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## **EUROPEAN SOCIAL CHARTER**

Comments submitted by  
the Coalition of Forum for Human Rights, Inclusion Czech  
Republic and the Counselling Centre for Citizenship, Civil and  
Human Rights concerning the 20th National Report on the  
implementation of the European Social Charter

submitted by  
**THE GOVERNMENT OF THE CZECH REPUBLIC**

Articles 7, 8, 16, 17, and 19  
for the period 01/01/2018 – 31/12/2021

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**CYCLE 2023**

# Comments on the 20<sup>th</sup> National Report on the implementation of the European Social Charter submitted by Czechia to the European Committee of Social Rights

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## Introduction

1. The submission provides comments on the 20<sup>th</sup> National Report on the implementation of the European Social Charter submitted by Czechia to the European Committee of Social Rights (*hereinafter* "ECSR") with a particular focus on issues relating to rights enshrined in Articles 16 and 17 of the 1961 Charter.
2. The submission is divided into five thematic parts which copies the questions raised by the ECSR to the Czech government. Under Article 16 it addresses **the right to adequate housing for families and the right to adequate support for families caring for their dependent relatives**, under Article 17 **the right to education as part of the problem of child poverty, specific issues relating to public protection of children, including the institutionalisation of children under 3 years of age, and the problematic aspects of dealing with young offenders**. Throughout the whole submission, we pay particular attention to children in vulnerable situations, namely **children facing poverty and social exclusion, Roma children, and children with disabilities**.
3. 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 several cases pending before domestic judicial authorities and before the European Court of Human Rights. FORUM authored and co-authored 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](http://www.forumhr.eu).
4. The submission has been supported by **Společnost pro podporu lidí s mentálním postižením v ČR, z. s. - Inclusion Czech Republic** and **Counselling Centre for Citizenship, Civil and Human Rights**.
5. **Inclusion Czech Republic** has been working for over fifty years for the rights of people with intellectual disabilities and their families. The organisation has over 7 000 members associated in 57 local associations in the fourteen regions of the Czech Republic. Inclusion Czech Republic provides expert opinions on changes and decisions made by authorities and institutions at all levels of public administration. The organisation points out discrimination and problems faced by people with intellectual disabilities and their families and pushes for changes that positively impact on their lives. It offers support for their mutual interaction, sharing of experiences, and solutions to the challenges they face and strives for people with intellectual disabilities to be taken by the whole society as equal citizens and to have the opportunity to participate in all areas of life. For more information, please visit: <https://www.spmPCR.cz/>.
6. **Poradna pro občanství, občanská a lidská práva – Counselling Centre for Citizenship, Civil and Human Rights** is an association founded by a group of lawyers and social workers in 1999. Since its inception, its legal programs have systematically focused on the legislative practice of adopting new laws affecting civil and human rights and their subsequent application. The Counselling Centre prepares reports and opinions on national government documents for

international human rights bodies (UN, Council of Europe) and the European Union (European Commission, European Union Agency for Fundamental Rights). The Counselling Centres provides its clients with free legal advice and legal representation, especially in the areas of promoting equal opportunities and non-discrimination, respect for family life (children's rights) and in cases of protection of human dignity. For more information, please visit: <https://poradna-prava.cz/cz/>.

## Article 16: The right of the family to social, legal, and economic protection

**b) Please provide updated information on the availability of adequate affordable housing for families and h) If the previous conclusion was one of non-conformity, please explain whether and how the problem was remedied. If the previous conclusion was deferred or conformity pending receipt of information, please reply to the questions raised: On Housing conditions for Roma families**

7. In its reply to the ECSR's question on the availability of adequate affordable housing for families, the government provides an overview of the projects implemented and the resources allocated, in general (pp. 18–19) and specifically concerning Roma (pp. 24–26). Although the State's efforts are unquestionably welcome, they may not be always adequate to address the precarious situation of families struggling with access to adequate housing. In particular, **they may not succeed to address the situation of those persons who face systemic discrimination** as defined by the UN Committee on Economic, Social, and Cultural Rights.<sup>1</sup> We would like to **focus specifically on the situation of Roma families** who definitely fall within the scope of minority groups who are victims of systemic discrimination in Czechia.<sup>2</sup>
8. When listing the supported projects on social housing in general (pp.18-19), the government implicitly confirms that **they grant the key role to the municipalities**. Municipalities are those whose practical steps define how effective those projects are and for whom. On the contrary, **the role of the persons and families in need of adequate housing is rather a passive one**. Instead of being rights-holders, they are **treated as beneficiaries of charity and are dependent on the discretion of the project promotor**. In other words, the project promotor decides who will be the beneficiary of the project and under what conditions. They thus create a space in which discriminatory attitudes can easily manifest themselves. And unfortunately,

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<sup>1</sup> „The Committee has regularly found that discrimination against some groups is pervasive and persistent and deeply entrenched in social behaviour and organization, often involving unchallenged or indirect discrimination. Such systemic discrimination can be understood as legal rules, policies, practices or predominant cultural attitudes in either the public or private sector which create relative disadvantages for some groups, and privileges for other groups.“ – E/C.12/GC/20, para. 12.

<sup>2</sup> The prevailing existence of systemic discrimination against Roma is confirmed every year in the government's annual report on the state of Roma minority. The 2020 and 2021 reports capture discriminatory statements by the Czech Public Defender of Rights whose office is also the equality body. The 2020 report is available in Czech at: <https://www.vlada.cz/assets/ppov/zalezitosti-romske-komunity/aktuality/Zprava-o-stavu-romske-mensiny-2020.pdf> and the 2021 report is available in Czech at: [https://www.vlada.cz/assets/ppov/zalezitosti-romske-komunity/aktuality/Zprava-o-stavu-romske-mensiny-2021\\_fin.pdf](https://www.vlada.cz/assets/ppov/zalezitosti-romske-komunity/aktuality/Zprava-o-stavu-romske-mensiny-2021_fin.pdf) [accessed 13 June 2023].

discriminatory attitudes are still common among the municipalities, especially if they are in regions structurally affected by destabilising poverty and social exclusion. When establishing programmes of social housing, municipalities thus not rarely tend to differentiate between groups in housing need and favour ones over the others labelled. **Single-parent families or senior citizens usually fall within the former while Roma families live in destabilising poverty within the latter.**

9. To demonstrate the existence of discriminatory attitudes of local municipalities we would like to remind the legislation effective between June 2017 and September 2021<sup>3</sup> which allowed municipalities to apply for the declaration of the so-called "benefit-free zones", i.e., zones in which the newly come inhabitants did not have the right to housing benefit. Many municipalities, especially in regions facing structural deficiencies and high rates of destabilising poverty and social exclusion used the legislation to prevent persons they found "undesirable" from immigrating to its territory and to expulse those already living there (this was possible in cases the families had time-limited rental contracts). **Roma families were particularly affected by those municipalities' policies.** We mention this example because even though the legislation was quashed by the decision of the Constitutional Court in August 2021<sup>4</sup>, it showed well that **many municipalities were not prepared to take responsibility for ensuring access to adequate housing to all groups in need of them and that Roma families belong among the most vulnerable.**
10. The government further mentions projects dedicated directly to social inclusion and the provision of adequate housing to Roma families (pp. 24–25). Neither of these projects which are implemented also by non-governmental organisations can be considered a systemic solution to the vulnerable situation of Roma families facing destabilising poverty since **they still cannot rectify the lack of legal entitlement to be provided with adequate and affordable housing in case of need.** As in the projects on social housing in general, even in the case of these projects focused specifically on Roma families (or at least partly) **the beneficiaries are fully dependent on the project promotor in whether the benefits of the project will be available in the place where they are living or would like to live or not.** Furthermore, in these projects, the provision of housing may be rarely connected with other obligations of the beneficiaries, at least in the form of enduring the provision of assistance by the project promotor **even in case the beneficiary does not feel a need for such assistance.**
11. Furthermore, it should not be overlooked that the natural consequence of the strategy relying on projects is **the violation of the principle of self-administration.**<sup>5</sup>

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<sup>3</sup> Act no. 111/2006 Coll., on aid in material distress, section 33d.

<sup>4</sup> Decision of the Constitutional Court of 24 August 2021, no. Pl. ÚS 40/17.

<sup>5</sup> Self-management has been thematised by French philosopher and sociologist Henri Lefebvre as a crucial part of his concept of the right-to-the-city referring to a form of radically democratic organisation of the public space. Lefebvre thus connected self-management with social integration/inclusion and combatting separation and exclusion. He used it to conceptualise what real participation of the concerned persons means: "Another obsessional theme is participation, linked to integration. This is not a simple obsession. In practice, the ideology of participation enables us to have the acquiescence of interested and concerned people at a small price. After a more or less elaborate pretence at information and social activity; they return to their tranquil passivity and retirement. It is not clear that real and active participation already has a name? It is called self-management." – Henri Lefebvre, *Right to the City*, p. 56.

Even though the State allocates significant funds for social housing of persons in vulnerable situations, **it does it through intermediaries – either municipalities or non-governmental organisations**. So, they are the ones who decide on the actual use of the funds and not directly the persons for whom the funds have been allocated. Those persons, on the contrary, may finally find themselves in a situation where they do not have any practical benefit from them if they are not chosen by the project promoters to participate in the project.

12. Finally, it is worth noting that the implementation of the projects is always dependent on the political representation of the relevant public entities, including the State and the municipalities. Thus, **the projects can never substitute for a legal entitlement of the person to adequate housing**. The project strategy is thus ineligible to effectively address the deficiencies in the fulfilment of the right to adequate housing on a systemic level.
13. Such a legal entitlement is, unfortunately, **missing under the Czech legislation as has been proven by the recent case-law of the Constitutional Court**. Recently, the Constitutional Court rejected a complaint issued by a Roma family concerning the municipality's failure to provide them with adequate housing within the municipality's system of municipal housing due to their origin.<sup>6</sup> The Constitutional Court held that under the valid Czech legislation, there was no legal provision instituting the right of the person to adequate housing and the corresponding municipality's obligation to ensure that right. The Constitutional Court refused the argument that section 35 (2) of Act no. 128/2000 on municipalities which lists the matters falling within the independent competence of the municipality and which also mentions, among others, meeting the need for housing, constituted such an obligation.<sup>7</sup>

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It is worth noting that the concept keeps progressively penetrating the international law of human rights, either as a deepening understanding of participation rights or as a requirement for self-management. The latter form appeared for instance in the disability rights, in concrete in the General Comment of the UN Committee on the Rights of Persons with Disabilities (hereinafter „the UN CRPD Committee“) no. 5 (2017) on living independently and being included in the community, i.e., in a context close to the one in which it was thematised directly by Lefebvre. The UN CRPD Committee connected the requirement for self-management with the provision of support services, namely personal assistance. In concrete, it stated that “persons with disabilities who require personal assistance can freely choose their degree of personal control over service delivery according to their life circumstances and preferences. Even if the responsibilities of “the employer” are contracted out, the person with a disability always remains at the centre of the decisions concerning the assistance, the one to whom any inquiries must be directed and whose individual preferences must be respected. ...” (CRPD/C/GC/5, para. 16 (d) (iv)). Although the context is different, the UN CRPD Committee's findings may still represent a fruitful inspiration for the requirement of self-management being one of the fundamental principles applicable in a situation the person is delivered a service or a benefit to fulfil their human rights.

<sup>6</sup> The decision of the Constitutional Court of 25 August 2023, no. II. ÚS 2533/20.

<sup>7</sup> “The independent competence of the municipality includes in particular the matters referred to in sections 84, 85 and 102, with the exception on issuing municipal ordinances. The municipality shall also, in accordance with local conditions and local customs, create the conditions for the development of social care and for meeting the needs of its citizens. This includes, in particular, meeting the needs of housing, health protection and development, transport and communications, information, education and training, general cultural development and the protection of public order.”

