 4 November 2003, § 53.

[3] Information available in English at: http://www.uzis.cz/en/about-us

[4] See, *D.H. v. the Czech Republic*, application no. 57325/00, Grand Chamber judgment of 13 November 2007, § 191.

14. The complainant organisations further note that the Government disputed the disproportionally high number of children with disabilities and Romani children in the early childhood care institutions, as presented in the collective complaint (see para. 11 of the collective complaint). The Government based their argument on two grounds. First, they claim that Czech law does not contain any provisions that would imply a different treatment of children with disabilities or Romani children and that would, either as such or in consequence thereof, result in any discrimination against these groups of children (see para. 41 of the Government's Observations). Second, they assert that comparing the proportion of Romani children and children with disabilities in early childhood care institutions with the proportion of such children in the total population is inappropriate and misleading because the proportion of these groups of children should be compared with their proportion in the part of the population in which family care fails for one reason or another (see paras. 42 and 45).

15. In relation to the first argument, the complainant organisations did not allege that the existing legal framework is *per se* discriminatory. Rather the argument was based on the factual situation supported by official statistics, that the practice of institutionalisation of young children in the Czech Republic disadvantages a substantially higher proportion of members of the most vulnerable groups of children in the population, namely children with disabilities and children of Romani origin.

16. As regards the question of disproportional representation, the complainant organisations first note that the Government is implying that in cases of children with disabilities and/or Romani children, the family care fails more often, comparing to non-Roma families and families with children without disabilities. This is a mere speculation and the Government did not substantiate this assumption in any way. Indeed, such argument even appears to be based on prejudice and discriminatory stereotypes. Nevertheless, even assuming this to be correct (which the complainant organisations deny), the Government would be under a positive obligation to address and tackle this particular situation, in particular by introducing measures to effectively support these families at risk in a way that complies with its obligations under Article 17 of the Charter and other international instruments and respects the human rights of the children and families concerned. The Government, however, did not specify what concrete measures were adopted to support these families at risk to prevent institutionalisation of their young children.

17. Moreover, it follows from the statistics submitted by the Government in relation to substitute family care (see para. 64 of the Government's Observations) that, in 2016 there were 5,290 children placed in substitute family care, out of which only 94 were children with disabilities (1.8%). Assuming that 5,290 children came from families at risk, as the Government's argument would imply, only a very low percentage concerns families with children with disabilities. Hence, considering that for children with disabilities, who consistently make up approximately 40% of children in the early childhood care institutions, comparing to approximately 4% in the population at large, the disproportionate representation appears to be even higher.

18. As regards the number of early childhood care institutions (see paras. 49-52 of the Government's Observations), the complainant organisations do not dispute the 2010-2016 figures. They submitted the very same data available at the time of the submission that is for years 2010-2015 (see para. 10 of the collective complaint). However, they must comment on the number of institutions in 2018. The Government stated that the number dropped to 26, but they failed to substantiate this claim (see para. 50 of the Government's

Observations). In the annex to their submission, they produced only 2016 statistics. That is proper, as 2017 data are not yet available.

19. Further, the complainant organisations must comment on the Government's statement about the closure of institutions in 2017 and the claim that there are no institutions in the Zlín region and the Southern Bohemian Region (see para. 50 of the Government's Observations). It is true that there are no institutions in these two regions, however, it must be noted that the closure had no connection to the Government's policies or reforms, as there are none. These particular regional authorities should be indeed praised for their effort, but it does not reflect on the Government's complete unwillingness to ensure that similar steps are taken throughout the whole country. As the LUMOS report clearly shows, the number of children in the early childhood care institutions in four other regions (Prague, Central Bohemian Region, the Ustí nad Labem Region and the Plzeň Region) remains very high with the institutionalisation rate above 21 children per 10,000. Moreover, the LUMOS report also revealed that in three identified early childhood care institutions the number of children remains extremely high. Namely, there were 80 children in the *Kojenecké ústavy ústeckého kraje* (early childhood care institutions of the Ustí nad Labem Region), 56 children in the *Dětské centrum Plzeň* (children centre Plzeň) and 53 children in *Dětské centrum při FTN, Praha, Krč* (children centre within the Prague hospital in Krč).

