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EUROPEAN SOCIAL CHARTER

Comments by the Forum for Human Rights
on the 18th National Report on the implementation of the
European Social Charter

submitted by

THE GOVERNMENT OF CZECH REPUBLIC

for the period 01/01/2016 – 31/12/2019

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CYCLE 2020

EUROPEAN SOCIAL CHARTER

NGOs' comments on the 18th national report on the implementation of the European Social Charter (ESC) submitted by the Government of the Czech Republic (reference period 2016 – 2019)

The reporting procedure to the European Committee of Social Rights (ECSR) relating to the provisions belonging to thematic group 2 on health, social security and social protection

CYCLE 2020

Submitted by:

Forum for Human Rights (FORUM)

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INTRODUCTION

1. The submission provides comments on the 18th national report of the Czech Republic under the reporting procedure to the European Committee of Social Rights ("ECSR") relating to the provisions belonging to thematic group 2 on health, social security, and social protection. This submission will focus on Article 11 of the ESC - the right to protection of health) in the specific context of forensic detention of persons with disabilities.
2. The submission has been written by Forum for Human Rights (FORUM). FORUM is an international human rights organisation active in the Central European region. It provides support to domestic and international human rights organisations in advocacy and litigation and leads domestic and international litigation activities. FORUM has been supporting many cases pending before domestic judicial authorities and before the European Court of Human Rights. FORUM authored and co-authored many reports and information for UN and Council of Europe bodies on the situation in the Central European region, particularly in Slovakia and Czechia. For more information, please visit www.forumhr.eu.

SPECIFIC COMMENTS

3. This submission concerns the right to health of persons with disabilities. It addresses the right to health in the forensic context, i.e. in the context of forensic detention of persons with disabilities.
4. The practice of forensic detention is a very complex and sensitive issue. The UN Committee on the Rights of Persons with Disabilities has identified all forms of involuntary commitment of persons with disabilities on healthcare grounds as a per se violation of the right of persons with disabilities to liberty and security guaranteed under Article 14 of the UN Convention on the Rights of Persons with Disabilities (*hereinafter* "the CRPD").¹ Therefore, the States have a clear obligation to search for and implement alternatives to forensic detention, that would be compliant with the CRPD and the human rights model of disability as defined by the UN CRPD Committee.² Nevertheless, at the same time, they must not lose sight of the people who are currently placed in forensic detention and of the conditions they are exposed to.
5. In Czechia, forensic detention may take two forms – (i) institutional treatment in a psychiatric hospital, and (ii) secure detention in a specialised protective facility. In this submission, we focus particularly on institutional forensic treatment. The reason is that in this particular context, the most serious concerns arise.

¹ A/72/55, para. 10.

² CRPD/C/GC/6, para. 9.

6. In 2019, the Ombudsperson's Office – serving also as the National Preventive Mechanism - published a report³ on institutional forensic treatment. The report is very critical, and, in this submission, we significantly rely on its findings. Considering many shortcomings and human rights concerns identified by the Ombudsperson, FORUM would like to draw the ECSR's attention to forensic treatment.
7. One of the main Ombudsperson's points concerns the insufficient legal framework for forensic treatment. The regulation is fragmented, there is no legal specification of the conditions to be met by facilities providing forensic treatment, the patient's rights and obligations are not covered comprehensively in the law and the requirement of cooperation on side of the patient involved is affected by flaws and ambiguities.⁴
8. Concerning the absence of comprehensive regulation of the patient's rights and obligations, the Ombudsperson criticised that some measures of interference with the patients' rights lack any legal basis and result in ambiguities in the practice of the treatment without the patient's consent.⁵ Czech law⁶ does not include procedural safeguards applicable in case the patient actively rejects the proposed treatment, thus the patient has no legal measures to object to the ordered treatment. This deficiency is even more serious regarding the fact that the Czech Criminal Code empowers the criminal court to transform institutional forensic treatment to security detention if, *inter alia*, the person "has repeatedly rejected examining or treating interventions".⁷ Furthermore, there is no effective monitoring in this regard.⁸
9. Another problematic issue regarding forensic treatment is the material conditions of the psychiatric facilities. Although, according to the

³ The Office of the Public Defender of Rights, Zpráva ze systematických návštěv 2019 (Reporting on systemic visits 2019), Ochranné léčení, omezovací prostředky a další témata (Forensic treatment, means of restrains and other topics), published 1. 2. 2019, available in Czech at: https://www.ochrance.cz/uploads-import/ESO/21-2016-NZ-MLU_SZ-ochranne_leceni.pdf [accessed 7/6/2021].

⁴ The Office of the Public Defender of Rights, Zpráva ze systematických návštěv 2019 (Reporting on systemic visits 2019), Ochranné léčení, omezovací prostředky a další témata (Forensic treatment, means of restrains and other topics), published 1. 2. 2019, available in Czech at: https://www.ochrance.cz/uploads-import/ESO/21-2016-NZ-MLU_SZ-ochranne_leceni.pdf [accessed 7/6/2021], p. 26-27.