14. The Constitutional Court based its decision on **the Czech Charter of Fundamental Rights which in article 41(1) limits significantly the justiciability of economic, social, and cultural rights since it makes their implementation dependent on the relevant legislation.**<sup>8</sup> The Constitutional Court interprets the article as a so-called deferential provision, i.e., a provision defining the exclusive competence of the legislature leaving only minor space for the Constitutional Court to deal with social rights.<sup>9</sup> This was criticised by the UN Committee on Economic, Social and Cultural Rights which expressed in its Concluding Observations on Czechia of March 2022 its concerns “that article 41 (1) of the Charter can have an adverse impact on the enforcement of economic, social and cultural rights covered by its scope, taking into account the wider margin of appreciation of policies while implementing these rights.”<sup>10</sup>
15. In the cited case, the Constitutional Court considered the relationship between the applicants and the municipality as a horizontal one and not a vertical one. **Thus, the Constitutional Court argued that without legislation, it could not hold that the municipality had the obligation to provide the applicants with social housing and to enforce the applicants’ right to adequate housing.**
16. There is thus an **evident loophole** in the Czech legal system depriving the human right to adequate housing of **any practical and effective impact**. That adversely affects other human rights of persons living in precarious housing as admits the government itself. The Ministry of Regional Development mentions on its website that the lack of adequate housing has serious impacts on health, family life, or privacy since it limits the right of the child to education and has significant impacts on their future; makes children end up in alternative care; and makes victims of domestic violence stay with the common household with the perpetrator.<sup>11</sup>
17. As the government states in its report, it is currently preparing Housing Support Act (p. 19). Although the prepared legislation, if adopted, would be a big step forward **it still does not address the loophole making certain groups particularly vulnerable in the access to adequate housing.** As the government report mentions, it establishes contact centres, institutionalize support measures to mediate and maintain housing, and provides for other important instruments, but **the actual provision of housing is tied to the conclusion of a contract** and is thus controlled by the contractual freedom of the parties. The explanatory note explicitly states that **the law does not impose an obligation on municipalities** to ensure housing for their

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<sup>8</sup> “The rights referred to in Articles 26 [note: right to work and to do business and to free choice of profession], 27 (4) [note: right to strike], 28 to 31 [note: right to fair remuneration for work and to satisfactory working conditions, particular protection of women, children and persons with disabilities at work, right to social security, right to health], 32 (1) [note: protection of children and families] and (3) [note: equality of children born in and out of wedlock], 33 [note: right to education] and 35 [note: right to a favourable living environment] of the Charter may be invoked only within the limits of the laws implementing those provisions.”

<sup>9</sup> The Constitutional Court relies for this purpose on the so-called rational basis test which leaves a quite large scope of discretion to the legislature. Furthermore, the test does not require the State to take steps in a reasonable timeframe and use the maximum available resources to achieve measurable progress. It strongly protects only the essence of the right which the Constitutional Court defines rather statically.

<sup>10</sup> E/C.12/CZE/CO/3, para. 4.

<sup>11</sup> <https://mmr.cz/cs/ministerstvo/bytova-politika/bydleni-jako-jedna-z-hlavnich-priorit-vlady/zakon-o-podpore-v-bydleni> [accessed 13 June 2023].



citizens and that the final selection of the tenant and the renting of the apartment remains the responsibility of the provider, including the municipality.<sup>12</sup> The law strengthens **the doctrine of horizontal relationship between the municipality and persons in housing issues** which following the above-mentioned case-law of the Constitutional Court only undermines the enforceability of the right to adequate housing.

18. Furthermore, we would like to draw attention to the fact that the forthcoming legislation may have **disciplinary implications**. If adopted, it will allow the public administration – the newly established contact centres – to force a person to enter into an assistance contract, i.e., to use a social support service. **The decision of whether the person needs assistance or not will be at the discretion of the contact centre**. Since the law fails to enact any criteria in this regard, we argue that **there are no guarantees against the social-cultural bias of this mechanism**. We assume that it will be disproportionately used on persons belonging to cultural and ethnic minorities like Roma families and will serve their further social control.
19. In brief, we find it appropriate to characterise the prepared law as the legal institutionalisation of the mechanisms applied in the current projects, unfortunately, with all their problematic aspects. **It fails to treat persons in housing needs like rights-holders and enact an enforceable legal claim to be provided with adequate and affordable housing**. It empowers the intermediary organisations providing either guarantees or assistance more than the people in housing need themselves. Although it introduces a new system of public financing, **those funds will be provided specifically to intermediaries in the form of public contributions**. Since the person is not guaranteed that they will be provided with housing, **the law does not ensure that the resources allocated to satisfying their housing need bring them any benefit**.
20. To summarise, **the law empowers the organisations that provide guarantees to the owner more than the people in housing need themselves**. Thus, we assume that it may prove insufficiently effective in addressing the situation of people facing systemic discrimination like Roma families.

### **Specific information on the situation of families caring for their older relatives**

21. Although this information does not follow any of the questions raised by the ECSR and addressed in the government's report, we would like to focus briefly on **the vulnerable situation of families caring for their older members**. In our joint alternative report relating to the thematic group 2 on health, social security, and social protection submitted in June 2021, we informed the ECSR about **the massive institutionalisation of older persons in Czechia** caused, *inter alia*, due to the unequal support for institutional services at the expense of alternative solutions to the situation of dependency of older persons. We focused predominantly on the need for the development of outreach and community-based social care and healthcare services.

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<sup>12</sup> The explanatory report is available in Czech at: <https://odok.cz/portal/veklep/material/KORNCSAGX2IT/> [accessed 14 June 2023].



22. In this report, we would like to address **other causes of the still-growing institutionalisation of older persons in a situation of dependency in Czechia** which in our view fall within the ambit of Article 16. We argue that **a broad understanding of family should be adopted** so that the term covers not only the families raising underaged children but families in general as groups of persons related by intimate and legal relationships, including the maintenance obligations, and caring for each other. Indeed, the vulnerable situation of a family caring for children may not differ from that of a family caring for its older member who is also dependent on the support and care of the other. In both cases, the situation of vulnerability consists of **a disadvantaged position in the labour market, increased family expenses, and thus the increased risk of family poverty and social isolation**. In both cases, the carers are highly motivated to keep their family together and avoid giving up typical contact with their dependent relative. Finally, the loopholes in family support, i.e. support of informal care, are connected with the massive institutionalisation of older persons in Czechia and affect similarly families with children with disabilities.
23. In correlation with the lack of adequate outreach and community-based services, there is a massive institutionalisation of older persons in Czechia. The reason is also **the insufficient material support of informal carers, typically women**. The only social benefit addressing the financial situation of a family caring for a dependent member is the care allowance<sup>13</sup>, a specific social benefit designed for persons with disabilities. Unfortunately, there are several problematic aspects of care allowance.
24. First, it should be noted that the primary purpose of care allowance is to enable a person with a disability to purchase professional social support services. **Due to the lack of allowance for the caring person, the care allowance becomes an important family income financing necessities of life of the family**, especially in cases of a higher level of support when the informal carer has to leave the labour market. Then it cannot be spent on professional social support services, leading to **a vicious circle of family poverty, isolation, and exclusion**. The dependent family member does not have the opportunity to experience their independence and to have some activities outside their family and the informal carer is more and more busy with the care for the relative.
25. The government tried to address the situation of informal carers by an amendment to Act no. 187/2006 Coll. on sickness insurance, effective on 1 January 2018<sup>14</sup>, but **its effort was very limited from the outset**. The amendment introduced a new type of sickness insurance allowance called "long-term caregiver's allowance" [in Czech *dlouhodobé ošetřovné*]. The allowance is designed for employees or self-employed persons who take care of a relative after their hospitalisation that lasted more than 4 days,<sup>15</sup> under the condition that the relative is assessed to need further

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<sup>13</sup> This benefit is completed by a system of very specific benefits, namely mobility allowance, allowance for the purchase of special aids, and entitlement to a card of a person with a disability guaranteeing a person discount on public transport fares and potentially other benefits related to public services. Nevertheless, these social benefits are not relevant as a regular income to the family budget to provide for the family's basic living needs.

<sup>14</sup> Act no. 310/2017 Coll.

<sup>15</sup> Act no. 187/2006 Coll. on sickness insurance, section 41a § 2 (a).

care for at least 30 days.<sup>16</sup> The assessment is carried out by the hospital doctor responsible for the care during the hospitalisation. The condition of hospitalisation does not apply only in case the relative is in an incurable state requiring palliative care.<sup>17</sup> **The allowance may be provided for a maximum period of 90 days.**<sup>18</sup> During this period, the person cannot be dismissed from work<sup>19</sup> and their position is guaranteed.<sup>20</sup>

26. There are several issues of concern. First, **legal conditions are narrowing the group of allowance beneficiaries.** The allowance is designated only for those, who have been employed or self-employed at the relevant time before they started caring.<sup>21</sup> **This condition by itself can make many informal carers ineligible, despite their objective need for material support.** Second, even though explicitly called “long-term”, **it is actually “short-term”.** The allowance is designed to cover only a short period necessary to find an alternative solution. The explanatory note to the amendment is explicit. It states that “the proposed legal regulation ... addresses for a temporary period the long-term need to care ...”.<sup>22</sup> The third restrictive condition concerns the supported relative. The requirement of the previous hospitalisation, except for those who are in an incurable state requiring palliative care, **causes that the allowance targets those, whose health condition deteriorated immediately to such a degree that they required acute residential health care.** The explanatory report to the amendment is again explicit. It mentions that the objective is to tackle situations when a relative or another close person suffers an immediate deterioration of her health condition,<sup>23</sup> typically due to an injury or heart attack.<sup>24</sup> **Others, whose health condition deteriorated progressively, are very likely to drop out of the target group of the allowance.** Unfortunately, this is what usually happens **to older persons suffering from neurodegenerative diseases who are the group most endangered by institutionalisation.**
27. Second, **there is no assurance that the amount of care allowance will be sufficient to meet the dependent person’s needs.** The amount of the allowance depends on the person’s degree of dependency. There are 4 degrees of dependency, and the amounts in each degree may differ depending on whether the person is a child (a person under 18) or not. The highest amount, i.e., the amount for persons in a situation called directly by the law as a state of “full dependency”<sup>25</sup>, is CZK

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<sup>16</sup> Ibidem, section 41 a § 2 (b).

<sup>17</sup> Ibidem, section 41 a § 3.

<sup>18</sup> Ibidem, section 41 e.

<sup>19</sup> Act no. 262/2006 Coll., the Labour Code, section 53 1 (f).

<sup>20</sup> Act no. 262/2006 Coll., the Labour Code, section 47.

<sup>21</sup> The employees have to be employed for at least 90 days within 4 months immediately preceding the start of care, the self-employed persons have to pay their sickness insurance for at least 3 months immediately preceding the start of care.

<sup>22</sup> The explanatory report to the Act no. 187/2006 Coll. is available in Czech at: <https://www.psp.cz/sqw/text/tiskt.sqw?o=7&ct=1029&ct1=0> [cited 8 October 2020].

<sup>23</sup> Ibid.

<sup>24</sup> Information provided directly by the Minister of Labour and Social Affairs, Jana Maláčová, to the Czech Television for the purpose of the reportage broadcasted on 13 January 2019. The reportage is available in Czech at: <https://ct24.ceskatelevize.cz/domaci/2704871-cast-lidi-na-dlouhodobě-osetrovne-nedosahe-zjistili-po-pul-roce-poslanci> [cited 8 October 2020].

<sup>25</sup> Exchange rate of the Central European Bank of 7 June 2023: EUR 1 = CZK 23,625. Available at:

19.200 (EUR 812,7).<sup>26</sup> Although the service of early care is provided for free, other relevant social services that may support the family with a dependent relative with a disability and prevent the institutionalisation of the dependent relative such as personal assistance or nursing service are not. **The law only regulates the maximum price of their provision which varies depending on the type of support** (nursing service) or the total number of hours-of-service provision per month (both nursing service and personal assistance). Concerning the assistance with care and with contact with the social environment, the price is either CZK 135 (EUR 5,6) if the total number of hours per month exceeds 80 or CZK 155 (EUR 6,5) if not. Even if we take the minimum price of personal assistance or nursing service, **the maximum amount of care allowance granted in the situation of full dependency will suffice to purchase only 142 hours of the service a month, which means 4,7 hours of assistance per day.**<sup>27</sup> The legislation establishes the relation between the care allowance and price for the social service only in the case of residential institutions where it ensures that the care provided by the institution does not cost more than the amount of care allowance granted to the person.<sup>28</sup>

28. We thus find the Czech system of material support for families caring for their dependent relatives, including older persons, **obviously insufficient to ensure effective protection of the family against non-voluntary separation and poverty and independent living for their dependent relatives.** As mentioned above, this is equally relevant for the institutionalisation of older persons as children, including those of young age (see below paras. 66-69).

## Article 17: The right of mothers and children to social and economic protection

**b) Please provide information on measures taken to: i) child poverty (including non-monetary measures such as ensuring access to quality and affordable services in the areas of health, education, housing etc.) and ii) combat discrimination and promote equal opportunities for children from particularly vulnerable groups such as ethnic minorities, Roma children, children with disabilities, and children in care**

29. The government report is very laconic to the measures taken to address child poverty and combat discrimination against children in particularly vulnerable situations, including Roma children. It is limited to mentioning the existence of the National Action Plan 2022-2030 but it fails to specify the „whole range of measures to support children in five key areas – education, housing, health care, nutrition, and a general support framework“ (p. 27). As to combatting discrimination against children in vulnerable situations, it only mentions the existence of an educational programme for carers in one type of preschool care, namely the children's group.