20. The Government further argued that the statistics of the Institute in relation to children with disabilities are incorrect as they identify children with special needs rather than of children with disabilities (see para. 60 of the Government's Observations). The definition of groups for the purposes of the statistics contains a very broad specification of health reasons and the specification of children with special needs (see para. 66 of the Government's Observations).

21. The complainant organisations note that the Government themselves provided explanation who should be regarded as "children with special needs". Namely, "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" (see para. 61 of the Government's Observations). This description aligns in substance with the definition of disability under Article 1 of the UN Convention on the Rights of Persons with Disabilities. According to this provision, "persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others". Thus, it does not appear that the category of children with special needs would be broader than the category of children with disabilities. Moreover, as it follows from the table submitted by the Government (see annex no. 1 of the Government's Observations), in 2016, out of 1,559 children in total admitted to institutions, 564 were obviously children with disabilities (approximately 36% of all admitted children). If including children of mothers addicted to drugs who may have health issues, the number rises to 847 out of 1,559 children which equates to 54.3% of all children in early childhood care institutions.

22. In relation to the number of Romani children in the early childhood care institutions, the complainant organisations agree with the Government's calculation (see para. 71 of the Government's Observations); however, they wish to present the data for the entire period 2010-2016. In their opinion, these numbers are self-explanatory and the proportion of Romani children in the early childhood care institutions remains very high and stable over these years.

	2010	2011	2012	2013	2014	2015	2016
number of admitted children	2077	2131	1932	1740	1606	1666	1559
Romani children	433	403	446	445	398	406	349
%	**20.80 %**	**18.90%**	**23%**	**28.30%**	**20.80%**	**24.40%**	**22.40 %**

V. Law

23. The complainant organisations note that the Government, in their submission, described the national legislation in order to demonstrate that there are available alternatives to institutional early childhood care. The complainant organisations have no comments on this description, however, they consider this law in the books being rather irrelevant as the merits of the collective complaint concern another piece of legislation, namely Section 43 § 1 of the Health Care Act which provides for a possibility to institutionalise young children (see para. 9 of the collective complaint).

24. In this regard it must be stressed that the Government themselves admit the extreme brevity of this provision (see para. 19 of the Government's Observations). However, what the Government failed to mention is that this defective piece of legislation has real negative impacts on children's lives as it provides for unreasonable and unlimited institutionalisation. Indeed, considering the wording of Section 43 § 1 of the Health Care Act, there are no precise legal conditions for admission of children. This results to the children being admitted to the institutions routinely, with no relevant assessment of necessity and unavailability of alternative family-based care. As the Government pointed out, the majority of young children are institutionalised in the early childhood care institutions on the basis of their parents' consent (see para. 59 of the Government's Observations). There is no research addressing whether these parental consents are fully informed consents and if so the reasons why parents of children with disabilities and Romani children would be massively using this type of very damaging and controversial institutional care, nevertheless, the complainant organisations assume that the logical answer might be twofold. First, the law is so vague as to permit it, and second, the adequate support and alternatives are simply not available and accessible to parents.

25. Turning to the issue of the deficiency of Article 43 of the Health Care Act, the complainant organisations note that it is especially noticeable when considering that children are being institutionalised on the basis of their parents' consent. In this regard the complainant organisations consider that the State Party is under an obligation to adopt such legislation that would sufficiently protect the children from unlawful interference with their right to appropriate alternative care and to freedom from all forms of violence. Indeed, there is a universal principle demonstrated by the Guideline no. 127 of the UN Guidelines for Alternative Care of Children (A/RES/64/142) providing that: *"(...) Laws, policies and regulations should prohibit the recruitment and solicitation of children for placement in residential care by agencies, facilities or individuals."*

26. For example, the Inter-American Commission on Human Rights accepted that a child may be, under certain circumstances, placed to institutional care by his/her parents or

his/her family, nevertheless emphasised that such a placement should be only *"for a short period of time or in a definite manner"*. Further they stated that *"these cases must be promptly brought to the attention of the public authorities with competence for child affairs in order to provide support to the parents through existing family support social services, to investigate whether other relatives might be able to take charge of the child or, otherwise, determine what measure of temporary or permanent alternative care would be most suitable for the child in light of his or her individual situation and best interest."*[5]

