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

**16 October 2018**

**Case Document No. 7**

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

## **FURTHER RESPONSE FROM THE GOVERNMENT ON THE MERITS**

**Registered at the Secretariat on 5 October 2018**





THE CZECH REPUBLIC

ADDITIONAL OBSERVATIONS OF THE GOVERNMENT  
ON THE MERITS OF THE COLLECTIVE COMPLAINT

**European Roma Rights Centre & Mental Disability Advocacy Centre**  
**v. the CZECH REPUBLIC**  
*(no. 157/2017)*

PRAGUE

5 OCTOBER 2018

1. In response to the letter of 16 July 2018 regarding the above mentioned collective complaint lodged with the European Committee of Social Rights (“Committee”) by European Roma Rights Centre and Mental Disability Advocacy Centre (“complainant organisations”), in which the Committee transmitted to the Government of the Czech Republic the complainant organisations’ written response to the observations of the Government on the merits of the collective complaint (“observations of the complainant organisations” or “their observations”), the Government, maintaining their position expressed in their initial observations of 4 May 2018, wish to submit the following additional comments.

2. The Government recall that the complainant organisations contend that the Czech Republic does not comply with Article 17 of the 1961 European Social Charter (“Charter”), read in isolation or in conjunction with the prohibition of discrimination embodied in the Preamble to 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, especially those with disabilities and of Roma origin.

## ON THE MERITS

3. The Government note at the outset that they see no new relevant arguments concerning the alleged violation of the Charter in the complainant organisations’ response to the Government’s initial observations of 4 May 2018 (“Government’s initial observations”). In fact, all the main arguments had been mentioned in the collective complaint lodged with the Committee.

4. With that in mind, the Government deem it necessary briefly to comment on the following aspects.

**(i) As to the alleged routine placement and lack of alternatives to institutional care**

5. Firstly, the Government emphasize that children in the Czech Republic are not routinely placed in children centres. Quite the opposite, as follows from the Civil Code and the practice, institutional care in any form is only a measure of last resort in respect of all children. The Government refer to §§ 21 *et seq.* of their initial observations for details.

6. Moreover, the allegation of routine placement of children under the age of three in children centres and lack of alternatives to institutional care are one of the main arguments in the collective complaint and the same argument is repeated in § 4 of the observations of the complainant organisations. The idea of the collective complaint that Article 43 of the Health Care Act allows for routine placement in children centres is *per se* wrong. The legal provision of the Health Care Act cannot be considered separately, but necessarily in conjunction with the Civil Code that primarily governs family and institutional care. The Health Care Act

governs children centres for children under the age of three. However, the details of institutional care and preference of family care are enshrined in the Civil Code.

7. Therefore, the Government devoted so much attention and space in their initial observations to the description of the current legislation in §§ 12 *et seq.* and of the alternatives to institutional care in §§ 76 *et seq.* It is clear from the above that the complainant organisations' allegation that the Government have misinterpreted the substance of collective complaint and that an overview of provisions providing for substitute family care in the Czech Republic is irrelevant for the complaint does not reflect reality.

**(ii) As to harmful impact of institutionalisation and applicable human rights standards**

8. The complainant organisations claim that institutional care is *per se* harmful to children and that the Government in their initial observations omitted to refer to relevant international law standards.

9. Firstly, the Government are aware of the fact that the current professional consensus is that the institutional care of such small children may disrupt their development. Children in institutions have no specific caregiver, which is crucial at such a young age because it is through this person that the child makes contact with the outside world, and gains the sense of security. However, it must not be forgotten that it is very often a biological family that causes the greatest trauma to a child. Moreover, a child who cannot grow up in her/his biological family is always disadvantaged to a certain degree in comparison to a child living in her/his biological family.

10. Secondly, while the complainant organisations suggest that the mere existence of children centres is inconsistent with the Charter, the Government refer to § 74 of their initial observations and reiterate that the authority for the social and legal protection of children shall always assess individual circumstances of each child concerned and consider all available alternatives before choosing the most appropriate measure. Also, it must be taken into account that children centres provide variety of services (see § 34 below). According to the response by the children centres to the Government in July 2018 (see § 16 below), parents are always advised of alternatives before potential separation of a child from them and an ongoing support by a social worker is provided to them. Also, in the process of searching for alternatives, the principle of non-separation of sibling groups is respected.

11. Thirdly, as to the alleged failure to address relevant human rights standards the Government state that those standards and obligations to be derived from them by the Czech Republic are generally known. Moreover, these international standards are extensively described in the complaint. In their initial observations, the Government have concentrated on the legal and factual situation in the Czech Republic and on positive developments in the field of institutionalisation and alternatives to institutional care that have been recently made.