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[https://www.ecb.europa.eu/stats/policy\\_and\\_exchange\\_rates/euro\\_reference\\_exchange\\_rates/html/eurofxref-graph-czk.en.html](https://www.ecb.europa.eu/stats/policy_and_exchange_rates/euro_reference_exchange_rates/html/eurofxref-graph-czk.en.html). [accessed 7 June 2023].

<sup>26</sup> The law defines the full dependency as a state when the child is not able to handle nine or ten necessities of life and requires everyday assistance, surveillance or care of another person due to their long-term condition. For an adult, number of necessities the person is not able to handle is eight or nine. – See Act no. 108/2006 Coll., on Social Services, section 8 § 1 (d) and § 2 (d).

<sup>27</sup> We count 30 days a month.

<sup>28</sup> Act no. 108/2006 Coll., on social services, section 73 § 4.

30. We find the information provided and the steps undertaken by the government significantly insufficient. We would like to focus specifically **on access to quality and affordable education, which is still very problematic, especially for children in vulnerable situations like children with disabilities, children facing destabilising poverty and social exclusion, and Roma children**. It is worth noting that recent research data confirms that **in Czechia, there is a very strong correlation between where and to what family the child is born and their educational outcomes**. A recent study prepared by renowned Czech sociologists shows that children who face poverty in Czechia are much more likely to have poor education outcomes than children living for instance in Estonia or Poland which are also post-communist countries. The educational system thus often becomes a tool for the reproduction of poverty.<sup>29</sup> Also the Ministry of Education confirms that there is a correlation between the child's abilities (mathematical preliteracy and phonemic awareness) and their socio-economic status. The Ministry has stated that "children from socially disadvantaged backgrounds perform worse on average. It has also been shown that the level of pre-literacy and pre-math skills is significantly better for children who attend kindergartens for longer (especially 3 years or more). This was also confirmed for socially disadvantaged children. Although the effectiveness of pre-school attendance on children's acquired skills cannot be considered a causal inference methodologically, a positive correlation is evident here."<sup>30</sup> Finally, the national strategic documents admit that in Czechia there is a very low intergenerational educational mobility and that "the socio-economic status of families today accounts for about 40 to 45% of the variance in mathematical, reading and science literacy test scores compared to the standard of about 30% in other European countries."<sup>31</sup>
31. We would like to address two issues, namely: 1) access to pre-school education in kindergartens for children in vulnerable situations; and 2) failure to implement a rights-based approach to education resulting in persisting segregation of children in vulnerable situations.

### **I) Access to pre-school education in kindergartens for children in vulnerable situations**

32. The Czech system of pre-school education in kindergartens **is still deficient in terms of availability and affordability. The capacities of kindergartens are still not sufficient, and the attendance therein involves considerable costs**. The introduction of obligatory last year of pre-school attendance associated with the exemption from the school fee addressed the problem of affordability of pre-school education only partially since the exemption does not include other fees, especially meal fees.

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<sup>29</sup> D. Prokop, V. Korbek, T. Dvořák, L. Marková, D. Gardošíková, J. Grossmann, J. Krajčová, D. Műnich, 'Nerovnosti ve vzdělání jako zdroj neefektivit' [Inequalities in education as a source of inefficiency], Summary analysis for Česká spořitelna Foundation, 2020. Available in Czech at: [https://drive.google.com/file/d/1rXqtU61XHqgro--5mOESo7zwAJKrJ\\_-q/view](https://drive.google.com/file/d/1rXqtU61XHqgro--5mOESo7zwAJKrJ_-q/view). [accessed 15 June 2023].

<sup>30</sup> Response of the Ministry of Education at the FORUM's request sent by e-mail in September 2022.

<sup>31</sup> The Strategy of the Czech Republic's Educational Policy until 2030+, p. 45. The Strategy is available in English at: [https://www.msmt.cz/uploads/brozura\\_S2030\\_en\\_fin\\_online.pdf](https://www.msmt.cz/uploads/brozura_S2030_en_fin_online.pdf). [accessed 15 June 2023].

33. Although there exist some mechanisms to make pre-school attendance affordable for low-income children and families, **they still do not bring a systemic solution and do not ensure that they will be available for every child who needs financial support to be able to attend kindergarten.** First, the legislation exempts the child's family from the obligation to pay the attendance fee if the child's parent is a beneficiary of a recurrent social benefit for persons in material distress (substance allowance and/or supplement for housing) if the child or the child's parent has a disability or when the child is placed in foster care.<sup>32</sup> This legislation is completed by the power of the director of the kindergarten to reduce or waive the fees associated with the child's attendance at the kindergarten which is, however, **formulated in very general terms and its exercise is thus fully dependent on the director's discretion.**<sup>33</sup> It is worth noting that this legislation has already been effective at the time of the implementation of research of 2015 which identified the attendance fee as one of the major financial barriers (together with the meal fee) in access to pre-school education for children facing poverty and social exclusion.<sup>34</sup> These findings may show the practical limits to the effectiveness of the cited legislation which may not be appropriate for all families who face poverty and social exclusion, including Romani families. Especially Romani families may be particularly vulnerable in this regard since **Romani families living in socially excluded localities identify economic reasons as the major barrier in the access to kindergartens.**<sup>35</sup> This may

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<sup>32</sup> Ministerial Decree no. 14/2005 Coll., on Pre-School Education, section 6 § 6 (a) – (d).

<sup>33</sup> Act no. 561/2004 Coll., the Education Act, section 123 (4). The Commentary on the Education Act comments on the cited power of the facility's director as follows: "Therefore, there are no specific procedural rules that principals of schools and educational establishments must respect when making this decision. This fact implies a certain legal uncertainty for the participants in education, as it is not guaranteed that the directors of schools and school establishments established by the state, a region, a municipality, or a union of municipalities will make the same decisions in similar cases (...). The power of the director of a school or educational facility to reduce or waive fees is defined very broadly in Section 123(4) of the Education Act. (...) The head of a school or educational facility is therefore entitled to decide to reduce or waive fees, (...). However, the fee may also be reduced in cases that are not explicitly mentioned in Section 123(4) of the Education Act. It is therefore up to the discretion of the head of the school or educational establishment in which specific cases he/she will use his/her powers." – See Katzová, P. Section 123. In: Katzová, P. 'Školský zákon: Komentář.' [Education Act. Commentary] [ASPI System]. Wolters Kluwer [accessed 9 March 2022]. ASPI\_ID KO561\_2004CZ. Available at: [www.aspi.cz](http://www.aspi.cz). ISSN 2336-517X.

<sup>34</sup> The research showed that the research was conducted among 175 mothers of whom 41 % (approximately 72 mothers) sent at least one of their children to kindergartens. 41 % of those mothers (approximately 30 mothers) confirmed that the attendance of their children was expensive for them but that they were still able to pay somehow pay it. 82 % of those mothers whose children did not attend kindergartens (approximately 84 mothers) mentioned that the attendance at kindergartens was too expensive, addressing allowance fees (76 mothers) and meal fees (77 mothers) as the biggest financial burden. – See Hůle, D., Kaiserová, I., Kabelová, K., Mertl, J., Moravec, Š., Svobodová, K., Šfastná, A. et al. 'Zavedení povinného posledního roku předškolního vzdělávání před zahájením školní docházky (Studie proveditelnosti)' [Introduction of a compulsory final year of pre-school education before starting compulsory school attendance (feasibility study)], Společnost Tady a teď, o. p. s., Demografické informační centrum, o. s., 2015, pp. 96-97. The Study is available in Czech at: [http://tadyated.org/wp-content/uploads/2015/10/studie\\_1\\_final.pdf](http://tadyated.org/wp-content/uploads/2015/10/studie_1_final.pdf) [accessed 15 June 2023].

<sup>35</sup> „For Romani families, the financial demands of pre-school education play a dominant role, which non-Romani families hardly mention it among the barriers. The financial aspect of the matter is thus a major obstacle for Roma than for their majority counterparts living near socially excluded localities." GAC spol. s r. o., 'Analýza sociálně vyloučených lokalit v ČR' [Analysis of

suggest that the directors are not exercising their power as regards the reduction of exemption from the fees associated with the child's attendance at the kindergarten. **Such attitudes of the directors would correspond to the generally disadvantageous attitude towards Roma in Czech society, including the education system.**

34. Concerning the meal fees, there are further two State programmes implemented by the Ministry of Labour and Social Affairs and the Ministry of Education. Although both programmes have an undeniably positive effect on children facing poverty and social exclusion, **it is questionable if they are sufficient to ensure the affordability of pre-school education in kindergartens.** Both programmes have significant limits in that they both lack direct accessibility for children and their families. Concerning the programme run by the Ministry of Labour and Social Affairs as part of FEAD, the child may become a beneficiary of a free meal at kindergarten (or another school facility) only on the condition that the kindergarten joins the project, and the region applies to the Ministry (since 2019 all regions participate in the programme). Concerning the programme of the Ministry of Education, **children may be supported only through kindergartens, non-governmental organisations, or municipalities which are the only eligible applicants for the programme's call.**<sup>36</sup> The child's family must apply for support from the kindergarten or non-governmental organisation which participates in the programme. In addition to this condition, the child's family must fall into one of the two categories defining the target group of the programme: 1) children with social disadvantages; and 2) children whose families find themselves in a long-term or temporary unfavourable financial situation. The definitions of both target groups make children and their families dependent on the discretion of kindergartens directors or other organisations – beneficiaries of the call.<sup>37</sup>

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socially excluded localities in the Czech Republic], 2015, p. 75. The analysis is available in Czech at:

[https://www.gac.cz/userfiles/File/nase\\_prace\\_vystupy/Analiza\\_socialne\\_vyloucenych\\_lokalit\\_GAC.pdf](https://www.gac.cz/userfiles/File/nase_prace_vystupy/Analiza_socialne_vyloucenych_lokalit_GAC.pdf). [accessed 15 June 2023].

<sup>36</sup> Cited according to the Ministry of Education's Call for applications "Support for children's participation in pre-school education for the year 2023" (ref.: MSMT-33712/2022-3), Article 4. The call is available in Czech at: <https://www.msmt.cz/file/59310/> [accessed 15 June 2023].

<sup>37</sup> The only category which is not dependent on the discretion of kindergartens directors or non-governmental organisations is children whose families are exempted from paying the attendance fee (see above para. 31). Otherwise, the assessment of kindergartens directors or non-governmental organisations – beneficiaries of the call is crucial. Children with social disadvantages are children:

- 1) living in an environment where there is insufficient long-term support to prepare for education (e.g. due to insufficient material facilities, inadequate housing conditions, time-consuming transport to kindergarten, lack of interest on the part of parents, family conflicts); and/or
- 2) living in socially excluded localities or localities of social exclusion at risk, in a family with a low socio-economic status; and/or
- 3) who are disadvantaged because they belong to an ethnic or national group or have a specific social background, in particular, if the disadvantage is linked to a lack of knowledge of the language of instruction, due to the use of a different language or a specific form of the language of instruction in the child's home.

Children whose families find themselves in a long-term or temporary unfavourable financial situation are children:



35. **Insufficient capacities of kindergartens further complicate the situation of Roma children and/or children facing destabilising poverty and social exclusion.** An analysis of the availability of early childhood care and education facilities prepared by the Ministry of Labour and Social Affairs in January 2020 showed that **the regions suffering from structural problems (Ústí nad Labem Region, Moravian-Silesian Region, and Karlovy Vary Region), including the existence of the greatest socially excluded localities<sup>38</sup>, and with a high proportion of Roma population<sup>39</sup> are those with the lowest representation of young children in kindergartens.**<sup>40</sup> The authors of the analysis explain this finding by either “enormous lack of capacity of kindergartens” or lower motivation of the parents to use these facilities for their children.<sup>41</sup> The authors of the study note that it is not possible to determine which of these two factors play the role<sup>42</sup> but we may put their findings in the context of other findings. **The 2015 analysis of socially excluded localities in the Czech Republic confirms the insufficient capacity of kindergartens in these areas** when stating that “children from socially excluded families and ordinary families in attendance at kindergartens limit the capacity of nearby kindergartens. In rural areas, the barriers mentioned include the fact that in the vicinity of socially excluded localities, there is no readily accessible kindergarten. Another barrier is the readiness of pre-school facilities to accept children from disadvantaged backgrounds.”<sup>43</sup>

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- 1) for whom the director has already decided on the reduction of the meal fee or the family's exemption from the obligation to pay for meals according to the Education Act, § 123 (4);
  - 2) whose family financial situation corresponds to the conditions defined in ministerial decree no. 14/2005 Coll., § 6 (6), and the family is thus exempted from paying the attendance fees;
  - 3) whose family's financial situation does not allow the child to participate in activities within the school's educational programme that require the child's financial participation (swimming, outdoor schools, theatre, exhibitions, etc.).

