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**EUROPEAN COMMITTEE OF SOCIAL RIGHTS  
COMITE EUROPEEN DES DROITS SOCIAUX**

29 August 2018

**Case Document No. 6**

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

**OBSERVATIONS BY LUMOS CZECH REPUBLIC**

**Registered at the Secretariat on 8 August 2018**





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**The observations**

**pursuant to Rule 32A of the Rules of the European Committee of Social Rights  
to the case**

**European Roma Rights Centre (ERRC) and Mental Disability Advocacy Centre (MDAC) v.  
Czech Republic  
Complaint No. 157/2017**

**CLARIFICATIONS OF LUMOS FINDINGS REGARDING INSTITUTIONAL CARE FOR YOUNG  
CHILDREN IN THE CZECH REPUBLIC WITH RESPECT TO THE COLLECTIVE COMPLAINT no.  
157/2017**

**Summary**

- In April 2018 Lumos published *Report on children's homes for children under the age of 3* ("the Report").
- As a matter of urgent clarification, it is **not stated in the Lumos Report that the numbers of children in the institutions of babies in the Czech Republic (as a whole) have been reduced to the minimum and that only children who need such placement remain in these institutions now.**
- Instead the Lumos Report is clear that if regional authorities develop family/family-like alternatives and ensure the clear preference of the alternatives, **there would be no need for baby institutions at all.**
- The Lumos Report is clear that the **441 young children resident in the baby institutions** at the beginning of the year 2018 were staying in these harmful institutions **not because of necessity, but because these children were born in a region where regional authority failed to develop and ensure preference of alternatives to institutional care for young children.**
- We recommend using the significant funds currently spent on running baby institutions on much more cost-effective community-based alternatives.
- A copy of the report has been included for clarification.

**Our clarifications regarding the Observations of the Government on the merits of collective complaint**

1. We seek to make urgent clarifications to the reference of Lumos findings about institutional care for young children in the Czech republic used by the government of the Czech Republic ("the Government"). The Government in its *Observations of the government on the merits of collective complaint (no. 157/2017)* ("the Observations") in § 57 **incorrectly** states that in its Report Lumos "*notes that the numbers of the youngest children placed in children centres have been reduced to the minimum*".

Lumos is international organization whose main aim is ending institutionalization of children. We have been working to support the deinstitutionalization process in the Czech Republic since 2008. We support prohibition of institutional care for young children (by law).



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2. The form of words used by the Government in §57 suggests that Lumos noted in its Report that the numbers of the youngest children placed in children centres (“the baby institutions”) in *the Czech Republic (as a whole)* have been reduced to the minimum. As a matter of clarification this is neither stated nor implied in our Report. The Report states that “*there were no children under 3 years of age in two regions of the Czech Republic and minimum children under 3 (including) in another five regions*”. Although we show in our report that seven regions of the Czech Republic have been successful in reducing numbers of children under 3 years of age (“the young children”) in baby institutions, we also show that other regions are not successful in this respect and the numbers of young children in baby institutions in some regions remain high. **To clarify for the avoidance of doubt: the report does not state and neither do we consider that the number of children in baby institutions in the Czech Republic (as a whole) have been reduced to the minimum.**

3. We have not stated that half of the Czech Regions managed to reduce the number of young children in baby institutions “to the very minimum” (reference: § 57 of the observations).

4. **Our Report clearly shows that the numbers of young children in baby institutions in four regions of the Czech Republic** (Středočeský, Prague, Ústecký and Plzeňský) **remain high** with institutionalization rate higher than 21 children per 10,000 (see graph on page 11 of the report). The report also shows (in Appendix 3) that in three baby institutions of the Czech Republic numbers of young children remain very high<sup>i</sup>, that is young children are still being placed in high capacity institutional care which is very harmful to their development.

5. Whilst there has been a reduction of young children in baby institutions (achieved thanks to efforts of some regional authorities); it is not our view, and neither does the Lumos Report support any claim that the rights of young children to family life in the Czech Republic are (generally) being upheld. The Lumos report clearly shows that **vulnerable children who are not lucky enough to be born in the “right region” still face significant risks of institutionalization.**

6. No provisions are put in place that would ensure that right to family life is guaranteed to all children born in the Czech Republic. The Government put in place legal and funding framework which enables regional authorities to develop alternatives to institutional care for young children. But **children are literally at the mercy of regional authorities.** Although the law clearly states that courts and child protection agencies should always prefer alternatives to institutional care (as explained at length in the Government’s Observations to the complaint), **the right of many children to family life is not being upheld** (as shown in our Report) **because some regional authorities fail to develop alternatives to institutional care in necessary capacity** (i.e. Ústecký region) **or fail to ensure that they are the preferred option** (i.e. Středočeský region). The result is a phenomenon known in public policy as “post code lottery”. Citizens (in this case children’s) rights are significantly affected by where they live (the “post code”).

7. **To clarify data presented in the Lumos Report shows that institutional care for young children is not being used to minimum extent as a measure of last resort only in necessary cases.. This may be true for some regions but definitely not for the Czech Republic (as a whole).** In Středočeský region 89 young children were placed in baby institutions at the time of our data collection (Jan/Feb 2018) even though more than 20 short-term foster carers in the region were available to take care of the children. Ústecký region fails to recruit enough short-term foster carers despite significant needs in the region which results in high institutionalization of young children.

