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## **EUROPEAN SOCIAL CHARTER**

Comments submitted by  
the group of NGOs 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

Report registered by the Secretariat  
on 30 June 2023

**CYCLE 2023**

VALIDITY

R Y T M U S



NGO's information to the European Committee of Social Rights

For consideration of the 20th periodic report of

**CZECHIA**

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Submitted by:

Validity Foundation - Mental Disability Advocacy Centre

Rytmus - od klienta k občanovi z.ú.

Společnost pro podporu lidí s mentálním postižením v ČR, z. s. - Inclusion Czech Republic

Rodiče pro děti s autismem z. s. - Civil Society Parents for Children with Autism

Naděje pro autismus

30 June 2023

## I. OVERVIEW

1. This written submission provides an update on the information on the implementation of the European Social Charter (hereafter „Social Charter“) by Czechia. The Government submitted the 20th report on the implementation of, inter alia, Article 17 of the Social Charter to the European Committee of Social Rights (hereafter „the Committee“) on 30 December 2022. The submitting international and domestic NGOs would like to provide the Committee with information on recent developments in two areas: a) institutionalisation of young children; and b) failure to appropriately implement the right to inclusive education. Both areas concern particularly children with disabilities and Roma children.
2. This submission has been written jointly by Rytmus – od klienta k občanovi, z. ú., Společnost pro podporu lidí s mentálním postižením v ČR, z. s. - Inclusion Czech Republic, Naděje pro autismus, Rodiče pro děti s autismem z. s. - Civil Society Parents for Children with Autism and Validity Foundation (Mental Disability Advocacy Centre).
3. **Validity Foundation** – Mental Disability Advocacy Centre is an international non-governmental human rights organisation which uses legal strategies to promote, protect and defend the human rights of adults and children with intellectual and psychosocial disabilities. Validity’s vision is a world of equality where emotional, mental and learning differences are valued equally; where the inherent autonomy and dignity of each person are fully respected; and where human rights are realised for all persons without discrimination of any form. Validity holds participatory status at the Council of Europe, and special consultative status at ECOSOC. For more information, please visit [www.validity.ngo](http://www.validity.ngo).
4. **Rytmus - od klienta k občanovi, z. ú.** is an NGO active in the Czech Republic since 1994. Rytmus supports people with disabilities in an active inclusion into society and provides the necessary support to acquire, develop and use their abilities and skills in a common environment, school, and employment.
5. **Společnost pro podporu lidí s mentálním postižením v ČR, z. s. - 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.spmpr.cz/>.
6. **Platforma Naděje pro autismus** is connecting everyone, who is not indifferent to the life and fate of people with autism.

7. **Rodiče pro děti s autismem z. s. (Civil Society Parents for Children with Autism)** is formed by a group of parents who used to meet at lectures concerning therapy based on applied behaviour analysis („ABA“) for their children on the spectrum. Altogether they participated in a long project organizing lectures on using ABA to teach children and summer ABA camps for children on the spectrum. They also managed to convince Members of the Parliament (Senate) that inclusion of professionals providing ABA services in the Act on Non-Medical Occupations would increase the quality of therapy services for children on the spectrum. The civil society focuses on spreading information on ABA, organizing summer camps and gathering information from other parents of children on the spectrum. All the members of the civil society are parents of children on the spectrum, some children attending mainstream primary schools, others special schools.