Cited according to the Ministry of Education's Call for applications “Support for children's participation in pre-school education for the year 2023” (ref.: MSMT-33712/2022-3), Article 6 (3) and (4). The call is available in Czech at: <https://www.msmt.cz/file/59310/> [accessed 15 June 2023].

<sup>38</sup> See the map of socially excluded localities in the Czech Republic in the 2015 analysis - GAC spol. s r. o., ‘Analýza sociálně vyloučených lokalit v ČR’ [Analysis of socially excluded localities in the Czech Republic], 2015, p. 35. The Karlovy Vary and Ústí nad Labem Regions are situated in the North-West and Moravian-Silesian Region in the North-East of the Czech Republic. The analysis is available in Czech at:

[https://www.gac.cz/userfiles/File/nase\\_prace\\_vystupy/Analýza\\_sociálně\\_vyloučených\\_lokalit\\_GAC.pdf](https://www.gac.cz/userfiles/File/nase_prace_vystupy/Analýza_sociálně_vyloučených_lokalit_GAC.pdf) . [accessed 15 June 2023].

<sup>39</sup> The 2015 analysis of socially excluded localities in the Czech Republic indicates that “in more than half of socially excluded localities, the majority are Romani”. - Ibid., p. 6.

<sup>40</sup> T. Zyanová, K. Janhubová, ‘Analýza dostupnosti zařízení péče o děti v předškolním věku. Se zaměřením na mateřské školy a dětské skupiny’ [Analysis of the availability of early childhood care and education facilities. With a focus on kindergartens and child groups]. Ministry of Labour and Social Affairs, 2020, p. 22. The Analysis is available in Czech at:

[http://www.dsmpsv.cz/images/ke\\_stazeni/Anal%C3%BDza\\_dostupnosti\\_za%C5%99%C3%ADzen%C3%AD\\_p%C3%A9%C4%8De\\_o\\_p%C5%99ed%C5%A1koln%C3%AD\\_d%C4%9Bti.pdf](http://www.dsmpsv.cz/images/ke_stazeni/Anal%C3%BDza_dostupnosti_za%C5%99%C3%ADzen%C3%AD_p%C3%A9%C4%8De_o_p%C5%99ed%C5%A1koln%C3%AD_d%C4%9Bti.pdf).

<sup>41</sup> Ibid., p. 21.

<sup>42</sup> Ibid., p. 21.

<sup>43</sup> GAC spol. s r. o., ‘Analýza sociálně vyloučených lokalit v ČR’ [Analysis of socially excluded localities in the Czech Republic], 2015, p. 75. The analysis is available in Czech at:



36. The vulnerability of children and families caused by the insufficient capacities in kindergarten is further exacerbated by **their weak legal position**. According to the current national legislation, the child has a legal claim to be admitted to pre-school education at kindergarten if they are over 3 and their place of permanent residence is at the catchment area of the specific kindergarten.<sup>44</sup> The problem is twofold: **1) the criterion of permanent residence may not be adequate for children facing poverty and social exclusion, and 2) the insufficient capacity of the kindergarten is a legitimate reason for rejecting the child's admission except for the last obligatory year.**
37. The inadequacy of the criterion of permanent residence for children facing poverty and social exclusion, including Roma children, **is closely connected with the systemic deficiencies in ensuring the right of these children and their families to adequate housing**. These children and their families often live in another place, not rarely quite removed from their place of permanent residence.
38. The fact that the criterion of the place of permanent residence may not be adequate for certain groups of children, especially the above-mentioned one, **is reflected in several national documents**. The Office of the Public Defender of Rights has pointed out in its 2020 monitoring report on the right to equality and protection against discrimination that the capacities of kindergartens are not sufficient in many localities which causes that either certain children do not have the opportunity to attend them or there are too many children in one class which may negatively affect the quality of pre-school education. The Office has further emphasised the specific situation of Romani children when stating that “[t]his more general problem is connected to the **problem of catchment areas**, which directly affects Romani children. Many of them have their place of permanent residence in a different municipality than where they actually live. However, according to the law, the catchment kindergartens are linked to the place of permanent residence. **Kindergartens in the vicinity of the actual residence, which are the most accessible for parents in terms of territory and finances (but not in terms of catchment area due to the difference between formal and actual residence, may not accept the child (e.g., due to full capacity).**”<sup>45</sup>
39. The inadequacy of the criterion of the place of permanent residence is addressed also in the Task Part of the Strategy of Roma Equality, Inclusion, and Participation (Strategy of Roma Integration) 2021-2030, but only concerning Romani children in the age of compulsory pre-school attendance. The Strategy reminds us that **the criterion may constitute a significant barrier to the participation of Roma children in compulsory pre-school education in the form of attendance at kindergartens**. In concrete, the Strategy states that “many of the Romani 5-year-olds have their

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[https://www.gac.cz/userfiles/File/nase\\_prace\\_vystupy/Analyza\\_socialne\\_vyloucenych\\_lokalit\\_GAC.pdf](https://www.gac.cz/userfiles/File/nase_prace_vystupy/Analyza_socialne_vyloucenych_lokalit_GAC.pdf).

<sup>44</sup> Act no. 561/2004 Coll., Education Act, section 34 § 3.

<sup>45</sup> Office of the Public Defender of Rights, ‘Naplnování práva na rovné zacházení a ochrany před diskriminací. Monitorovací zpráva 2020’ [Implementing the right to equal treatment and protection against discrimination. 2020 Monitoring report], 2021, p. 26. The report is available in Czech at:

<https://www.ochrance.cz/uploads-import/ESO/62-20-DIS-DJ-monitorovac%C3%AD%20zpr%C3%A1va.pdf>.

permanent residence in a different place than they are currently residing in. They are therefore not entitled to priority admission to the catchment kindergarten in their place of actual residence. Kindergartens that are the most accessible to parents in terms of territory and finances but are not in the catchment area due to different permanent and actual residence, may not admit the child, e.g., due to full capacity.”<sup>46</sup>

40. We should add that **the admission of the child to a kindergarten during the school year is at the discretion of the kindergarten’s director even in case the child is over 3 and has a place of permanent residence in the kindergarten’s catchment area.**<sup>47</sup>

This legislation may also prove inadequate to meet the needs of children facing destabilising poverty and social exclusion, including Roma children, whose families migrate during the year due to the persistent housing problem in Czechia.

41. It is thus not surprising that **Roma children are underrepresented in pre-school education in kindergartens.** The situation is better in the compulsory last year of pre-school education even though Roma children are still underrepresented compared to children from the majority population. The Strategy of Roma Equality, Inclusion, and Participation (Strategy of Roma Integration) 2021-2030 stated that “in the school year 2018/2019, according to the qualified estimates of the Ministry of Education (...), 3,57 % of the total number (125.498) of children who were required to attend pre-school education were Romani children, which is lower than the representation of Romani children at primary schools (3,7 %). (...) Thus, if we assume that demographically there have been no significant changes, the participation rates of Romani children in pre-school and primary education should be equal or be at least similar.”<sup>48</sup> The proportion of Romani children in non-compulsory pre-school education is even lower – only about 1,37 % in the school year 2018/2019.<sup>49</sup> This has been also confirmed by the latest data contained in the Government’s Report on the Execution of the Judgment *D.H. and Others v. the Czech Republic* which mentions that according to the qualified estimates for the school year 2020/2021, there were 6.964 Romani children at kindergartens of whom 4,197 (60,4 %) were over five and thus at the age of compulsory pre-school education and only 2.717 (39,2 %) were under five.<sup>50</sup> Compared to the total number of children under five in kindergartens in the school year 2020/2021 (230.155<sup>51</sup>), Romani children represented only 1,2 %.

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<sup>46</sup> The Strategy of Roma Equality, Inclusion and Participation (Strategy of Roma Integration) 2021 – 2030, The Task Part, Strategic Objective C.1. The Task part is available in Czech at: [https://www.vlada.cz/assets/ppov/zalezitosti-romske-komunity/aktuality/05-Strategie-romske-rovnosti--zacleseni-a-participace-2021---2030---ukolova-cast\\_2.pdf](https://www.vlada.cz/assets/ppov/zalezitosti-romske-komunity/aktuality/05-Strategie-romske-rovnosti--zacleseni-a-participace-2021---2030---ukolova-cast_2.pdf).

<sup>47</sup> Act no. 561/2004 Coll., Education Act, section 34 § 7.

<sup>48</sup> ‘Strategie rovnosti, začlenění a participace Romů (Strategie romské integrace) 2021-2030’ [Strategy of Roma Equality, Inclusion and Participation (Strategy of Roma Integration) 2021-2030], p. 48. The Strategy is available in Czech at: [https://www.vlada.cz/assets/ppov/zalezitosti-romske-komunity/aktuality/Strategie-rovnosti--zacleseni-a-participace-Romu-2021---2030---textova-cast\\_OK\\_2.pdf](https://www.vlada.cz/assets/ppov/zalezitosti-romske-komunity/aktuality/Strategie-rovnosti--zacleseni-a-participace-Romu-2021---2030---textova-cast_OK_2.pdf).

<sup>49</sup> Ibid., p. 48.

<sup>50</sup> Report of the Czech government on the execution of the judgment *D.H. and Others v. the Czech Republic* of 30 September 2021, available at: [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectId=0900001680a41672](https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680a41672).

<sup>51</sup> See the Statistical Yearbook of the Ministry of Education, Youth and Sports, table no. B1.4.1, for the school year 2020/2021. Available in Czech at: <https://statis.msmt.cz/rocnka/rocnka.asp>.

42. **Children with disabilities are in a similarly vulnerable situation as concerns the access to pre-school education.** The Education Act makes their admission to kindergarten dependent on a statement from the school counselling centre and eventually also from the child's practitioner.<sup>52</sup> **The law fails to specify when the director is empowered to reject the family's application for the child's admission.** The legal position of the child and their family is thus very weak since they lack any legal entitlement in this regard.
43. The National Action Plan 2022-2030 mentioned by the government in its report sets the extension of kindergartens' capacities as one of its objectives and states that particular attention will be paid to regions with insufficient availability of them. Unfortunately, it fails to concretise how much the capacities will be extended, it only states that the extension will respect the individual needs of the regions.<sup>53</sup> Furthermore, it completely fails to address the other problematic aspects relating to the availability and affordability of pre-school education for children in vulnerable situations described above. In other words, **it does not plan to rectify the weak legal position of children in vulnerable situations and their families and to provide them with clear legal entitlements to both the availability and affordability of pre-school education in the place where they actually live.**

## **II) Failure to implement a rights-based approach to education resulting in persisting segregation of children in vulnerable situations**

44. The other issue we would like to address relates to primary education, but its very roots are similar to the deficiencies of the system of pre-school education. It is the weak legal position of children and their families that results in **persisting segregation of children in vulnerable situations, especially children facing destabilising poverty and social exclusion, Roma children, and children with disabilities.**
45. Despite all the legislative efforts adopted in recent years, most importantly the amendment to the Education Act no. 82/2015 Coll. introducing a new system of support measures in education<sup>54</sup>, **Czechia still fails to make its educational system rights-based.** The system is heavily built on the discretion of the representatives of the education system and school maintainers while the child and their families have few enforceable legal rights.
46. The disability rights seem suitable to conceptualise those deficiencies as **the predominance of the medical (or in more general terms expert) model over the rights-based model.** This is well apparent in the mechanism of granting supporting measures to children in vulnerable situations which is **completely dependent on the expert assessment of the child's needs while the child and their family play only a passive role in the whole process.** Even though the provision of the support measure is dependent on the informed consent of the child's legal representatives,

<sup>52</sup> Act no. 561/2004 Coll., Education Act, section 34 § 6.

<sup>53</sup> The objective A.1.2.1, p. 90. The Action Plan is available in Czech at:

<https://www.mpsv.cz/documents/20142/225508/Ak%C4%8Dn%C3%AD+pl%C3%A1n+k+napl%C4%9Bn%C3%AD+Z%C3%A1ruky+pro+d%C4%9Bti+na+obdob%C3%AD+2022-2030.pdf/99eb1c67-62d7-830b-5144-5e12d82f1447> [accessed 15 June 2023].

<sup>54</sup> Act no. 561/2004 Coll., Education Act, sections 16–16b.

