



European
Social
Charter

Charte
sociale
européenne



01/07/2021

RAP/RCha/CZE/18 (2020)

EUROPEAN SOCIAL CHARTER

Comments by the Forum for Human Rights,
Validity Foundation, supported by Společnost pro podporu
lidí s mentálním postižením v ČR
on the 18th National Report on the implementation of the
European Social Charter

submitted by

THE GOVERNMENT OF CZECH REPUBLIC

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

Report registered by the Secretariat

on 01 July 2021

CYCLE 2020



EUROPEAN SOCIAL CHARTER

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

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

CYCLE 2020

Submitted by:

Forum for Human Rights (FORUM)

Validity Foundation – Mental Disability Advocacy Centre

Společnost pro podporu lidí s mentálním postižením v ČR – Inclusion Czech Republic

30 June 2021

INTRODUCTION

1. The submission provides comments on the 18th national report of the Czech Republic under the reporting procedure to the European Committee of Social Rights ("ECSR") relating to the provisions belonging to thematic group 2 on health, social security, and social protection. This submission will focus on the following provisions of the European Social Charter ("ESC"): Article 11 of the ESC (the right to protection of health), Article 13 of the ESC (the right to social and medical assistance), and Article 23 or Article 4 of the Additional Protocol (the right of elderly persons to social protection).
2. The submission has been written by Forum for Human Rights (FORUM) and Validity Foundation and is supported by Společnost pro podporu lidí s mentálním postižením v ČR – Inclusion Czech Republic.
3. 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 also leads domestic and international litigation activities. FORUM has been supporting a number of cases pending before domestic judicial authorities and before the European Court of Human Rights. FORUM authored and co-authored a number of 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.
4. Validity Foundation – Mental Disability Advocacy Centre is an international non-governmental organisation that uses legal strategies to promote, protect and defend the human rights of people with mental disabilities worldwide. 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 is fully respected; and where human rights are realised for all persons without discrimination of any form. Validity has participatory status at the Council of Europe, and special consultative status at ECOSOC. For more information, please visit www.validity.ngo.
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.spmpcr.cz/>.

SPECIFIC COMMENTS

6. This submission concerns the right to health of persons with disabilities. It addresses the right to health in four important domains for persons with disabilities, i.e. in the context of I) ill-treatment; II) independent living; and III) equality before the law, i.e. legal capacity in the area of medical treatment, reproductive rights and right to marry and found a family.

I. RIGHT TO HEALTH AND PROTECTION AGAINST ILL-TREATMENT

7. The right to health and its protection are closely connected to protection against ill-treatment.¹ The ECSR emphasises that “the notion of the protection of health incorporates an obligation that the State refrain from interfering, directly or indirectly with the enjoyment of the right to health.”² Effective protection against ill-treatment must thus constitute an indispensable part of the right to health. Unfortunately, Czechia fails to provide persons with such protection on several levels (prohibition of the use of practices that amount to ill-treatment in medical facilities, criminalisation of ill-treatment, prevention of ill-treatment) which negatively impacts particularly on persons in a situation of vulnerability, including persons with disabilities. Below, we describe each failure in more detail.

(a) Failure to prohibit the use of practices amounting to ill-treatment in medical facilities

8. The freedoms deriving from the right the health should protect the person from any interference with her integrity in the absence of her informed consent. Restraints are typically used on persons with disabilities in the context of healthcare, and therefore constitute forced intervention. In the Czech Republic, the use of restraints continues to raise human rights concerns.
9. The use of restraints in psychiatric hospitals and psychiatric wards of university hospitals³ affects particularly persons with disabilities. The UN Committee on the Rights of Persons with Disabilities (*hereinafter* “the UN CRPD Committee”) condemned this practice as a form of ill-treatment of persons with disabilities in breach of Article 15 of the UN Convention on the Rights of Persons with Disabilities.⁴ The former UN Special Rapporteur on the right to health, Dainius Pūras, connected in his report on mental health and

¹ Digest of the case law of the ECSR, December 2018, p. 128.

² *Ibid.*, p. 128.

³ See PODRAZIL, P., JIRÁSKO, V. (2019). Užití omezovacích prostředků v průběhu nedobrovolné hospitalizace s důrazem na užití síťových lůžek. *Právník*, 2019, vol. 158, no. 8. pp. 774-792.

⁴ Guidelines on the right to liberty and security of persons with disabilities, A/72/55, paras. 12 and 39.

human rights the need for restraint measures with the problem of inappropriate staffing and lack of person-centred support.⁵ He pointed out that the question about restraints is not whether they should be allowed or not within the context of healthcare. There are always alternatives to them, and the only relevant question is the willingness of the system to adopt these alternatives.