## II. SPECIFIC COMMENTS

### a) Institutionalisation of young children with disabilities and Roma children

8. Czechia still has institutions for young children, even younger than 3 years of age – infant homes (officially called “children’s homes for children up to 3”). The European Committee of Social Rights found this practice to violate the right of mothers and children to social and economic protection enshrined in Article 17 of the 1961 European Social Charter.<sup>1</sup> The Committee noted that: i) the use of legal regulations on institutional care and the operation of infant homes specified in Act No. 372/2011 Coll. on health services does not guarantee adequate protection and care for children under the age of 3; ii) sufficient measures have not yet been taken to provide services to children under the age of 3 in a family and community-based environment and to gradually deinstitutionalise the existing system of care for young children; iii) necessary measures have not been taken to ensure the right to adequate protection and appropriate care services for children of Roma origin and children with disabilities under the age of 3.
9. The decision of the Committee dealt only with infant homes. Still, it is worth noting that young children may also be institutionalised in other types of institutional facilities, namely children’s homes<sup>2</sup>, facilities for children requiring immediate assistance<sup>3</sup>, and facilities for persons with disabilities<sup>4</sup>.
10. In September 2021, the Parliament adopted an amendment to the relevant laws introducing the minimum age of 3 or 4, depending on the type of institution<sup>5</sup>, below which a child cannot be placed in institutional care. Pursuant to the amendment, the age limit should come into effect on 1 January 2024 for facilities for children requiring immediate assistance and 1 January 2025 for other above-mentioned facilities<sup>6</sup>.
11. Although the aforementioned amendment creates an impression that with its entry into force, there will be a complete abolition of infant homes, this is not the case. The amendment

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<sup>1</sup>*European Roma Rights Centre (ERRC) and Mental Disability Advocacy Centre (MDAC) v. the Czech Republic*, decision on the merits of 17 June 2020, collective complaint no. 157/2017.

<sup>2</sup>Act no. 109/2002 Coll., on the exercise of the institutional or protective care in school facilities and on preventive educational care in school facilities.

<sup>3</sup>Act no. 359/1999 Coll., on Social and Legal Protection of Children.

<sup>4</sup>Act no. 108/2006 Coll., on Social Services.

<sup>5</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>6</sup>Act no. 363/2021 Coll.

does not abolish the possibility of placing a child in an infant home on a contract concluded between the facility and the child's parents. It only adds the condition that the contract must be approved by the child protection authority. Nevertheless, this approval is only subsequent – it is to be issued after the child is already in the institution. The effectiveness of this safeguard is thus highly questionable. Moreover, **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.

12. Furthermore, the age limit contains exceptions designed for children with disabilities who can still be placed in facilities for persons with disabilities and siblings of already institutionalised children who can still be placed in children's homes even if they are younger than 3 or 4. These exceptions are contrary to the international commitments of the Czech Republic as they are discriminatory towards the most vulnerable groups of children – children with disabilities and children from families with socially marginalised backgrounds.
13. In February 2023, the Ministry of Labour and Social Affairs surprisingly proposed another amendment to extend the functioning of infant homes for additional two years, until the end of 2026, instead of 2024.<sup>7</sup> According to the statement given by the ministry, this was supposed to be a transitional period, which they claimed is a common practice in significant regulatory changes. Furthermore, the original version of the proposal did not take into account that there are still legal exceptions allowing for the institutionalisation of children with disabilities under the age of 3.
14. After the public consultation on the draft amendment and strong objections from civil society, a new version of the proposal was prepared in May 2023. The current version of the proposal has abandoned the extension of the existence of infant homes. The ministry accepted the objection stating that the extension is not justified and is in contradiction with international commitments. According to the objection, even the approval of the ban on infant homes by the end of 2024 was a result of a compromise, precisely to provide sufficient transitional time for the state bodies and the facilities. Infant homes will therefore be abolished by the end of 2024.
15. At the same time, the current proposal aims to abolish placing children under the age of 3 in infant homes on a contract concluded between the facility and the child's parents. In the previously adopted amendment, this provision was omitted without reason, and the current proposal aims to rectify this deficit.
16. Still, the ministry proposes to mitigate the ban on the stay of children under the age of 3 in facilities for children requiring immediate assistance, which was introduced in the previous amendment. According to the ministry, these facilities are intended to provide temporary protection for children under 3 years old and their siblings for a very limited and short period, creating space for finding a different and more suitable solution for the child. According to the current proposal, children under the age of 3 could be placed in these facilities for a maximum period of 14 days.

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<sup>7</sup>Proposal of the law amending Act No. 359/1999 Coll., on the Social and Legal Protection of Children, as amended, and other related laws, no. 483/23.