⁵ The Office of the Public Defender of Rights, Zpráva ze systematických návštěv 2019 (Reporting on systemic visits 2019), Ochranné léčení, omezovací prostředky a další témata (Forensic treatment, means of restrains and other topics), published 1. 2. 2019, available in Czech at: https://www.ochrance.cz/uploads-import/ESO/21-2016-NZ-MLU_SZ-ochranne_leceni.pdf [accessed 7/6/2021], p. 26-27.

⁶ Section 88 (1) (a) of the Act No. 373/2011 Coll., on Specific Healthcare Services.

⁷ Act no. 40/2009 Coll., § 99 (5).

⁸ The Office of the Public Defender of Rights, Zpráva ze systematických návštěv 2019 (Reporting on systemic visits 2019), Ochranné léčení, omezovací prostředky a další témata (Forensic treatment, means of restrains and other topics), published 1. 2. 2019, available in Czech at: https://www.ochrance.cz/uploads-import/ESO/21-2016-NZ-MLU_SZ-ochranne_leceni.pdf [accessed 7/6/2021], p. 51-54.

Ombudsperson's findings, the material conditions of the visited facilities were mostly good or decent, there were wards with walk-through rooms housing multiple patients with extremely austere furnishing and sometimes even no bedside tables and the patients also have no privacy in sanitary facilities, one facility used fifteen-bed dormitories. In some wards, the Ombudsperson noted that staffing was inadequate to ensure a rich forensic treatment programme and secure care for patients with behavioural risks.⁹

10. The number of persons being placed in institutional forensic treatment is increasing every year. The Czech Republic however fails to systematically collect data on persons being placed under institutional forensic treatment. In 2018, the Ministry of Health carried out a survey and found out that during 18 months between 2017 and 2018 the number of those persons increased by 13 % (from 847 to 956).¹⁰ The reason for this increase may be the fact that the institutional forensic treatment is not strictly limited in time and lasts "as long as required by its purpose". Even though it may be imposed for 2 years at the maximum, before the expiration of this period it may be prolonged if the treatment has not been finished yet.¹¹

11. Instead of addressing the above-described deficiencies and focusing on more effective integration of persons under institutional forensic treatment into the community, the State concentrates predominantly on managing the capacities of institutional protective treatment. In its document elaborated as part of the "reform of the psychiatry," the Ministry of Health stresses the necessity to clearly identify the number of beds in psychiatric hospitals that are dedicated to persons under institutional protective treatment. In addition, the document proposes to create specialised units, including closed wards for the most serious cases without which the number of persons being placed in secure detention facilities may be increasing. Even though from the point of view of the current situation, all these efforts may be understandable, their impact on the increasing number of placed persons and the duration of the treatment may be very limited. A more comprehensive approach to the whole reform, requiring, *inter alia*, legislative amendments of the conditions under which the institutional forensic treatment may be imposed and carried out, seems to be necessary.

⁹ The Office of the Public Defender of Rights, Zpráva ze systematických návštěv 2019 (Reporting on systemic visits 2019), Ochranné léčení, omezovací prostředky a další témata (Forensic treatment, means of restrains and other topics), published 1. 2. 2019, available in Czech at: https://www.ochrance.cz/uploads-import/ESO/21-2016-NZ-MLU_SZ-ochranne_liceni.pdf [accessed 7/6/2021], p. 75-81.

¹⁰ Ministry of Health. Current State and Recommendations for Further Development of the Forensic Treatment Net. [Stávající stav a doporučení k dalšímu rozvoji sítě ochranného léčení]. published in August 2018. The Analysis is available in Czech at: https://www.mzcr.cz/wp-content/uploads/wepub/18368/40103/11_Priloha%2011_stav%20a%20ozvoj%20site%20OL.pdf [accessed 29/6/2021], p. 18.

¹¹ Act no. 40/2009 Coll., the Criminal Code, § 99 (6).

12. Considering the abovementioned shortcomings accompanying forensic treatment, a comprehensive revision of the whole system and the law regulating protective treatment is recommended.¹²

Recommendations:

The Czech Republic should urgently reform the existing system of forensic institutional treatment and adopt the necessary legislative amendments that would provide persons with disabilities under forensic treatment with appropriate safeguards, including safeguards against unnecessary and disproportionate non-consensual medical interferences with the person's integrity during the forensic treatment.

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¹² The Office of the Public Defender of Rights, Zpráva ze systematických návštěv 2019 (Reporting on systemic visits 2019), Ochranné léčení, omezovací prostředky a další témata (Forensic treatment, means of restrains and other topics), published 1. 2. 2019, available in Czech at: https://www.ochrance.cz/uploads-import/ESO/21-2016-NZ-MLU_SZ-ochranne_leceni.pdf [accessed 7/6/2021], p. 10-12.