**neither the child nor their legal representatives are included in the assessment of what support measure would be suitable for the child.** This conflicts with the rights of the child not to be discriminated against and to be provided with reasonable accommodation. The UN CRPD Committee emphasised **that a dialogue with the entitled person must constitute a crucial point in determining how reasonable accommodation should look.**<sup>55</sup>

47. Although the concept of reasonable accommodation is currently explicitly used predominantly with respect to the rights of persons with disabilities, we argue that **its validity is universal and there is no reason to exclude other vulnerable groups who may also need to adapt their environment like for instance children facing destabilising poverty and social exclusion, including Roma children.** The requirement that determining the reasonable accommodation in the concrete case is based on dialogue with the person is nothing else than **a reflection of a more general right to participation** (guaranteed with respect to children also in Article 12 of the UN Convention on the Rights of the Child), directly associated with **human dignity and the position of the person as a subject of rights and not an object of care and charity.**
48. The disability rights movement has succeeded in conceptualising the medical or in general the expert view of the man as **a form of socio-cultural domination and the importance of human voice as the most effective protection against this domination.** The perspective given by the dichotomy of the medical (expert) model of disability and the social or human rights model of disability<sup>56</sup> seems to be suitable to **explain discriminatory schemes and practices still present in the Czech educational system against children in vulnerable situations.** This applies not only to children with disabilities but also children facing destabilising poverty and social exclusion, including Roma children. We argue that the prevalence of the expert model of addressing their vulnerability in the educational system brings to the system **oppressive elements in the form of establishing hierarchical relationships between the representatives of the system and children and their families.** The logical consequence of these relationships is **a wide space of discretion for the former and a lack of legal entitlements for the latter.** Children and their families thus lack appropriate instruments to conceptualise the socio-cultural bias they are victims of and to combat it.
49. We argue that the failure to take into account the outlined conceptual background is **the reason why despite all the efforts adopted in recent years, Czechia has still not succeeded in rectifying the situation of Roma children** addressed already in the decision of the Grand Chamber of the European Court of Human Rights in the case of *D.H. and Others v. the Czech Republic* of 13 November 2007, complaint no. 57325/00. As shown by the latest Government's report to the Committee of Ministers of the Council of Europe submitted in October 2021, **Roma children remain disproportionately overrepresented, compared to their total number in the population, both in special schools or classes as well as among children who are educated according to a modified educational programme for primary education for children with intellectual disabilities (so-**

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<sup>55</sup> CRPD/C/GC/6, para. 24 (b).

<sup>56</sup> We are aware of the distinction that appears in academic literature, but we believe that in this context it is not significant.

called “with lower demands for learning outcomes because of mild mental disabilities”).<sup>57</sup>

50. Furthermore, there appear new forms of discrimination against Roma children. They take place under the guise of involving Roma children in mainstream schools and educating them under the mainstream educational programme. We are referring especially to **the reorganisation of school districts to make them correspond to the spatial segregation of the Roma population and establish mainstream schools attended exclusively or predominantly by Roma children.** Children educated in these mainstream schools with the majority of Roma children are not only segregated from the majority population but also provided with **education of significantly lower quality.** The research conducted by the Office of the Public Defender of Rights found that “the schools with the majority of Roma pupils do not provide their pupils with the same educational opportunities as schools with mixed collectives.”<sup>58</sup>

51. These developments show well that an effective solution to structural discrimination against children in vulnerable situations cannot be found without **radically changing the paradigm of the expert model for a rights-based one** with the child being the active agent with enforceable legal entitlements to quality and inclusive education regardless of the vulnerability of their situation. Unfortunately, such a fundamental reform of the very core principles of the educational system **is not foreseen by the current strategies,** not even the Action Plan mentioned by the government in its report.

### **c) Please provide information on any measures adopted to protect and assist children in crisis situations and emergencies**

#### **l) Institutionalisation of children of young age**

52. Czechia still has **a high number of children who are separated from their families<sup>59</sup> and a high number of children placed in institutional care<sup>60</sup>,** including very young children. The ECSR addressed the practice of institutionalising young children in one type of institution, namely children’s homes for children up to 3 years of age (so-called “children centres”), and the relevant legislation in its decision on the merits of the collective complaint *European Roma Rights Centre (ERRC) and Mental Disability Advocacy Centre (MDAC) v. the Czech Republic* of 17 June 2020, no. 157/2017. In the decision, the ECSR held unanimously that Czechia violated

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<sup>57</sup> The Government’s report is available at:

[https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectId=0900001680a41672](https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680a41672) [accessed 5 January 2022].

<sup>58</sup> Office of the Public Defender of Rights, Recommendation of the Public Defender of Rights on common education of Roma and non-Roma children, no. 86/2017/DIS/VB, p. 4. Available in Czech at:

[https://ochrance.cz/fileadmin/user\\_upload/ESO/86-2017-DIS-VB\\_Doporuceni\\_desegregace.pdf](https://ochrance.cz/fileadmin/user_upload/ESO/86-2017-DIS-VB_Doporuceni_desegregace.pdf). [accessed 15 June 2023].

<sup>59</sup> The number of children separated from their families is stable at around 3 400–3 500 a year. There was a significant decline in 2020 and 2021 but since in 2022 the number tended to return to return to its common value, we assume that the decline was caused by the COVID-19 pandemic.

<sup>60</sup> There are more than 6 000 children in alternative care institutions in Czechia.

Article 17 of the 1961 Charter. The ECSR argued that Czechia had not adopted appropriate measures to deinstitutionalise the system of care for children up to 3 years of age which had a particularly detrimental effect on children with disabilities and Roma children. The ECSR also found that the legislation regulating children's homes for children up to 3 years of age was weak and failed to provide those children with appropriate protection from unreasonable institutionalisation. The ECSR criticised specifically so-called "voluntary stays" based on a contract concluded between the child's parent and the institution since the legal framework offered "no guarantees that the placement in institutions of children below the age of 3 is based on the needs of the child and serves the best interest of the child, nor that appropriate available alternatives to placement are given prior consideration and applied accordingly."<sup>61</sup>

53. In its report, the Czech government mentions the legislative amendments that were adopted in the Autumn 2021 following the ECSR's decision. The Czech government indeed enacted several safeguards against the institutionalisation of young children while the most important of them is the minimum age limits and the need for the approval of a contractual placement of a child in an institution by the child protection authority (so-called social and legal protection authority). However, the set of adopted safeguards is not sufficient to provide young children with effective protection from institutionalisation. This is particularly true for children in vulnerable situations mentioned in the ECSR's decision, i.e., children with disabilities and Roma children whose situation remains precarious.
54. The main problem with the mentioned legislative amendments is that **the Czech system of institutional alternative care for children is fragmented**. There are several institutions where a child deprived of their family's care may be placed, falling under different ministries<sup>62</sup>. **The minimum age limits for placement of a child in an institution copied this fragmentation** – they were adopted specifically with respect to specific institutions and to specific court orders, but not all of them. Unfortunately, there are two major deficiencies of those age limits: 1) they do not cover the whole spectrum of institutions where a young child may be placed; and 2) they legalise exceptions concerning specifically the two above-mentioned groups of children in vulnerable situations – children with disabilities and Roma children.
55. Regarding the first objection, it is worth noting that the legislative amendments **failed to abolish the children's homes for children up to 3 years of age and it is these institutions where the placement of the child is not limited by any minimum age limit**. The government provides the ECSR with false information when it states in its report that "from 2024 onwards, there will be a ban on placing children under 3 years of age in a children's home on any legal basis; ..." (p. 28). We assume that this is where the government confuses children's homes for children under 3 years of age with emergency facilities for children. Although both facilities are often part

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<sup>61</sup> *Mental Disability Advocacy Centre (MDAC) and European Roma Rights Centre (ERRC) v. The Czech Republic*, the decision on the merits of 17 June 2020, complaint no. 157/2017, § 154.

<sup>62</sup> Emergency facilities (facilities for children in need of immediate assistance) and facilities for persons with disabilities where children may also be placed are under the Ministry of Labour and Social Affairs, children's homes, children's homes with school, diagnostic facilities and closed educational facilities are under the Ministry of Education and children's homes for children up to 3 years of age are under the Ministry of Health.

of the same institution, **they are governed by different laws and are subject to different regimes.** The minimum age limit valid for emergency facilities for children thus do not apply for the children's home for children under the age of 3.

56. The only age limitation for child's placement in the children's home for children under 3 years of age thus comes from the age limitation relating to some court orders. The legislative amendments enacted that a child below the age of 3 cannot be placed in a residential facility by interim court order<sup>63</sup> or so-called educational measure ordered by court<sup>64</sup>. Nevertheless, **there are still other possibilities to place a young child in the children's home for children under 3 years of age, namely the court's institutional care order or a contract** concluded between the child's parent/s and the institutional facility. We assume that specifically the latter places children in particular danger of unreasonable institutionalisation.
57. As it follows from the above, the legislative amendments **failed to abolish the "voluntary" stays of young children in children's homes for children under 3 years of age**, i.e., stays based on a contract between the child's parent/s and the institutional facility. As the government points out in its report, it only adds the condition that the contract must be approved by the administrative authority responsible for the protection of children. Nevertheless, **this approval is only subsequent- it is to be issued in a situation when the child is already in the institution.** The effectiveness of this safeguard is thus **highly questionable.** Many representatives of administrative authorities responsible for the protection of children favour institutional care over alternative family care (despite legal rules favouring alternative family care over institutional care), **especially when the child has a disability since they believe that an institution is better prepared to care for them than any family could ever be, or when the child is Roma since they face difficulties in finding alternative care options for Roma children.**
58. The government mentions in its report that the placement of a young child in the children's home for children under 3 years of age "is limited to situations where their health conditions require long-term inpatient care, i.e. outpatient care is not sufficient" (p. 28). **We argue that this legislative change should not be overestimated.** First, the requirement that the care the child needs must be "long-term" is not part of the legislation, **it is rather the government's interpretation which, however, may not apply in practice.** Second, it is worth noting that the term "health care" is defined **quite broadly under the national legislation so that it also includes so-called "nursing care"**, i.e., care "the purpose of which is to maintain, promote and restore health and meet biological, psychological, and social needs altered by or arising in connection with the impairment of the health status of individuals or groups (...) and to develop, maintain or restore self-sufficiency."<sup>65</sup> It thus **significantly overlaps with what it means to care for a young child with only one difference which is the impairment of the health status.** Nevertheless, **unfavourable social situations may be easily connected with deteriorated health conditions as it**

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<sup>63</sup> Act no. 292/2013 Coll., on Special Court Proceedings, section 452 § 2 in the version coming into force on 1 January 2025.

<sup>64</sup> Act no. 359/1999 Coll., on Social and Legal Protection of the Child, section 13a in the version coming into force on 1 January 2025.

<sup>65</sup> Act no. 372/2011 Coll., on Health Care Services and the Conditions of Their Provision, Article 5 § 2 (g).



**proves the definition of the children's homes for children under 3 years of age itself.** Although the amendment abolished that children's homes for children under 3 years of age were designed, among other things, for children whose development is endangered by an inappropriate social environment, **the legal definition still foresees that children who are placed in those institutions are children who cannot be brought up in a family environment, particularly those who are mistreated, neglected, abused and/or who are with disabilities.**

59. We would describe the continuing existence of children's homes for children under 3 years of age and the government's failure to abolish these institutions as **a significant loophole in the government's efforts to terminate institutionalisation of children up to 3 years of age.** It significantly weakens the effectiveness of minimum age limits enacted with respect to other alternative care institutions for children since it creates scope for quite an easy circumvention of those limits. We assume that this legislation **makes particularly vulnerable especially those children for whom it may be more challenging to find a foster parent/family.** Those are specifically two groups of children whose situation was addressed by the ECSR in the above-mentioned decision, i.e., Roma children and children with disabilities.
60. It is worth noting that **the government has currently finished preparation of an amendment proposing the abolishment of children's homes for children under 3 years of age.**<sup>66</sup> Although this governmental initiative is very welcome, the amendment is still in the process and the outcome is thus uncertain.
61. Furthermore, two above-mentioned groups of children, i.e., Roma children and children with disabilities, **are also affected by the exceptions to the newly enacted minimum age limits for placement in residential care.** The minimum age limits and exceptions therefrom differ according to the type of institution they relate to.<sup>67</sup> Thus, **facilities for persons with disabilities will be still allowed to accommodate young children with disabilities<sup>68</sup> and children's homes will be still allowed to accommodate young children together with siblings.**<sup>69</sup> We assume that the latter exception will disproportionately affect Roma children since in Roma families in Czechia multiple sibling groups are more common than in the majority population and, furthermore, it is rather challenging to find foster parent/family for Roma children, especially if it is a larger sibling group.
62. Concerning the exception affecting children with disabilities, it is true that the authors of the new legislation tried to define disability for this purpose narrowly, based on the degree of dependency, while only children in the third and fourth degree of dependency, while only children in the third or fourth degree of dependency (the two highest levels of dependency) will be allowed to be placed in the alternative care of the facility for persons with disabilities. **We argue that this**

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<sup>66</sup> The draft law is available in Czech at:

<https://odok.cz/portal/veklep/material/ALBSCNPJ6EPJ/> [accessed 14 June 2023].

