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

30 March 2022

Case Document No. 8

Validity Foundation v. Czech Republic
Complaint No. 188/2019

**THE ADDITIONAL RESPONSE BY THE GOVERNMENT ON
THE MERITS**

Registered at the Secretariat on 30 March 2022



VÍT ALEXANDER SCHORM

AGENT OF THE GOVERNMENT OF THE CZECH REPUBLIC
BEFORE THE EUROPEAN COURT OF HUMAN RIGHTS

Prague, 30 March 2022
Ref.: MSP-3/2019-KVZ-OZ/84
Pages: 3
Encl.: –



Collective complaint no. 188/2019
VALIDITY FOUNDATION v. the Czech Republic

Dear Mr Kristensen,

Following your letter dated 24 March 2022, in which you sent me the response from the Validity Foundation (“the Complainant”) to the additional information provided by the Government of the Czech Republic on the merits of the above-mentioned complaint, I have the pleasure of providing you with a reply of the Government on these issues.

Firstly, the Government strongly disagree with the Complainant’s statement that the Government’s action is “insincere” and may be interpreted “as a manifestation of bad faith”. The part of the explanatory report quoted by the Complainant in its written response of 3 March 2022 was taken out of context. The relevant part of the explanatory report stated:

“Placement into net-beds has been for a long time criticised by the UN bodies and bodies of the Council of Europe in relation to all countries where they were used. Net-beds are from a legal point of view considered to be a tool which is in violation of absolute prohibition of ill-treatment. Even the UN Committee against Torture (“the CAT Committee”) has repeatedly called for an abolition of this practice; the CAT Committee criticised net-beds in relation to Slovakia, Austria but also the Czech Republic. In its latest Concluding observations of 2018, the CAT Committee strongly urged the Czech Republic to abolish the use of net-beds. In this relation, the Committee stated:

‘Prohibit, in practice, the use of cage beds in all psychiatric institutions and social institutions in which children with mental disabilities are held; amend the Health-Care Services Act (No. 372/2011) to include the prohibition of net beds in all psychiatric facilities; and ensure that the central registry recording the use of restraints includes sufficiently comprehensive information for the purpose of monitoring’.

Due to aforementioned reasons, it is necessary to state that the use of net-beds is – also on the basis of a clear and direct interpretation by the European Commission and the UN – in direct contravention of the European Convention on Human Rights and in particular the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (...).”

As it is clear from the quotation above, the reference was part of an overview of opinions of the United Nations and Council of Europe bodies expressed in their soft law documents, not a position of the Ministry of Health.

Furthermore, the Bill to which the explanatory report was attached, received many comments by different bodies during the interdepartmental commenting procedure. As a consequence, the legislative process was ended, and the Bill was adopted neither by the Government nor the Parliament. The relevant section permitting net-beds as a means of restraint was repealed later by a different Act. The explanatory report attached to this Act includes neither statements quoted by the Complainant nor any similar ones.

Secondly, the Government do not agree with the Complainant that the use of net-beds before its abolishment constituted a form of ill-treatment. They firmly believe that the abolishment of net-beds was a consequence of their gradual phasing-out and as such was a result of a progressive realisation of Article 16 of the 1961 European Social Charter and Article 4 § 3 of the Additional Protocol. As to the interpretation of international human rights standards they refer to §§ 39–72 of their initial observations and §§ 20–44 of their additional observations.

Regarding the UN CAT Committee’s case *Černáková v. Slovakia*, the Government states that the case was related to a situation of a complainant placed in a social care facility, and not in a psychiatric ward. Even though the UN CAT Committee found, among others, a violation of Article 16 (1) of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“the Convention”), the facts of the case showed that no general standards of quality of care in relation to the use of net-beds were adopted and that the length of time for which the complainant was placed into a net-bed was not recorded. Moreover, the complainant alleged that the use of net-bed was not justified by medical necessity and rather was used to discipline her. Furthermore, the domestic court admitted that the complainant possibly suffered degrading treatment.

Therefore, the CAT Committee concluded that “the act in question reached the intensity and harmful consequences amounting to ill-treatment within the meaning of Article 16(1) of the Convention”. Furthermore, the CAT Committee observed that “the use of the cage-bed was unlawful under the Slovak law at the time and that the State party admitted a violation of [domestic law] (...) without remedying harmful consequences for the complainant”. Therefore, the CAT Committee found a violation of Article 2 (1), read in conjunction with Article 16 (1) of the Convention (UN Committee against Torture, *Černáková v. Slovakia*, no. 890/2018, decision adopted on 19 November 2021, §§ 9.3 and 9.4).

The Government are of the opinion that considering the above, the case should not be interpreted as calling for an absolute and immediate prohibition of net-beds or that a use of net-beds as such, i.e as a medical necessity while respecting strict legal safeguards, constitutes ill-treatment. It is important to mention that in the case of the Czech Republic, the use of net-beds

in psychiatric facilities was accompanied by legal safeguards (see §§ 77–83 of Government’s initial observations) and control mechanisms (see §§ 84–92).

Finally, the Committee has not expressed its opinion on the use of net-beds even though it had the opportunity to do so when reviewing the Czech Republic’s compliance with obligations under Article 11 § 1 of the Charter and Article 4 of the Protocol in its most recent Conclusions XXII-2 (2021) published in March 2022. Should it have considered that the use of net-bed constitutes as such a form of ill-treatment, it would have certainly stated so.

To conclude, the Government propose that the Committee holds that Article 11 § 1 of the Charter and Article 4 § 3 of the Protocol have not been violated.

Yours sincerely,

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