**(iii) As to statistical data on children placed in children centres**

*a) Introductory remarks on complainant organisations' claims*

12. The Government deem it necessary to comment on the complainant organisations' claim in § 3 of their observations that the Government disagreed with the official statistics and their interpretation.

13. Firstly, the Government emphasize that they do not question the data collected by a State authority, the Institute of Health Information and Statistics of the Czech Republic ("Institute"). However, the Government question the value of the data for the purposes of the complaint as they pursue different objective. They were collected by the Institute in order to determine the total number of children of all ages placed in children centres (institutionalised) including children staying there for other reasons (see § 38 of the Government's initial observations and below) for the use of the Ministry of Health, whereas the complainant organisations criticize the Czech Republic for institutionalisation of children under the age of three. Nevertheless, as stated above, the official statistics do not reflect only children under the age of three institutionalised in children centres. As already explained in the Government's initial observations, Article 43 of the Health Care Act contested by the complainant organisations provides for the possibility of placing not only children under the age of three, but also older children, in particular in case it is in child's best interest under his/her particular circumstances not to leave the environment he/she knows or not to be separated from his/her sibling(s) once he/she turns three. Therefore, the official statistics do not faithfully reflect the number of children under the age of three placed to children centres.

14. The number of children under the age of three placed in children centres has been smaller than shown by the official statistics because these facilities also serve older children and the statistics showed the number of all children using the services of such facilities, often only during the day (see above § 13). As stated in § 54 of the Government's initial observations, 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'. There is no data available as far as previous years are concerned. However, it is obvious that the same argument applies to these years – the official data does not contain information about the number of children under the age of three placed in children centres in the mode of the health service designated as 'children's homes for children under the age of three'. Therefore, it can be concluded that the number of admitted children is not in thousands but in hundreds.

15. Secondly, the above findings of the Government are supported by recent data collected by Lumos organisation. As stated above, in early 2018 there were 441 children under the age of three in children centres. The recent data of the Ministry of Health provided for the purpose of these additional observations shows that on 26 June 2018 there were 301 children in the mode of the health service designated as 'children's homes for children under the age of three' (see § 39 below).

16. Moreover, the Office of the Government Agent has contacted all children centres, regional councils and governmental departments in order to collect relevant data as for 20 July 2018. It follows from the response of the children centres that there were 296 children under the age of three on 20 July 2018.<sup>1</sup>

17. The above mentioned data shows that the number of children under the age of three placed in children centres has been constantly declining.

18. Furthermore, the complainant organisations allege that based on the official statistics (see above § 13) the institutionalisation of children under the age of three concerns predominantly Roma children and children with disabilities. However, their argumentation is not convincing as the official statistics do not support their allegation. The Government comment on it in details below (see §§ 19 *et seq.*).

*b) Children of Roma origin*

19. As regards the number of children of Roma origin placed in children centres, the Government are convinced that the interpretation of the official data by the complainant organisation is not correct. As stated in §§ 70–71 of the Government's initial observations, it follows from the enclosed chart that the number of children of Roma origin in the respective years was decreasing at a much faster rate than the number of all children. The complainant organisations themselves admit that the Government's calculation is correct (see § 22 of their observations).

20. Another question is of course the way of detecting Roma origin of children placed in children centres. It is very difficult to establish the Roma origin of children under the age of three with certainty. The official statistics are no help as the children centres that are the respondent have no instructions in this respect. The Government are convinced that there is no evidence in the complaint that could lead to a conclusion that Roma children under the age of three are overrepresented and therefore discriminated against as far as institutionalisation is concerned.

21. It is clear from the law and the long-time practice of other services as well as that of children centres, confirmed *inter alia* by answers from all children centres (see § 16 above), that the child protection system works on the basis of individual assessment and non-discrimination. Each and every child's individual situation is assessed with a view to use the most appropriate measure for him/her at the given moment and all alternatives are considered. Although sometimes it may be necessary to place a child into a children centre as a measure of last resort, the assessment is never based on criteria such as ethnic origin of the child or of his/her carers. Care within the child protection system is provided to all children in need according to their best interests and regardless of their ethnic origin or any other discriminatory grounds.

22. That is also why the data on Roma origin was deleted from the official statistics of the Institute for the following years and will no longer be collected as

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<sup>1</sup> The data are available upon request of the Committee.

the data could not be accepted as reliable and the amount was merely being identified for statistical purposes of the Institute as it otherwise does not make any difference, either in determining the form of care of the child, or the care provision itself.