17. As a result of the public consultation on the draft, the ministry has added to the proposal a prohibition on the institutionalisation of children with disabilities up to the age of 4 with no exceptions, effective from the year 2026.<sup>8</sup>
18. The number of children placed in infant homes has been consistently decreasing. According to available data<sup>9</sup>, in the first quarter of 2021, there were 228 children under the age of 3 in institutional care, 213 fewer children than in 2018. Between 2018 and 2021, the number of unaccompanied children under the age of 3 was halved. At the beginning of 2022, 138 children under 3 were in infant homes. If the current trend continues, the number of children under 3 in infant homes will reach zero by 2024. However, the overall reduction in the number of children in infant homes is misleading because there has been an increase in the number of children aged 4 and above being admitted. These numbers indicate that infant homes primarily serve to a different group of children than they are intended for, and therefore, they should no longer have a place in Czechia by 2024.
19. The CRPD Committee, in its Guidelines on deinstitutionalization, including in emergencies (CRPD/C/5) emphasised that “institutionalization can never be considered as a form of protection of children with disabilities. All forms of institutionalization of children with disabilities – that is, placement in any non-family setting – constitute a form of segregation, are harmful and violate the Convention. Children with disabilities, like all children, have the right to family life and a need to live and to grow up with a family in the community.”<sup>10</sup>

#### **Recommendations:**

- **Continue adopting all necessary legislative amendments to eliminate the practice of institutionalisation of young children with no exceptions in all types of residential care settings.**
- **Ensure that these institutions are not substituted by other health care or social care facilities to provide alternative care to young children, especially those with disabilities.**
- **Ensure that deinstitutionalisation plans and processes are fully in line with the CRPD, the CRPD Committee’s general comment No. 5 (2017) on living independently and being included in the community (CRPD/C/GC/5), and the CRPD Committee’s Guidelines on deinstitutionalization, including in emergencies (CRPD/C/5).**
- **Invest the maximum of available financial and human resources to ensure the availability and affordability of outreach social services for families in need of social and health care support.**
- **Invest the maximum of available financial and human resources in the development of family-based alternative care.**

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<sup>8</sup> At the time of submission of this alternative report, a proposal is awaiting submission to Parliament for approval.

<sup>9</sup> *INFANT HOMES FOR CHILDREN UP TO 3 YEARS: Final Report from the Assessment Conducted by The Ministry of Labour and Social Affairs in Spring 2022*. The document is available in Czech at: <https://www.mpsv.cz/documents/20142/225508/DD3+Z%C3%A1v%C4%9Bre%C4%8Dn%C3%A1+zpr%C3%A1va+za+2022.pdf/d00fd976-4de4-29a9-944c-d62df9d8e081> [accessed 11 June 2023].

<sup>10</sup> UN Committee on the Rights of Persons with Disabilities, Guidelines on deinstitutionalization, including in emergencies (CRPD/C/5), para 12.

## **b) Implementation of the right to inclusive education for children in vulnerable situations**

20. Article 17 of the Social Charter provides for social and economic protection of mothers and children. The revised version of Article 17 further specifies and provides for social, legal, and economic protection. States are required, among other things, to take measures that guarantee children the assistance, education, and training they need. Although Article 17 does not explicitly mention the right of children to inclusive education, the explanatory report to the Charter emphasises the need for protecting children and young persons with special needs arising from their vulnerability<sup>11</sup>, including the education of children with disabilities<sup>12</sup>. It is argued that the right to education is an inherent part of the social and economic protection of children, as it is inherently related to the child's development and the stability of their present and future situation<sup>13</sup>.
21. In connection with Article 17, Czechia was requested to provide information in the Report on measures taken to 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. In this regard, Czechia states only that since the amendment to Act No. 247/2014 Coll., on the provision of child care services in a children's group and on amendments to related acts, the obligation of further continuous education of carers has been stipulated.<sup>14</sup>
22. It is evident that Czechia has not yet taken measures to fulfil the purpose and aim of inclusive education as interpreted in Article 17. During the reporting period, Czechia has not undertaken any legislative or executive steps that would lead to significant progress in implementing inclusive education for vulnerable groups of children in the Czech educational system.
23. In the past, Czechia has adopted several significant legislative measures aimed at promoting access of vulnerable groups of children to mainstream education, including Amendment No. 82/2015 (referred to as "the Inclusive Amendment"). However, it cannot be said that Czechia is moving towards implementing inclusive education in its educational system in the manner interpreted by Article 17 of the Charter, along with the UN Convention on the Rights of Persons with Disabilities ("CRPD"), whose standards for inclusive education have been acknowledged by the Committee. Inclusive education, in accordance with the CRPD, is based on a child's rights approach. The child rights approach introduces a paradigm shift away from child protection approaches in which children are perceived as objects in need of assistance rather than individuals entitled to non-negotiable rights to protection<sup>15</sup>. The child's rights approach, therefore, obliges states to remove barriers to access to education

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<sup>11</sup>European Social Charter (ETS no. 163) - Explanatory Report, para. 69, document available at: <http://www.lex.unict.it/eurolabor/ricerca/dossier/dossier5/cap3/social-charter-explan.htm> [accessed 11 June 2023].