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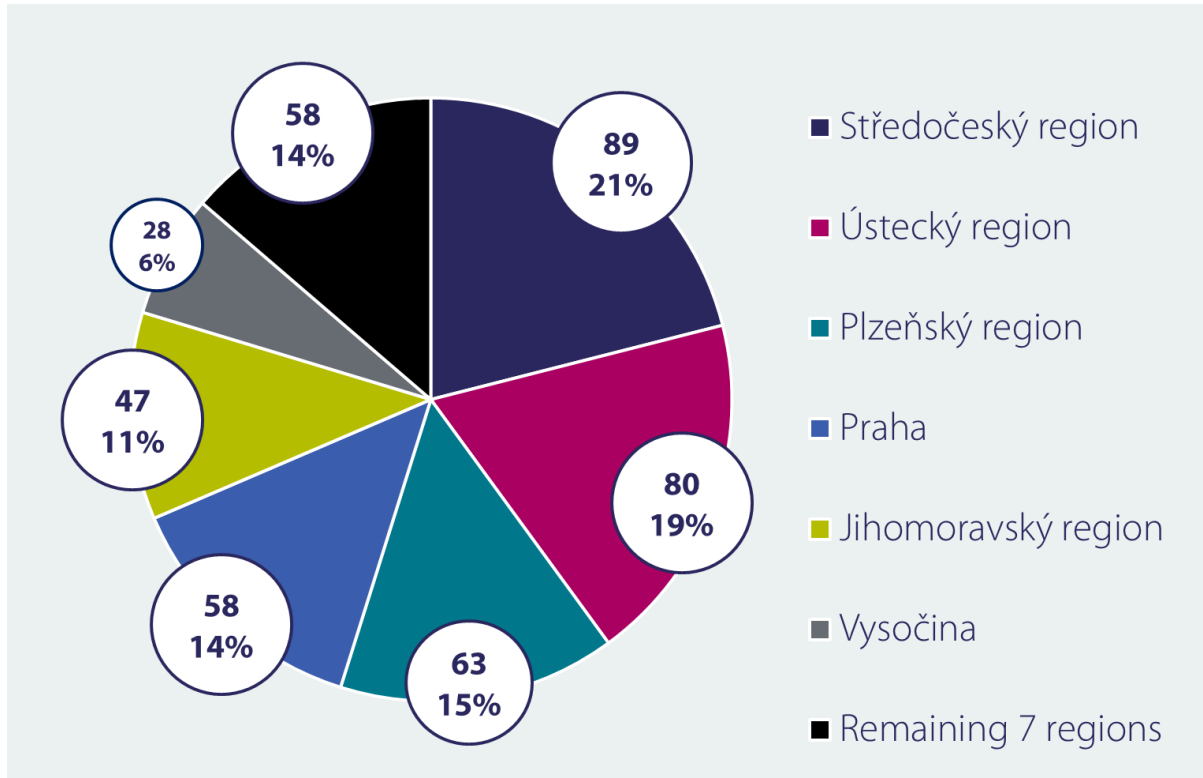
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Numbers of children aged 0-3 in Children's homes for children under 3 years of age in the regions of the Czech Republic in Jan/Feb 2018 (data obtained by Lumos through Freedom of information request)



8. Moreover, the legal framework suffers from a major loophole: the possibility to place children in baby institutions based on contract (with parent). The mothers can for instance sign a contract with a baby institution straight in the maternity hospital which results in the placement of the child in the institutional care without any involvement of child protection agencies. The possibility of contractual stays allows a complete bypass of the whole child-protection system and the provisions that specify that institutional care is the measure of last resort. The institutions do not even have obligation to report the children placed based on contract to the child protection agencies and the length of stay is not limited. Our inquiry found that 147 children (of all ages not solely of 0-3 years) were resident in the baby institutions based on contract. This represents 23 % of all children in the baby institutions at the time. The practice of using voluntary stays and thereby bypassing the child protection system is fortunately not common in many regions of the Czech Republic. However, children unfortunate enough to be born in places where the practice of contractual stays in baby institutions flourishes (such as Plzeň<sup>ii</sup>), face high risk that they will be placed into harmful institutional care without any attempts at all to secure alternatives. It is not acceptable that the Government (by keeping this legal loophole) allows placement of children in harmful institutions as de facto “a measure of first resort” without obliging the public authorities to first attempt to provide support to child’s birth family or find placement in substitute family.

9. The only provision that could ensure that young children are not any more being placed in harmful institutional care is its prohibition, as enacted by several European countries, including by those facing severe socio-economic and developmental challenges than the Czech Republic. Some developed countries, like England, managed to eliminate the practice of placing young children in institutional care without its prohibition. However, this has been achieved through a complex system of legal and funding



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arrangements, which provides strong disincentives to place children into residential care to the Local authorities responsible for child care and includes a strong inspection system which can levy harsh sanctions on the Local authorities if they fail to uphold the children's right to family life. None of such provisions exists in the Czech Republic and currently we still await movement towards its introduction.

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<sup>i</sup> There were 80 young children in Kojenecké ústavy ústeckého kraje, 56 children in Dětské centrum Plzeň 53 children in Dětské centrum při FTN, Praha, Krč.

<sup>ii</sup> In the large baby institution Dětské centrum Plzeň, more children were resident based on the contract than court order (57 % vs. 43 %).

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