23. On the contrary, the Government have demonstrated that the number of children of Roma origin in children centres was in a certain period declining even at a faster rate than the number of all admitted children. The number of Roma children under the age of three placed in alternative care is not unfortunately available as the Ministry of Labour and Social Affairs does not collect data on ethnicity in any manner (see § 68 of the Government's initial observations).

24. For the sake of completeness, the Government add that the Czech Republic regularly supports subsidy programs targeting Roma population. In 2017, 37 projects were supported in the total amount of CZK 10,946,416. For example, the subsidy program that support outreach work can be mentioned, or the subsidy program that prevents social exclusion and promotes community work.<sup>2</sup>

*c) Children with disabilities*

25. Firstly, the Government note that official statistics collect data on children with special needs. However, the complainant organisations talk about children with disabilities (the Government refer in full to §§ 60 *et seq.* of their initial observations for details). Therefore, it is essential to realize that disabled children are not the same category as children with special needs. In other words, data on children with special needs listed in the Institute's official statistics cannot be applied to children with disabilities, which is a much narrower category.

26. Under Article 43 of the Health Care Act children centres provide not only health services but also maintenance to children who are primarily ill-treated, neglected or abused and those whose development is at risk due to an inappropriate social environment, or children with disabilities (the Government refer to §§ 17–18 of their initial observations for details). It follows that children centres provide health and variety of other services not only for children with disabilities but for all children who are somehow neglected by their biological family.

27. As described above, there are no official statistics that would show the number of children with disabilities under the age of three placed in children centres.

28. Secondly, representatives of the Office of the Government Agent have recently visited two children centres with the largest capacity and the fact is that there are not many children with disabilities *stricto sensu*.

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<sup>2</sup> More information can be found in the 2017 annual report of the Government Council for Roma Minority Affairs (<https://www.vlada.cz/en/ppov/zalezitosti-romske-komunity/the-council-for-roma-community-affairs--50634/>); the Czech version is available at: <https://www.vlada.cz/cz/ppov/zalezitosti-romske-komunity/dokumenty/vyrocní-zpráva-o-cinnosti-rady-vlady-pro-zalezitosti-romske-mensiny-za-rok-2017-166470/>



29. Thirdly, the Government's view is strongly supported by the approach of the Lumos international organisation that was invited to submit observations on the complaint (see the Committee's letter to the Government Agent dated 28 August 2018). For its report published in April 2018 (see § 66 of the Government's initial observations) Lumos did not collect data on children with disabilities. If it were a real problem that would need attention, non-governmental organisation of that kind would surely do so. However, this has not been the case. On the contrary, in June 2018 research report called *Children in institutions for persons with disabilities*<sup>3</sup> clearly states that the exact number of children with disabilities in institutional care is not recorded in official statistics. In details the report states the following (page 6 of the research report):

- The total number of children with disabilities in institutional care is not recorded in official statistics. Most of them grow up in institutions for persons with disabilities (therefore, not in children centres).
- Small children (children under the age of three) with disabilities *may* be placed in children centres. There were 649 children residing in children centres at the beginning of 2018. However, it is not known how many of them live with disabilities. In this connection Lumos refers to its report published in April 2018. About 20 children a year are released from children centres to institutions for persons with disabilities. Therefore, the number of children with disabilities will probably not be in the order of hundreds (in children centres).

30. To conclude, it follows from the above that there are no official statistics that would count children with disabilities in children centres. Furthermore, the reality is that not many children with disabilities are placed in children centres. The alleged discrimination against children with disabilities is not based on any relevant arguments. The official statistics, the findings of the Government and research of the intervening organisation Lumos do not support the allegation of the complainant organisations. Under the current legislation, institutional care is only a measure of last resort in respect of all children, without discrimination.

*d) Recent data from the Czech Health Statistics Yearbook 2017*

- *Number of children centres*

31. According to the Czech Health Statistics Yearbook 2017 ("Yearbook 2017") issued by the Institute<sup>4</sup> the number of children centres in the Czech Republic is continuously declining.

32. In 2010, there were 34 children centres, in 2015 there were 31 and in 2017 there were no more than 28. In § 18 of their observations the complainant

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<sup>3</sup> The Czech version is available at [https://lumos.contentfiles.net/media/assets/file/DOZP\\_vyzkumna\\_zprava\\_lumos.pdf](https://lumos.contentfiles.net/media/assets/file/DOZP_vyzkumna_zprava_lumos.pdf)

<sup>4</sup> The Czech version is available at [https://www.uzis.cz/system/files/nzis\\_rep\\_2018\\_K33\\_A410\\_detske\\_domovy\\_pro\\_deti\\_do\\_3\\_let\\_veku\\_a\\_detska\\_centra\\_2017.pdf](https://www.uzis.cz/system/files/nzis_rep_2018_K33_A410_detske_domovy_pro_deti_do_3_let_veku_a_detska_centra_2017.pdf)

organisations comment on the number of institutions in 2018. The Government stated that the number dropped to 26 in 2018, on the basis of the report by Lumos of April 2018.<sup>5</sup> The Ministry of Health states that there are 27 children centres in 2018, but the apparent discrepancy can be explained by the fact that one children centre has two workplaces.