<sup>67</sup> The age limit of 3 applies in facilities for children requiring immediate assistance and the age limit of 4 in children's homes and facilities for persons with disabilities.

<sup>68</sup> See Act no. 108/2006 Coll. on social services, section 48 § 2 coming in force on 1 January 2025.

<sup>69</sup> See Act no. 109/2002 Coll., on institutional and protective care in school facilities and on preventive educational care in school facilities, section 12 § 3 coming in force on 1 January 2025.

**exception constitutes double discrimination.** First, it overlooks that **the need to form an attachment with one caregiving person is common to all children, including children with the highest need of support due to their impairment** and that the harm caused to the development of the child by the lack of this bond is no less because of the impairment. The former UN Special Rapporteur on the right to health, Dainius Pūras, characterized the lack of this bond as a form of violence against young children.<sup>70</sup> Second, the exception which applies only to facilities for persons with disabilities, **will cause that children with the highest support of care due to their impairment will be separated from other children in alternative care and will live in institutions that are primarily designed for adults.**

## **II) The disciplinary nature of the child public protection system and the vulnerable situation of children and families facing destabilising poverty and/or social exclusion**

63. We consider that none of the above-mentioned exceptions would be necessary, **has the Czech government focused on reasons why children are deprived of their family's care and end up in alternative care, either family or institutional.** The Czech child protection system **still relies predominantly on repressive instruments,** including the intervention of public authorities (authorities of the social and legal protection of the child). **Instead of equipping families with entitlements, it subjects them to the demands of the State.** It thus has **a very disciplining effect on families and uses coercive interventions against families that fail to meet the requirements, including the removal of a child.** This easily leads to the sanctioning of phenomena that are linked, for example, to poverty or cultural difference. **Therefore, it is not surprising that for example Roma children are overrepresented among children removed from their families and placed in alternative care.** They are of minority ethnicity, and they are also disproportionately affected by destabilising poverty and social exclusion. It is worth noting that only about 5 % of all the removals are due to the child's maltreatment or abuse. On the contrary, **the most common reason for child's removal is "neglect of the child's upbringing" which is rather a social disciplining category, not culturally or socially neutral.** Since 2021 when the Ministry of Labour and Social Affairs stopped to use among reasons for the child's removal the category of the child's behavioural difficulties which is also a disciplining one, the removals for the neglect of the child's upbringing exceeded 55 % of all the removals (see tables no. 1 and 2).

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<sup>70</sup> See the report of the UN Special Rapporteur on the right to health, Dainius Pūras, on the right to health in early childhood: right to survival and development, A/70/213, para. 73: "In this connection, it is of special importance that all stakeholders understand the harmful effects of institutional care in early childhood; it is a form of violence against young children. The Special Rapporteur therefore urges all stakeholders to continue to implement the Guidelines for the Alternative Care of Children (General Assembly resolution 64/142, annex) and to expedite the process of eliminating institutional care for children under 3 years of age. Furthermore, he calls for recognition of the detrimental effects of institutional care on the health and development of all young children and for the adoption of a common understanding that institutional care should not be accepted for children under 5 years of age."

**Table no. 1: Official reasons for removals of children in the Czech Republic from their families (2016 - 2020)**

	Child maltreatment	Child abuse	Neglect of the child's upbringing	Upbringing difficulties in the child's behaviour	Other obstacles in the care of the child on the part of the parents	Total
<b>2016</b>	158	42	1 665	937	1 010	<b>3 812</b>
<b>2017</b>	141	24	1 640	871	1 070	<b>3 746</b>
<b>2018</b>	122	43	1 541	862	1 071	<b>3 639</b>
<b>2019</b>	167	29	1 608	843	932	<b>3 579</b>
<b>2020<sup>71</sup></b>	144	25	1 463	552	719	<b>2 903</b>
<b>2021<sup>72</sup></b>	153	20	1 712	X <sup>73</sup>	1 196	<b>3 081</b>
<b>2022</b>	146	31	1 877	X	1 321	<b>3 375</b>

Source: Ministry of Labour and Social Affairs

**Table no. 2: The total number of removed children and the proportion of those who were removed due to "upbringing difficulties in the child's behaviour" compared to the cases of child maltreatment and abuse**

	Total number of removals	The proportion of cases of child maltreatment and child abuse in the total number of removals (%)	The proportion of cases of "neglect of the child's upbringing" (%)
<b>2016</b>	<b>3 812</b>	5,2	43,7
<b>2017</b>	<b>3 746</b>	4,4	43,8
<b>2018</b>	<b>3 639</b>	4,5	42,4
<b>2019</b>	<b>3 579</b>	5,5	44,9
<b>2020</b>	<b>2 903</b>	5,8	50,4
<b>2021</b>	<b>3 081</b>	5,6	55,6
<b>2022</b>	<b>3 375</b>	5,2	55,6

Source: Ministry of Labour and Social Affairs

64. In its report, the government mentions the subsidy titles through which it allocates financial support for children and their families who are in a vulnerable situation (p. 28). **Unfortunately, those titles finance as the governments notes itself only services for those families.** We would like to emphasise that **services support may not be adequate especially** in those situations when the vulnerability of the family's situation is given by the structural deficiencies the family faces such as destabilising poverty and social exclusion. On the contrary, in those situations the predominant focus on the services support for the family may **easily result in shifting the responsibility from the public power to individuals as the entire task of getting out of the situation is placed on them.** The public power expects the family to manage it even **in a failing and damaging environment** which is for example the case of children facing destabilising poverty and Roma children.

<sup>71</sup> It is very likely that these numbers and the reduction in number of children removed from their families by more than 600 were due to the COVID-19 pandemic. The fact that in 2021 and especially 2022 the numbers of children removed from their families kept increasing to the numbers from the pre-pandemic period may confirm this assumption.

<sup>72</sup> It is very likely that also numbers for 2021 were influenced by the COVID-19 pandemic.

<sup>73</sup> The category of upbringing difficulties in the child's behaviour has stopped being monitored since 2021. Since the number of children removed due to „neglect of the child's upbringing“ or „other obstacles in the care of the child on the part of the parents“ have increased significantly between 2020 and 2021 we may assume that behavioural difficulties are still a reason for the child's removal from their family but are now categorized under one of these categories.

65. **The Czech child protection system is not able to allocate needed material resources directly to the family.** Of course, the family is entitled to various social benefits, those, however, are proving **insufficient to effectively protect every child and their family from extreme poverty.** The available resources for children in vulnerable situations are allocated to services. A huge problem is also the lack of a system of social housing (see above paras. 5-18). For instance, when a family loses housing, cannot find another one and decides to place their children to an emergency facility, the State will be able to allocate for each placed child CZK 39.600 a month<sup>74</sup> (approximately EUR 1.676<sup>75</sup>). Thus, for a family with 3 children the amount is CZK 118.800 a month (EUR 5.028). To compare, the average wage in the first quarter of 2023 was CZK 41.265 and the median wage was CZK 34.471.<sup>76</sup> According to the Deloitte Rent Index the highest average price for rental housing in the same period was CZK 373/m<sup>2</sup> (the capital of Prague) and the lowest was CZK 186/m<sup>2</sup>.<sup>77</sup> Even if we take the highest average price, the State financial allowance for the child's stay in the emergency facility in case of a family with one child would pay in the first quarter of 2023 the family's rent on an apartment in Prague measuring more than 100 m<sup>2</sup>. **Nevertheless, the State is willing to allocate these resources for the child only under the condition that the child stays in the institution, they can never be paid directly to the child's family to secure housing for example.** The crux of the problem is **that it is the State which decides how the resources intended for the child at risk will be used and the State chooses to buy for the child the institutional stay.** The child themselves and their family have no option to directly benefit from this money. This is only one example which is, however, illustrative for a system which as the Czech one **does not focus on creating inclusive environments and support entitlements but rather concentrates its attention on authoritative interventions and alternative care.**
66. When the government cites the relevant parts of the National Strategy for the Protection of Children's Rights 2021-2029 (p. 30), it mentions that a new legislation on child protection and services provision for children at risk will be adopted. We find it crucial **that the legislation will take a rights-based approach, reserve coercive interventions against children's families only for those situations when the child's family seriously threatens the child's absolute rights** (right to life and survival, right not to be ill-treated, right to protection from all form of violence, right to freedom from all forms of exploitation as the most relevant) **and replace them with entitlements in other cases, including entitlements to relevant material assistance.**
67. This requires, *inter alia*, to reunite the current fragmented system of alternative care for children as recommended to Czechia by the UN Committee on the Rights of

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<sup>74</sup> Act no. 359/1999 Coll., on Social and Legal Protection of Children, section 42g § 3(a).

<sup>75</sup> Exchange rate of the Central European Bank of 7 June 2023: EUR 1 = CZK 23,625. Available at:

[https://www.ecb.europa.eu/stats/policy\\_and\\_exchange\\_rates/euro\\_reference\\_exchange\\_rates/html/eurofxref-graph-czk.en.html](https://www.ecb.europa.eu/stats/policy_and_exchange_rates/euro_reference_exchange_rates/html/eurofxref-graph-czk.en.html). [accessed 7 June 2023].

<sup>76</sup> Official data by the Czech Statistical Office. Available at:

<https://www.czso.cz/csu/czso/ci/prumerne-mzdy-1-ctvrtleti-2023#:~:text=V%201.%20%C4%8Dtvrlet%C3%AD%202023%20%C4%8Dinila,ve%20stejn%C3%A9m%20obdob%C3%AD%20roku%202022>. [accessed 8 June 2023].

<sup>77</sup> Data available at: <https://www2.deloitte.com/cz/cs/pages/real-estate/articles/rent-index.html> [accessed 8 June 2023].

the Child in its latest Concluding Observations of October 2021.<sup>78</sup> As mentioned above, there are many types of alternative care institutions for children which are governed by different philosophy, rules and fall under the authority of 3 different ministries – Ministry of Labour and Social Affairs, Ministry of Education and Ministry of Health. Should the new legislation ensure that the child and their family have the most direct access possible to the resources the State is able to allocate for them, it is necessary **that the whole budget of those resources is administered by only one ministry**. The Ministry of Labour and Social Affairs seems to be the most suitable for this task since it is only this ministry that already manages outreach social support services as well as social benefits. Concurrent existence of alternative care institutions under the Ministry of Education and the Ministry of Health **causes that already at the central level a part of resources is devoted for residential facilities** since under those two ministries the resources for children at risk cannot be used otherwise.

### III) Situation of families with children with disabilities

68. Concerning children with disabilities, both support and material assistance for the child and their family is needed and is currently insufficient. It still happens in Czechia that **parents** of a child who has been born with a more severe disability **are advised directly in the maternity hospital to leave their child in an institution**. The institutionalisation of the child is presented to them as practically the only option, and the **parents are not provided with information about the available social services** (especially so-called early intervention) since the health care system is not used to informing about social services. There are promising practices of so-called “Accompanying Centres” (Centra provázení<sup>79</sup>), but these are **available only in a few university hospitals**. The Centre supports families of children with disabilities requiring more intensive support from the first moment this need was identified and accompanies them in the first stages of coping with this new reality (linking social and health care services).

69. Furthermore, **the capacity of outreach services for families with children with disabilities, both social and health care, is not sufficient**. For instance, the social services of early intervention are not available to families in many regions. In the Central Bohemia Region, South Moravia Region, and the Capital City of Prague, families must wait longer than 210 days.<sup>80</sup> Service providers targeting families with children with autism have the longest average waiting times. **The frequency of visits is very low** (usually after 6-8 weeks). According to the Ombudsperson's findings, an increase in the number of interventions would be especially welcomed by service

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<sup>78</sup> CRC/C/CZE/CO/5-6, para. 31 (a): „Recalling the Guidelines for the Alternative Care of Children and its previous recommendations to the State party, the Committee recommends that the State party: (a) Unify the childcare system under one structure to enable its effective direction and the allocation of public funds to prioritize non-residential forms of support for children in situations of vulnerability, including children with disabilities, and their families; ...“

<sup>79</sup> More information available in Czech at: <https://centrumprovazeni.cz/> [accessed 15 June 2023].

<sup>80</sup> Availability of social services for children with disabilities and their families, Ombudsman research 2020 [https://www.ochrance.cz/uploads-import/CRPD/Vyzkumy/11-2019\\_Vyzkum\\_soc-sluzby-pro-deti-s-postizenim.pdf](https://www.ochrance.cz/uploads-import/CRPD/Vyzkumy/11-2019_Vyzkum_soc-sluzby-pro-deti-s-postizenim.pdf) p. 26 [accessed 15 June 2023].

providers offering services for children with autism<sup>81</sup> and for children with hearing impairments. **The availability of the necessary outreach health care services is even worse since it is not systematically anchored or developed.** The health care system significantly favours the ambulatory or residential form of health care.