27. However, in the Czech Republic, the relevant provision is so vague that it does not provide for any limitation of situations in which an admission on the basis of parents' consent would not be possible, nor limitation of the maximum duration of the stay in the institution (which can last until the child needs to leave the institution at the age of six due the compulsory school attendance). In addition, there is no legal obligation of the institution to make aware the competent local authority responsible for the protection of the child about the institutionalisation. All these loopholes in the legislation thus make it possible that the child stays unregistered by the public child protection system for a considerable period of time, without any possibility to profit from alternatives to institutional care, including support provided to his/her biological family.

28. The obligation to fulfil in the context of institutionalising young children then requires the State that the existing alternatives will be practical and effective. In this regard it should be emphasized that the first and primary alternative to the institutionalisation of young children is not foster care, including temporary foster care, as the Government argue, but **the support provided to the natural family of the child**. The Government claimed that *"children placed in children centres usually return back to their families after some time"* (see para. 33 of the Government's Observations). Therefore, the question is whether the separation of the child from his natural family in the form of his/her institutionalisation is necessary and whether there could be no other alternatives to support the family from the very moment the child is born.

29. The Government admitted that in August 2017 they did not adopt a document presenting necessary legislative steps that need to be taken to transform the system of care for vulnerable children in the Czech Republic (see 36 of the Government's Observations). The document was created in direct connection with the Government Resolution No. 1033 of November 2016 by which the Government noted the submission of the Government´s Council for Human Rights describing the main deficiencies of the Czech system of care for vulnerable children as well as the steps that need to be unconditionally taken to start transforming the system. The Government´s Council for Human Rights emphasised that approximately 52% (CZK 4,1 billions) of all of the financial resources invested in the system of care for vulnerable children per year (in total CZK 8,2 billion) are being spent on institutional care for children, while the bulk of public funds spent on the support for vulnerable children in their natural environment constitutes only 8,6% (CZK 0,7 billion CZK) of the total amount of public finances. The Government refused to adopt the document summarizing the legislative steps necessary to start transforming the system (which did not even take the form of a legislative bill, but the form of a non-legislative strategic material), but also failed to adopt any alternative plan and, with regret, such a plan has not yet been introduced by the Government.

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[5] The Interamerican Commission on Human Rights, Thematic Report on the Right of Girls and Boys to a Family Alternative Care – Ending Institutionalization in the Americas of 2013, para. 349. The report is available at: The thematic report is available at: http://www.oas.org/en/iachr/children/docs/pdf/Report-Right-to-family.pdf

30. The Government, however, claimed that they already took the necessary steps to transform the system of care for vulnerable children by the amendment to the Act no. 359/1999 Coll. on Social and Legal Protection of Children in 2012, effective since 1 January 2013 (see para. 73 of the Government's Observations). It should be noted that this argument is incorrect. First, the main policy document was the National Strategy to Protect Children´s Rights 2012-2018.[6] It was introduced especially as a consequence of the adoption of the Concluding Observations of the UN Committee on the Rights of the Child in 2011 (CRC/C/CZE/CO/3-4) and envisaged a whole set of consecutive steps that need to be taken, including the objective of supporting alternative family care (objective 9) and the objective of elaborating the alternatives of care for vulnerable children and the deinstitutionalisation of care (objective 10). The amendment of Act no. 359/1999 Coll. on Social and Legal Protection of Children was only the first of these steps, but certainly not the last. Its aim was to address primarily those issues which needed legislative changes most urgently, i. e. the way the local authorities for the protection of children operate, the need to strengthen temporary foster care and to increase support for foster care in general. All these changes were conceived as temporary since according to the first National Action Plan for the Fulfilment of the National Strategy to Protect Children´s Rights 2012 – 2015,[7] the Czech Republic was supposed to prepare and adopt a completely new law – an Act on the support of families, alternative family care and protecting children´s right by the end of 2014. It was expected that the Act would legally establish a system of family support and a network of services. Nevertheless, the new law has never been adopted, similarly as the second National Action Plan for the years 2016-2020 has never been adopted (see para. 36 of the Government´s Observations).