<sup>12</sup>*Autism-Europe v. France*, complaint no. 13/2002, decision on merits of 4 November 2003; *MDAC v Bulgaria*, complaint no. 41/2007, decision on the merits of 3 June 2008.

<sup>13</sup>UN CRC Committee, General Comment no. 14 – the best interest of the child, para. 79.

<sup>14</sup>The Government of Czech Republic, 20th National Report on the implementation of the European Social Charter, page 27.

<sup>15</sup>CRC/C/GC/13, para. 59.

and ensure that every child is provided with quality education while respecting their individuality and experience.

24. The CRPD Committee's General comment No. 4 (2016) on the right to inclusive education underlines that „education must be directed at the full development of the human potential and sense of dignity and self-worth, and the strengthening of respect for human rights and human diversity.“<sup>16</sup>
25. Unfortunately, the aforementioned "Inclusive Amendment" never brought about a comprehensive reform of the Czech education system, as it never fully embraced the aforementioned paradigm shift. Repressive and welfare approaches to children remained present within the system. According to FORUM and Amnesty International – the Czech Republic study, despite all the legislative reforms, the education system still heavily relies on discipline and the authority of pedagogical staff and school representatives, rather than on respect for the child and diversity.<sup>17</sup>
26. One of the consequences of these shortcomings is the power asymmetry between school representatives and the child and their family within schools. The director of the school and other school representatives disposes of broad discretion in many areas of decision-making concerning the organisation of the education. At the same time, the child and their family lack explicit legal entitlements. The system thus does not provide the child and the family with adequate safeguards that even when integrated into the mainstream school, the child will not be ostracised by the school and its staff to get them to change the school. The study also showed that one of the significant barriers to effective implementation of the right to inclusive education is persistent prejudiced attitudes of teachers and other pedagogical staff to children who often think it is better for children to be educated in specialized schools.<sup>18</sup>
27. On the structural level, the lack of rule of law takes the form of ministerial decrees, which often significantly narrow the child's entitlements compared to the Education Act. Although ministerial decrees are supposed to be issued only based on and within the limits of the law, some decrees exceed their authority and establish significant rules for inclusive education without undergoing proper legislative process. For instance, although the Education Act does not contain any limits in the provision of support measures in education and only requires that the school counselling facility recommends these measures, the Ministerial Decree no. 27/2016 Coll. and its Annex impose several restrictions in this regard and excludes the provision of certain support measures in specific contexts.
28. The recent developments show clearly that the Ministry is using the amendments to the Ministerial Decree no. 27/2016 Coll. as a tool to narrow the scope of support measures foreseen by the “Inclusive Amendment” since those showed to be too costly. This was also the case of the highly debated amendments to the Ministerial Decree effective since 1 January 2020, which narrowed the availability of specific support measures, including the support by a teaching assistant.

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<sup>16</sup> UN Committee on the Rights of Persons with Disabilities, General comment No. 4 (2016) on the right to inclusive education (CRPD/C/GC/4), para 15.

<sup>17</sup> FORUM and Amnesty International – the Czech Republic, *The Right to Education: The Reality and Possibilities of Strategic Litigation* [Právo na vzdělání: Realita a možnosti strategické litigace], 2021. The study is available in Czech at: <https://forumhr.eu/wp-content/uploads/2021/08/Pravo-na-vzdelani.pdf> [accessed 22 July 2023].

<sup>18</sup> Ibid.