70. Also, the material support for families caring for their child with a disability is insufficient as described above in paras. 19-26.

71. We understand that the described problems relate closely to provisions that are not part of the current review but of Group 2: Health, social security, and social protection, namely Articles 13 and 14. Nevertheless, we find **the interdependence between those provisions and Articles 16 and 17 crucial, especially in the context of families with children with disabilities.** Not rarely, the lack of adequate service and material support for those families makes the child's parents give up care and place the child in a residential facility, including children's homes for children under 3 years of age. That is why we also address these issues with respect to provision falling in Group 4: Children, families, migrants.

**d) If the previous conclusion was one of non-conformity, please explain whether and how the problem was remedied. If the previous conclusion was deferred or conformity pending receipt of information, please reply to the questions raised**

## Young offenders

### I) Children below the age of criminal responsibility in the child justice system<sup>82</sup>

72. Following the ECSR's questions raised in its Conclusions, the Czech government provides in its report a brief description of the juvenile justice system for children below the age of 15 (pp. 32—33). We would like to emphasise that **the description is rather superficial, not focusing on the problematic aspects of the whole system** which the ECSR also addressed in its decision on the merits of collective complaint *International Commission of Jurists (ICJ) v. the Czech Republic*, no. 148/2017. Those aspects are: **1) the lack of procedural safeguards for children below the age of criminal responsibility in the pre-trial stage of criminal proceedings**, especially the right to access to a lawyer from the very first contact with law enforcement authorities if the child is suspected of having committed an unlawful act; **2) and the lack of restorative justice measures and procedures available to children below the age of criminal responsibility.** Concerning the latter, the government's report **incorrectly conflates restorative justice with the fact that the stated aim of the measures imposed on children below the age of criminal responsibility is not to punish the child but to reform them.** It does not really provide any information on restorative measures and procedures that are in operation in Czechia, the number of children below the age of criminal responsibility taking part in them, the

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<sup>81</sup> [https://www.ochrance.cz/uploads-import/CRPD/Vyzkumy/11-2019\\_Vyzkum\\_soc-sluzby-pro-deti-s-postizenim.pdf](https://www.ochrance.cz/uploads-import/CRPD/Vyzkumy/11-2019_Vyzkum_soc-sluzby-pro-deti-s-postizenim.pdf) p. 30 and see also Research and recommendations on the availability of social services for children with autism <https://www.ochrance.cz/aktualne/klient-s-autismem-socialni-sluzbu-prakticky-nenajde/>. [accessed 15 June 2023].

<sup>82</sup> We use the terminology adopted by the UN Committee on the Rights of the Child in its General Comment no. 24 (2019) on children's rights in the child justice system, CRC/C/GC/24, para. 8.



structures implementing them, and the way the government supports them, including financially.

73. When the government states that children below the age of criminal responsibility do not always have to be brought to the court, it cites rather new case-law by the Supreme Court<sup>83</sup> which sought to address the long-standing criticisms, including from the public prosecution office<sup>84</sup>, of the current legislation by reinterpreting it. Nevertheless, **not even this interpretation succeeds to overcome the limits given by the legislation** and open effective access to diversions from judicial proceedings also for children below the age of criminal responsibility. The Supreme Court's interpretation is **built on the argument that the acts in the given cases did not constitute an unlawful act in terms of criminal law**. In other words, the Supreme Court states that the acts did not fall within the scope of the juvenile justice system and that is why the public prosecution should not have brought the case before the juvenile court. **Thus, the case-law does not open access to diversions in those cases when the child has infringed the penal law**. On the contrary, the very same case-law formulates a strong background to all cases of unlawful acts committed

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<sup>83</sup> Decision of 25 October 2017, no. 8 Tdo 1314/2017. The decision is available at:

[https://www.nsoud.cz/Judikatura/judikatura\\_ns.nsf/WebSearch/15DF6AF6BFF84F90C12582280041BC00?openDocument&Highlight=0,null](https://www.nsoud.cz/Judikatura/judikatura_ns.nsf/WebSearch/15DF6AF6BFF84F90C12582280041BC00?openDocument&Highlight=0,null),. Decision of 25 October 2017, no. 8 Tdo 1077/2017.

The decision is available at:

[https://www.nsoud.cz/Judikatura/judikatura\\_ns.nsf/WebSearch/1B28537B4A53A8BFC12582280041BBF0?openDocument&Highlight=0,null](https://www.nsoud.cz/Judikatura/judikatura_ns.nsf/WebSearch/1B28537B4A53A8BFC12582280041BBF0?openDocument&Highlight=0,null),. Decision of 25 October 2017, no. 8 Tdo 1105/2017.

The decision is available at:

[https://www.nsoud.cz/Judikatura/judikatura\\_ns.nsf/WebSearch/4909424321205E44C12582280041BBF9?openDocument&Highlight=0,null](https://www.nsoud.cz/Judikatura/judikatura_ns.nsf/WebSearch/4909424321205E44C12582280041BBF9?openDocument&Highlight=0,null),. Decision of 25 October 2017, no. 8 Tdo 1075/2017.

The decision is available at:

[https://www.nsoud.cz/Judikatura/judikatura\\_ns.nsf/WebSearch/8033C34943DF37CEC12582280041BBED?openDocument&Highlight=0,null](https://www.nsoud.cz/Judikatura/judikatura_ns.nsf/WebSearch/8033C34943DF37CEC12582280041BBED?openDocument&Highlight=0,null),. Decision of 25 October 2017, no. 8 Tdo 1215/2017.

The decision is available at:

[https://www.nsoud.cz/Judikatura/judikatura\\_ns.nsf/WebSearch/828E651E33EA4860C125821F002071D4?openDocument&Highlight=0,null](https://www.nsoud.cz/Judikatura/judikatura_ns.nsf/WebSearch/828E651E33EA4860C125821F002071D4?openDocument&Highlight=0,null),. Decision of 25 October 2017, no. 8 Tdo 1083/2017.

The decision is available at:

[https://www.nsoud.cz/Judikatura/judikatura\\_ns.nsf/WebSearch/88B8E3B164091BFCC12582240041C967?openDocument&Highlight=0,null](https://www.nsoud.cz/Judikatura/judikatura_ns.nsf/WebSearch/88B8E3B164091BFCC12582240041C967?openDocument&Highlight=0,null),. Decision of 25 October 2017, no. 8 Tdo 1082/2017.

The decision is available at:

[https://www.nsoud.cz/Judikatura/judikatura\\_ns.nsf/WebSearch/909979B5D86B1D5CC12582280041BBF1?openDocument&Highlight=0,null](https://www.nsoud.cz/Judikatura/judikatura_ns.nsf/WebSearch/909979B5D86B1D5CC12582280041BBF1?openDocument&Highlight=0,null),. Decision of 25 October 2017, no. 8 Tdo 1080/2017.

The decision is available at:

[https://www.nsoud.cz/Judikatura/judikatura\\_ns.nsf/WebSearch/C0E3A905DA0A4E62C12582240041C965?openDocument&Highlight=0,null](https://www.nsoud.cz/Judikatura/judikatura_ns.nsf/WebSearch/C0E3A905DA0A4E62C12582240041C965?openDocument&Highlight=0,null),. Decision of 25 October 2017, no. 8 Tdo 1216/2017. The decision is available at:

[https://www.nsoud.cz/Judikatura/judikatura\\_ns.nsf/WebSearch/FAD552C9D55C3228C12582280041BBFC?openDocument&Highlight=0,null](https://www.nsoud.cz/Judikatura/judikatura_ns.nsf/WebSearch/FAD552C9D55C3228C12582280041BBFC?openDocument&Highlight=0,null), [all accessed 8 June 2023].

<sup>84</sup> The critique of the obligation to bring every case of a child suspect below the age of 15 to the juvenile court appeared in the public prosecution annual reports. See, for instance, the 2011 Annual Report stating that "Some prosecutors' offices again pointed to the inappropriate mandatory nature of this authority [note: authority to initiate proceedings against the child below 15 before the juvenile court] which should be replaced by the possibility for the prosecutor to use non-judicial measures in less serious cases of child delinquency, while, of course, retaining this authority as optional." The report is available in Czech at: [https://verejnazaloba.cz/wp-content/uploads/2020/03/Zpr%C3%A1va-o-%C4%8Dinnosti\\_2011.pdf](https://verejnazaloba.cz/wp-content/uploads/2020/03/Zpr%C3%A1va-o-%C4%8Dinnosti_2011.pdf), p. 43. [accessed 15 June 2023].



by children below the age of criminal responsibility being dealt with before the juvenile court.

74. In concrete, the Supreme Court held that “in accordance with the existing case-law, expert literature, as well as the practice of the courts, a reliable conclusion as to whether an act exhibiting the characteristics of an otherwise relevant criminal offence within the meaning of section 90(1) or section 93 of the Juvenile Justice Act has been committed can, **in principle, be made in proceedings conducted under Title III of the Juvenile Justice Act [note: judicial proceedings], after a hearing has been ordered and evidence has been taken.**”<sup>85</sup> (*emphasis added*). Again, the government in its report does not provide us with statistical data on the number of suspect children being “diverted” this way from the judicial proceedings. It only mentions the total number of children below the age of criminal responsibility in the juvenile justice system in 2021 (p. 33).
75. Furthermore, the very same case-law of the Supreme Court **confirmed the existence of the pretrial stage of the proceedings against children below the age of criminal responsibility.** This has been a long-standing point of contention in debates about securing children's procedural rights as shown in the government's report itself which is completely silent about this stage of the proceedings and the procedural situation of the child therein. **The Supreme Court admitted that if there is a reasonable suspicion that a particular child below the age of criminal responsibility has committed an unlawful act in terms of criminal law, public prosecution is allowed to obtain and secure evidence relevant to the decision in the case.**<sup>86</sup> Although the Supreme Court refuses that the law enforcement authorities proceed according to the Criminal Procedure Code, according to the relevant provisions of the Juvenile Justice Act, Civil Procedure Act and Public Prosecution Act<sup>87</sup>, **those acts do not provide sufficient legal background enabling public prosecution to gather evidence.** The public prosecution and the Police thus have **no other option than to proceed according to the Criminal Procedure Code which is something the government did not even deny** in its observations to the collective complaint *International Commission of Jurists (ICJ). v. the Czech Republic*, no. 148/2017.<sup>88</sup> Although the Supreme Court admits that public prosecution obtains and secures evidence against children below the age of criminal responsibility prior to judicial proceedings, it does not consider it necessary to provide the child with procedural safeguards in this stage since it argues that the evidence takes place only before the judicial proceedings. Its interpretation thus **turns out to be paradoxical and at odds with practice reality.**
76. There is a broad consensus in international human rights law that children in the child justice system **must be provided with enhanced procedural protection from the very first stages of the proceedings and should have the broadest possible**

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<sup>85</sup> See for instance, Decision of 25 October 2017, no. 8 Tdo 1082/2017. The decision is available at:

[https://www.nsoud.cz/Judikatura/judikatura\\_ns.nsf/WebSearch/909979B5D86B1D5CC12582280041BBF1?openDocument&Highlight=0,null](https://www.nsoud.cz/Judikatura/judikatura_ns.nsf/WebSearch/909979B5D86B1D5CC12582280041BBF1?openDocument&Highlight=0,null). [accessed 8 June 2023].

<sup>86</sup> Ibidem.

<sup>87</sup> Ibidem.

<sup>88</sup> Submission of the government on the merits of 15 November 2017, para. 50. Available at: <https://rm.coe.int/cc148-2017-submissions-by-the-gvt-on-the-merits/168076c3bf> [accessed 9 June 2023].

**benefit from diversions from formal judicial proceedings.** The UN Convention on the Rights of the Child is explicit on that in its Article 40 as further elaborated by the UN Committee on the Rights of the Child in its General Comments no. 10 and 24. The problem of the Czech juvenile justice system for children below the age of criminal responsibility is that **due to a specific legal construction qualifying their responsibility formally as civil and not criminal, those children are provided with lower standards of protection of their rights, both procedural and substantive although they come into contact with the very same authorities as criminally responsible children.** When deciding on the merits of the above-mentioned collective complaint addressing this issue, the ECSR held that “the adoption of measures in light of the intention of the State to create a more protective system for children below the age of criminal responsibility should not result in children being provided with less and/or weaker procedural protection than adults.”<sup>89</sup> Unfortunately, this is exactly what is happening in Czechia to children below the age of criminal responsibility.

77. We would like to point out that in its report the government fails to present the ECSR how it plans to deal with the situation already found by the ECSR in breach of article 17 of the 1961 Charter on two grounds: 1) the failure to ensure mandatory legal assistance for those children in the pre-trial stage of proceedings; and 2) the failure to provide alternatives (diversion) to formal judicial proceedings for children below the age of criminal responsibility. It rather tends to deny the above-described problems of the system.