31. Moreover, also other steps of the first National Action Plan aiming at transformation of the system of care for vulnerable children in the Czech Republic have remained unfulfilled. These include, among others, the introduction of the age limit for institutional care (activity 10.3), preparation of transformation plans for existing institutions (substantive solutions, budget, schedule, educational needs, monitoring and evaluative mechanism) in at least 10 regions and with respect to 40 institutions by the end of 2014 (activity 10. 2. 2). It is true that some transformation plans were created, but only in two Czech Regions – the Zlín Region (*Zlínský kraj*) and the Pardubice Region (*Pardubický kraj*), but thanks to the financial support from the EEA and Norway Grants and without the Government's support.

32. In relation to foster care, the Government, as it seems, emphasised the role of temporary foster care as a form of professional foster care. The complainant organisations find it necessary to underline that temporary foster care has its specific aim - to care for a child deprived of the care of his/her natural family only for a limited period of time which should not exceed 1 year. It is thus at least inaccurate to view this kind of care as an alternative to placement in early childhood care institutions. The overrepresentation of Romani children and children with disabilities in this type of institutional care clearly shows that this form of care is also discriminatory and itself is not sufficient to practically implement the right of these children to appropriate alternative care and to independent living. Even if these children were placed in temporary foster care, there is quite a high probability that after the year they will have to be replaced in institutional care since there is no alternative available. This prediction has then direct impact even on their chance to be placed in a temporary foster care. The complainant organisations cannot support these

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[6] The Strategy is available at: https://www.mpsv.cz/files/clanky/13456/strategy.pdf.

[7] The National Action Plan is available at: https://www.mpsv.cz/files/clanky/14312/NAP_ENGL_2012-2015.pdf .

assertions with relevant data, other than already presented in the collective complaint since the Government have failed to collect data about children in the family-based alternative care, disaggregated according to their ethnic origin and disability.

33. Nevertheless, it has to be noted also that the Government, being aware of groups of children, such as children with disability and Romani children, for whom it is more difficult to find alternative care due to prejudice and discrimination, set a support for alternative family care as one of the objectives of National Strategy to Protect Children´s Rights (objective 9) containing, *inter alia*, an activity focused on foster care development and specialization. According to the first National Action Plan for the Fulfilment of the National Strategy to Protect Children´s Rights 2012 – 2015 this activity should have been realized through specification of the types of foster care in relation to children´s needs, the method or preparing foster parents and necessary support by June 2014 (activity 9.3.1). **Even this activity, regrettably, has remained unfulfilled.**

34. Therefore, the complainant organisations conclude that the picture drawn by the Government is far from reality. The actual state of the whole system, as it looks right now, was precisely described in the 2017 analysis of innovative approaches and services for families prepared for the Ministry of Labour and Social Affairs:

> *"A huge problem of the current system of services to support families and children is its fragmentation and absence of coordination. Contrary to existing strategic materials and transformation efforts of the last years the system of services for children and families remains only a marginal issue for the governing representation and waits for a complex change which would place a child and his/her family in an adverse life situation into its center and surround them with system of coordinated and directed approaches and assistance of cooperating subjects acting in the best interest of the child that will be transparently financed, standardized and effectively controlled".*[8]

VI. Conclusion

35. Article 17 of the Social Charter contains an obligation to ensure that *all* children are provided with an appropriate level of social protection and treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society. The provision of Article 17 of the Social Charter should be understood from the perspective of present-day conditions and reality and interpreted in the light of the current child rights approach and the consensus around the treatment of children.

36. The complainant organisations note that the European Committee has consistently deployed an evolutive or dynamic interpretation of the Social Charter providing the European Committee with the necessary degree of flexibility to ensure the realisation of rights guaranteed in the Social Charter, which are made practical and effective. In particular, the European Committee observes that the Social Charter, as a living instrument, ought to be interpreted in accordance with developments in the national laws of the Council of Europe Member States as well as applicable international instruments

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[8] The Analysis is available in Czech at: https://www.mpsv.cz/files/clanky/31566/Analyza_inovativnich_postupu_a_sluzeb_pro_rodiny_a_deti_v_Ceske_republice_2017_.pdf ; p. 110.