33. The number of places in children centres is also declining. While in 2010, there were 1,963 places, in 2011 children centres had 1,783 places, in 2013 1,638 places, in 2015 1,470 places and in 2017 1,309 places. Again, it must be borne in mind that these places are not intended only for children under the age of three.

34. That means that the number of places decreased by 87 from 2016 to 2017 and by 654 from 2010 till 2017.

35. Most importantly, it must be taken into account that some children centres have undergone extended transformation and the rest of them are in the extended transformation process and provide a variety of services not only in the mode of the health service designated as 'children's homes for children under the age of three'. That is why the number of places includes the total number of places for all types of services, e.g. among many, services for mothers to stay with children, and counselling (see § 38 of the Government's initial observations for details). They are also extending their activities closer to their clients in their natural environment and strengthen their outreach and ambulatory work. If, however, the placement of child in a children centre proves necessary, the environment obtaining there is close to a family environment, with only a limited number of children within a group.

- *Number of admitted children*

36. The Yearbook 2017 shows that in 2011 children centres admitted overall (see §§ 54 *et seq.* of the initial observations of the Government) 2,131 children, while in 2012 1,932 children, in 2013 1,740 children, in 2015 1,666 children, in 2016 1,559 children and in 2017 1,490 children.

37. It can be read from the Institute's statistics that out of the total number of children admitted in 2017 (1,490), 1,172 children were admitted subject to parents' consent, 256 children were admitted under a court's interim measure, and 62 children were admitted under a court's judgment ordering institutional care.

38. The 2017 statistics also show that almost half of children are discharged within two months after their admission to the children centre and over 20% of children are discharged in the range of 3 to 5 months; nearly three-quarters of children are discharged within 5 months after their admission and most of them are released into some form of alternative family care. The same pays to institutionalisation on the basis of parent's consent. In most cases, such a stay of a child

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<sup>5</sup> The Czech version of the respective report is available at <http://www.ditearodina.cz/images/Lumos.pdf>

takes a form of an urgent and short-term solution to a complicated situation in a family.

39. As to the age of children, the latest information by the Ministry of Health shows that on 26 June 2018 there were 682 admitted children in children centres in the mode of health service designated as ‘children’s homes for children under the age of three’. Out of them 301 children were indeed under the age of three. As can be seen, the number of children admitted to children centres dropped rapidly and on the mentioned date there were ‘only’ 301 children under the age of three in children centres. It can be compared to the statistics compiled by Lumos that show that in early 2018 there were 441 children under the age of three in children centres in the mode of health services designated as ‘children’s homes for children under the age of three’ (see § 54 of the initial observations of the Government).

40. Out of 301 children under the age of three, 113 children were admitted subject to parents’ consent and 188 children were admitted under a court’s judgment ordering institutional care.

41. To conclude, the Government are of the opinion that the complainant organisations’ claims based on the official statistics are unfounded as in the official statistics there is no data on the number of children under the age of three placed in children centres. Moreover, there is no data on the number of children with disabilities under the age of three placed in children centres. Finally, there is no data on the number of children with disabilities and children of Roma origin that would show discrimination of those groups of children.

## ON JUST SATISFACTION

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

43. The Government maintain their view that the Committee does not have the competence to decide about costs of the proceedings or to award any other financial compensation. The Government refer to §§ 103 *et seq.* of their initial observations for details.

## CONCLUSION

44. As to the merits of the collective complaint at hand, the Government made the following conclusions in their initial observations on the merits of the complaint of 4 May 2018.

- Firstly, there is no routine child institutionalisation as institutionalisation is only a measure of last resort in respect of all children with-

out discrimination of children with disabilities and children of Roma origin.

- Secondly, national law provides a number of alternatives to institutional care.
- Thirdly, the number of children under the age of three admitted to children centres has been declining.

45. Therefore, in line with the conclusions above, the Government propose holding that Article 17 of the Charter has not been violated either in isolation or in conjunction with the prohibition of discrimination on grounds of ethnic origin or state of health.

Vít A. Schorm  
Agent of the Government  
*(signed electronically)*

Vít  
Alexander  
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