## **II) Use of the child protection system to enforce responsibility against the child**

78. Unfortunately, the problem of weakening the legal position of the child, both procedural and substantive, in the name of child protection is **much broader in Czechia and does not concern only children below the age of criminal responsibility.** The problem is that the suspicion of an unlawful act may be considered a **“behaviour difficulty” relevant to the child protection system.** In practice, it is not rare that following the suspicion against the child, **two parallel legal proceedings are initiated** – the criminal ones before child justice authorities and the civil ones before the civil court. **However, before the civil courts, children are not guaranteed any specific procedural safeguards.** They are not mandatorily provided with legal representation of an attorney but are represented by social workers of the public authority for the protection of the child<sup>90</sup> which acts as their guardian *ad litem*.

79. Furthermore, **the civil court may order the placement of children in conflict with the law in an alternative care institution, usually one with a closed regime (diagnostic institution, children’s home with school, closed educational facility).** Those institutions are also designed for children who are sent there by the juvenile justice court.<sup>91</sup> These placements take place often upon interim orders which are issued

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<sup>89</sup> International Commission of Jurists (ICJ) v. the Czech Republic, decision on the merits of 20 October 2020, no. 148/2017, § 85.

<sup>90</sup> So called social and legal child protection authority.

<sup>91</sup> According to the national legislation these institutions should be built separately for children placed there upon a juvenile court order and upon a civil court order. Nevertheless, the type of the institutions and the main principles on which they operate, especially the intensive

at the beginning of the civil proceedings and may serve as **a de facto substitute for pre-trial detention**. Later in the civil proceedings, the civil courts may decide on imposing institutional care as an alternative care measure which serves as **a de facto substitute for the measure adopted by the juvenile court**. **Civil law does not establish such strict conditions either for interim measures or institutional care since these measures are not deemed punitive but protection**. Nevertheless, the result is that children end up in **the very same institutions with the closed regime and with the purpose of their “reeducation”**. The practice of conducting civil proceedings parallel to juvenile justice proceedings deprives all the criminal justice safeguards and guarantees against the unreasonable deprivation of the child's liberty of their effectiveness.

80. The thematic report Czech School Inspectorate on those closed educational facilities of 2017 confirmed the prevalence of this practice and the huge number of children who are placed in these institutions for having committed a criminal offence however by a decision of the civil court. The report listed **the child's criminal behaviour as the second most common reason for the child's placement in these institutions**, appearing in more than one-quarter of cases (25,1%; 1000 in absolute numbers).<sup>92</sup> However, the number of children placed in these institutions by a juvenile court following them having been found guilty of an unlawful act remains constantly low compared to children placed in these institutions by the civil court (see table no. 3).

**Table no. 3: Number of children in closed alternative care institutions (diagnostic institutions, children's homes with school and closed educational facilities) upon a civil court order and a juvenile court order**

	Juvenile court order (so-called protective upbringing)	Civil court order	
		Interim order	Institutional upbringing
2015	73	520	1 501
2016	83	470	1 566
2017	83	427	1 500
2018	87	412	1 559
2019	103	394	1 628
2020	121	354	1 581
2021	114	322	1 475
2022	115	318	1 581

Source: Ministry of Education, Youth, and Sports

disciplination and reeducation, are still the same. Furthermore, in practice both groups of children live together.

<sup>92</sup> See Czech School Inspectorate. Kvalita výchovně-vzdělávací činnosti v zařízeních pro výkon ústavní nebo ochranné výchovy. Tematická zpráva. [Quality of the upbringing-educative effort of the facilities for institutional and protective upbringing. Thematic report; online]. Prague: Czech School Inspectorate, 2017 [accessed 25/11/2021], p. 5. Available in Czech at: [https://www.csicr.cz/Csicr/media/Prilohy/PDF\\_el.\\_publikace/Tematick%C3%A9%20zpr%C3%A1vy/01-F\\_TZ-Kvalita-vychovne-vzdelavaci-cinnosti-v-zarizenich-pro-vykon-UV-OV\\_FINAL-2-5.pdf](https://www.csicr.cz/Csicr/media/Prilohy/PDF_el._publikace/Tematick%C3%A9%20zpr%C3%A1vy/01-F_TZ-Kvalita-vychovne-vzdelavaci-cinnosti-v-zarizenich-pro-vykon-UV-OV_FINAL-2-5.pdf)

81. We argue that should the criminal justice safeguards be effective and practical, Czechia must abandon the concept that suspicion of committing an unlawful act or the child's criminal behaviour constitutes reasons for ordering protection placement of the child in institutional care and that children may be treated for such reasons parallelly to criminal proceedings in civil proceedings before the civil court.
82. Furthermore, very close to the problem of applying civil measures against children in conflict with the law is the use of the child protection system **to discipline the child even if the child has not committed an unlawful act**. Criminal behaviour is not the only reason why a civil court may order alternative care placement of the child in a closed regime facility. The category of **“behavioural difficulties” or “behavioural problems”** is understood much more broadly and may easily absorb all behaviours of the child which are considered “antisocial” or “risky” like truancy, substance and alcohol abuse, aggressive behaviour, etc. It is not defined by the national legislation and its interpretation depends on the current opinions of the society and its representatives of what type of the child's behaviour is unacceptable and should be treated in the form of the child's forced confinement to an institution and her subordination to the institutional regime.
83. According to the official statistics until 2021 when the category was erased from the official statistics (see above para. 1), “behavioural difficulties” were **the third most common reason for the removal of the child from her family**. Contrary to maltreatment and abuse which together constitute only a little bit more than 5 % of all removals, “behavioural difficulties” constituted **nearly one-quarter** (see tables no. 4).<sup>93</sup> We may assume that this practice continues even after 2021 although not officially displayed in statistics, since the number of children in institutions with a closed regime does not significantly decrease and the number of juvenile justice placements does not significantly increase.
84. Children placed in closed regime institutions (diagnostic institutions, children's homes with schools, and closed educational institutions) represent **one-third of all institutionalised children upon civil court orders** (see table no. 5).

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<sup>93</sup> We prefer to use data for 2019 since these are not influenced by the pandemic of COVID-19 and thus are likely to give an accurate picture of the normal situation in the Czech Republic. Source: Ministry of Labour and Social Affairs.

**Table no. 4: The total number of removed children and the proportion of those who were removed due to “upbringing difficulties in the child’s behaviour” compared to the cases of child maltreatment and abuse**

	Total number of removals	The proportion of cases of child maltreatment and child abuse in the total number of removals (%)	The proportion of cases of „upbringing difficulties in the child’s behaviour“ (%)
<b>2016</b>	<b>3 812</b>	5,2	24,6
<b>2017</b>	<b>3 746</b>	4,4	23,3
<b>2018</b>	<b>3 639</b>	4,5	23,7
<b>2019</b>	<b>3 579</b>	5,5	23,6
<b>2020<sup>94</sup></b>	<b>2 903</b>	5,8	19
<b>2021<sup>95</sup></b>	<b>3 081</b>	5,6	X <sup>96</sup>
<b>2022</b>	<b>3 375</b>	5,2	X <sup>97</sup>

Source: Ministry of Labour and Social Affairs

**Table no. 5: The number of children<sup>98</sup> placed in closed regime institutions (diagnostic institutions, children’s homes with schools, closed educational institutions) by civil court orders 2016-2020**

	Children homes (open institutions)	Diagnostic institutions	Children homes with schools	Closed educational institutions	Total number in educational institutions	Total number of children in closed regime institutions upon civil court orders	%
<b>2015</b>	3 791	380	733	1 027	<b>5 931</b>	<b>2 021</b>	<b>34,1</b>
<b>2016</b>	3 830	392	721	1 045	<b>6 060</b>	<b>2 036</b>	<b>33,6</b>
<b>2017</b>	3 887	371	686	969	<b>5 913</b>	<b>1 927</b>	<b>32,6</b>
<b>2018</b>	3 853	378	750	951	<b>5 932</b>	<b>1 971</b>	<b>33,2</b>
<b>2019</b>	3 985	378	797	980	<b>6 140</b>	<b>2 022</b>	<b>32,9</b>
<b>2020</b>	3 962	358	732	1 001	<b>6 053</b>	<b>1 935</b>	<b>32</b>
<b>2021</b>	3 890	355	693	892	<b>5 830</b>	<b>1 797</b>	<b>30,8</b>
<b>2022</b>	3 937	370	731	945	<b>5 983</b>	<b>1 899</b>	<b>31,7</b>

Source: Ministry of Education, Youth, and Sports

<sup>94</sup> It is very likely that these numbers and the reduction in number of children removed from their families by more than 600 were strongly influenced by the pandemic of COVID-19.

<sup>95</sup> It is very likely that also numbers for 2021 were influenced by the COVID-19 pandemic.

<sup>96</sup> No longer monitored.

<sup>97</sup> No longer monitored.

<sup>98</sup> We do not take into account children stay in the institution upon a contract.

85. Although “behavioural difficulties” or “behavioural problems” are not officially marked as status offences,<sup>99</sup> the principle is almost the same. Obligations, including deprivation of liberty, are imposed on children following their behaviour which is not illegal and would not be punishable if performed by an adult. The difference is that **these behaviours are dealt with outside the criminal justice system, resulting in lower both procedural protection and substantive protection against unreasonable deprivation of liberty**. As mentioned above, the institutions where these children are placed are the same as the institutions for children in conflict with the law (diagnostic institutions, children’s homes with schools, closed educational facilities). The regimes to which the two groups of children are exposed differ only slightly.<sup>100</sup>
86. The issue of alternative care placements of children due to their behaviour considered “antisocial” and “risky” **has been most recently raised by the Council of Europe Secretariat in their contribution to the CRC Committee’s Day of General Discussion on “Children’s Rights and Alternative Care”** (16-17 September 2021). The submission has mentioned the results of the Council of Europe’s 2021 survey which “confirmed that children with challenging behaviour continue to be placed in large and small residential care settings, foster care, medical facilities, and secure accommodation”. The submission has proposed that the States support these children and young persons “through a child centred approach rather than imposition of penalties” and develop interventions promoting resilience, strengthening protective factors, empowering children and parents, promoting coping skills, eliminating or reducing violence, discrimination, and inequalities.<sup>101</sup>
87. In its last Concluding observations concerning Czechia **the UN Committee on the Rights of the Child** has expressed its concern about “the high institutionalization rates, including in large institutions, (...) for “behavioural difficulties”, (...)”<sup>102</sup> and **had recommended to Czechia to “ensure that children are only separated from their family if it is in their best interests and after a comprehensive assessment of their situation (...) and abandon the practice of placement for “behavioural difficulties”**.<sup>103</sup> **The UN Committee on Economic, Social, and Cultural Rights** formulated practically the same observations in its Concluding Observations of March 2022.<sup>104</sup>
88. Following the cited recommendations, we would like to emphasise that the solution to the described problems requires both - **eliminating the practice when**

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<sup>99</sup> The concept of status offences is criticised mainly by the CRC Committee which links it to the violation of the prohibition of discrimination - CRC/C/GC/21, para. 26. The CRC Committee thus urges the State parties to abandon this practice – CRC/C/GC/10, para. 8; CRC/C/GC/24, para. 12.

<sup>100</sup> Children who are placed in these closed facilities upon a juvenile court order are not allowed, compared to children placed upon a civil court order, to be visited by other persons than their relatives and close persons and leave the facility without being accompanied by a member of the staff. However, the everyday regime of both groups is in practice practically the same and it is strictly organised and supervised. – See Act no. 109/2002 Coll., on institutional and protection upbringing in educational facilities and preventive upbringing care in educational facilities.

<sup>101</sup> The Council of Europe Secretariat’s submission is available at: <https://owncloud.unog.ch/s/i0qk6e5tZMighsK?path=%2F3.%20IGOs>.

<sup>102</sup> CRC/C/CZE/CO/5-6, para. 30 (c).

<sup>103</sup> *Ibid.*, para. 31 (e).

<sup>104</sup> E/C.12/CZE/CO/3, paras. 30 and 31 (f).

**children are removed from their families due to “behavioural difficulties” and abolishing educational institutions with a closed regime.** This is closely connected with the above-mentioned **need for the unification of the alternative care system under the Ministry of Labour and Social Affairs and the replacement of demands on children and their families with entitlements.** Those institutions are nothing more than the expression of the State's failure to offer children struggling with difficulties in their family or social situation such a form of support the child would find meaningful and helpful. The State relies rather on coercion and repression **making the child protection system protect society from the child rather than promote the child's rights.** The system of educational institutions with a closed regime doesn't even come close to matching the **“4-A scheme”** requiring the services serving to fulfil human rights to be available, accessible, and acceptable for the person and adaptable to their needs.

In Prague, 30 June 2023

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