(see World Organisation against Torture v. Greece, European Committee of Social Rights Complaint No. 17/2003, Decision on the merits of 7 December 2004, para. 31).

37. In relation to children's rights, the European Committee has stated that the Social Charter should be interpreted in the light of the case-law developed under other international treaties as regards the protection of children and young persons, such as the UN Convention on the Rights of the Child and the European Convention on Human Rights. (General Introduction to ECSR Conclusions XV-2, 2001, Vol1, p. 26). Moreover, it has been acknowledged that children's rights play an especially significant role and the Charter is the most significant treaty at the European level for children's human rights (see Defence for Children International (DCI) v. the Netherlands, Complaint No. 47/2008, decision on merits of 20 October 2009, para 26). It complements the European Convention on Human Rights in this area and reflects the United Nations Convention on the Rights of the Child (see International Federation for Human Rights (FIDH) v. France, Complaint No. 14/2003, decision on the merits of 8 September 2004, para 36, and World Organisation against Torture (OMCT) v. Greece, Complaint No. 17/2003, decision on the merits of 7 December 2004, para 31). Indeed, as the European Committee explained "when ruling on situations where the interpretation of the Charter concerns the rights of a child, the Committee considers itself bound by the internationally recognised requirement to apply the best interests of the child principle" (see Defence for Children International (DCI) v. the Netherlands, complaint no. 47/2008, decision on the merits of 20 October 2009, para 29).

38. This position mirrors a wide consensus that in assessing compliance with legal obligations, the child rights approach should be adopted, considering principles of participation, best interest, dignity, non-discrimination and rule of law, and bearing in mind that the interpretation of Article 17 of the Social Charter should be based on the notion of an effective and practical human rights treaty, as the aim and purpose of the Social Charter, being a human rights instrument, is to protect rights not merely theoretically, but also in fact (see International Commission of Jurists (ICJ) v. Portugal, Complaint no. 1/1998, 10 September 1999, para 32).

39. The complainant organisations refer in this respect especially to the Committee on the Rights of the Child which has expressed special concern in regard to the placement of very young children in residential institutions due to the amount of care and attention those children need according to their young age, for their proper physical and psychological development.[9] This same concern was expressed by the Independent Expert for the U.N. Study on Violence against Children.[10]

40. Moreover, in the case of children younger than 3 years of age, the U.N. Guidelines for the Alternative Care of Children underscore the importance of their placement in family settings and avoiding residential institutions, due to their special needs and requirements given their age and condition.

41. In accordance with the predominant opinion of experts, alternative care for young children, especially those under the age of 3 years, should be provided in family-based

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[9] Committee on the Rights of the Child, General Comment No. 7, Implementing child's rights in early childhood, CRC/C/GC/7/Rev.1, September 20, 2006, 40th Regular Session, paragraphs 6, 8 and 36. Specifically para. 36(b): "[R]esearch suggests that low-quality institutional care is unlikely to promote healthy physical and psychological development and can have serious negative consequences for long-term social adjustment, especially for children under 3 but also for children under 5 years old. To the extent that alternative care is required, early placement in family-based or family-like care is more likely to produce positive outcomes for young children."

[10] U.N. Study on Violence against Children, paragraphs 189 and 190.

settings. Exceptions to this principle may be warranted in order to prevent the separation of siblings and in cases where the placement is of an emergency nature or is for a predetermined and very limited duration, with planned family reintegration or other appropriate long-term care solution as its outcome.[11]

VII. Request for Compensation

42. The complainants ask the Committee, in its findings, to conclude that it would be fair to award the complainants €10,000 (ten thousand euros) by way of compensation for expenses incurred in connection with this complaint. The Committee will find itemised costs attached.

In Budapest and Prague, 9 July 2018

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[11] U.N. Guidelines for the Alternative Care of Children, guideline 22.