29. The problem with this practice lies both in the fact that the ministry creates significant legislation without proper legislative processes and in the frequency of changes implemented through decrees. For instance, The Ministerial Decree no. 27/2016 has already been amended six times since its adoption in 2016, and virtually every year, there is a draft amendment by the Ministry which aims to restrict, more or less openly, the provision of support measures and thus reduce their costs. This practice has been criticized by the Public Defender of Rights for violating the rights of children with special educational needs, including children with disabilities<sup>19</sup>.
30. Children with special educational needs, including children with disabilities still face ongoing specific form of segregation in education. They are adversely affected by the existence of a special education system for children with intellectual disabilities. Although an effective solution to structural discrimination against children with disabilities cannot be found outside the scope of the right to inclusive education, the Ministry has not been adopting measures to eliminate special schools altogether, as required by the CRPD and the Committee.<sup>20</sup>
31. On the contrary, these students in special schools often cannot receive the same level of support as they would in a regular school. The aforementioned amendment to Regulation No. 27/2016, effective from January 1, 2020, introduced the provision that teaching assistants cannot be provided as a support measure in special education<sup>21</sup>. This regulation must be deemed illegal because it disregards the individual needs of students. Although teaching assistants still work in special schools, the school itself must bear the cost, often employing only one assistant for the entire class of children. Consequently, the regulation violates the legal right of children with special educational needs to receive free support measures from the school<sup>22</sup> and their right to have their educational needs taken into account in education<sup>23</sup>. Furthermore, it excludes students with special educational needs from access to education and discriminates against them based on their disabilities, contravening Article 2 of the CRPD.
32. If children with special educational needs in mainstream schools (as opposed to children in special schools) currently have an individual entitlement to a teaching assistant, the Ministry plans to remove this entitlement as well. In the proposed amendment to Regulation No. 27/2016 Coll, the Ministry aims to institutionalize teaching assistants by allocating a certain number of assistants to schools based on predetermined parameters. While this step may contribute to increasing the stability of allocated assistants, it completely disregards the right of a child with special educational needs to receive an individualized approach to education, as stipulated by the Education Act and international obligations, namely the right of the child to receive individualised reasonable accommodations in education. The proposed change is not systematic, as the entitlement to a teaching assistant will only be eliminated in primary schools, which is the stage of education when a child needs support measures the most. Furthermore, it creates an impermissible retraction of the achieved level of protection of the right to equal access to education.

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<sup>19</sup>The opinion of the Public Defender of Rights of 21 September 2020 is available in Czech at: [https://www.ochrance.cz/uploads-import/ESO/39867\\_2020\\_S.pdf](https://www.ochrance.cz/uploads-import/ESO/39867_2020_S.pdf) [accessed 11 June 2023].

<sup>20</sup> Mental Disability Advocacy Center (MDAC) v. Belgium, complaint no. 109/2014, decision on merits of 29 March 2018.

<sup>21</sup>Point 1.8. of Annex 1 of the decree.

<sup>22</sup>Section 16, paragraph 1 of the Education Act.

<sup>23</sup>Section 2, paragraph 1, letter b) of the Education Act.

33. In relation to teaching assistants, it is also worth mentioning additional shortcomings in their position. Although students with special educational needs in mainstream schools currently are entitled to be provided with a teaching assistant, it is necessary to highlight the deficiencies in the funding of assistants. When the educational counselling centre recommends a teaching assistant for a student, they also specify the number of hours per week during which this support should be financed. However, in most cases, the support is not provided for the entire working hours. In practice, this means that the child remains in school only for the duration when the assistant is available. As a result, parents have to pick up their child from school earlier, and the child is unable to participate in afternoon socialization activities in daycare or extracurricular activities.

#### **Recommendations:**

- **Repeal the proposed amendment of the Ministerial Decree no 27/2016 Coll. which decreases the available supports to children with special education needs in mainstream education.**
- **Adopt all necessary measures, including legislative and budgetary ones, to progressively eliminate all forms of special education for children with disabilities in a reasonable timeframe and by using the maximum of available resources.**
- **Ensure that the education system for persons with disabilities is based on the CRPD and the CRPD Committee's General comment No. 4 (2016) on the right to inclusive education (CRPD/C/GC/4).**
- **Ensure that support measures at mainstream schools are provided in an individualised, flexible manner in accordance with the children's right to reasonable accommodations and by using the maximum of available resources.**
- **Ensure that all the legislative, strategic, and methodological materials pursue the implementation of inclusive education and not mere integration.**