10. Czech legislation continues to allow for the use of restraints in medical settings, including one of their worst forms – the use of netted cage beds. Despite express and continuing recommendations⁶, netted cage beds are listed under section 39 of the Health Care Act⁷ as one of the restraints allowed within Czech psychiatric institutions. Although the number of netted cage beds as well as the number of their uses has been decreasing recently, netted cage beds remain present in 14 psychiatric institutions or psychiatric wards of university or regional hospitals while they are actively used in 11 institutions.⁸ In the case of two facilities, an increase in the use of this restraint was evidenced despite the general decreasing trend in numbers and usage.⁹ To fulfil the international obligations of the state, the provision of the Health Care Act allowing for the use of netted cage beds in psychiatric facilities must be repealed.

11. Other restraints allowed under Czech law are also invasive, painful and humiliating. They include chemical restraints, solitary confinement, restraint belts, straitjackets, etc. Czech psychiatry places heavy reliance on the use of restraints. In its National Action Plan for Mental Health 2020-2030 adopted in January 2020, the Government admits that according to its research about 2,616 persons had experienced the use of some form of restraint measures during the previous 6 months, confirming that this is not a marginal problem. The Government has expressly committed itself to prevent and reduce these practices. However, it merely plans to adopt “partial changes in the legislation and internal directives of individual facilities and to unify the registration of the use of restraint measures and regularly evaluate it on the level of facilities and the Czech Republic.”¹⁰ Furthermore, the

⁵ The UN Special Rapporteur deals with this issue in the context of older persons with dementia, who are subjected to chemical restraints. See A/HRC/44/48, para. 48.

⁶ See, for example, Concluding observations of CAT Committee regarding the report of the Czech Republic of 2018, CAT/C/CZE/CO/6, paras. 32 and 33 (c); and Concluding observations of UN Human Rights Committee regarding the report of the Czech Republic, 21 August 2013, para. 14; and, European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, Report to the Czech Government on the visit to the Czech Republic by the CPT from 7 to 16 September 2010, 18 February 2014, CPT/Inf (2014) 3, paras 110-117.

⁷ Act no. 372/2011 Coll.

⁸ The Government's Observations on the merits of the collective complaint Validity Foundation – Mental Disability Advocacy Centre v. the Czech Republic (complaint no. 188/2019), para. 107. The Government's Observations are available at: <https://rm.coe.int/cc188casedoc3-en-government-s-submissions-on-the-merits/1680a06fbc> [accessed 18/1/2021].

⁹ Ibid., para. 110.

¹⁰ See the National Action Plan, measure 3.1.2. The National Action Plan is available in Czech at: <https://www.reformapsychiatrie.cz/sites/default/files/2020-12/N%C3%A1rodn%C3%AD-ak%C4%8Dn%C3%AD-pl%C3%A1n-pro-du%C5%A1evn%C3%AD-zdrav%C3%AD-2020-2030.pdf> [accessed 14/6/2021].

Government plans to ensure systemic methodological support for measures that would lead to the development of preventive and alternative scenarios. Finally, the Government should support education and sharing of examples of good practices.¹¹

12. Even though the Government's commitments in the National Action Plan may seem complex, its objectives do not reach the necessary standard. The consistent implementation of the right to health would require elimination of the use of restraints, not only its reduction and more rigorous monitoring. The amendment to the legislation should not be only partial, but comprehensive and should accommodate all rights of persons with disabilities, including their rights to security and dignity. Furthermore, the implementation strategy does not include any legislative amendments, and these are not included even among the indicators to monitor the implementation of the measure.¹²

Recommendation:

Czechia must adopt clear, targeted and time-framed steps to eliminate the use of coercion in psychiatry, including all forms of restraints as a form of ill-treatment of persons with mental disabilities. This is closely connected with a complex reform of mental health care shifting the focus from institutional care and biomedical model of interventions¹³ to underlying and social determinants of mental health¹⁴ and accessibility of mental health services in the community, as part of mainstream health services.¹⁵

(b) Failure to criminalise torture and other forms of ill-treatment

13. The right to be protected from any form of ill-treatment is absolute. The State must not only refrain from ill-treating the person but must also provide the person with effective protection in the case she has been ill-treated by a non-State actor. An integral part of this protection necessarily includes the requirement to criminalise acts of ill-treatment.

14. The Czech Republic was criticised by the UN Committee against Torture ("CAT Committee") for the failure to properly implement adequate provisions criminalising torture and other forms of ill-treatment and for failing to ensure the effective investigation, prosecution, and punishment, within

¹¹ Ibid.

¹² Implementation of the National Action Plan for Mental Health 2020-2030 for the period of 2020-2023, pp. 51-52.

¹³ The UN Special Rapporteur on the right to health, Dainius Pūras, stresses on the biomedical model in his report on the right to mental health of 2017 that "reductive biomedical approaches to treatment that do not adequately address contexts and relationships can no longer be considered compliant with the right to health. While a biomedical component remains important, its dominance has become counterproductive, disempowering rights holders and reinforcing stigma and exclusion." – A/HRC/35/21, para. 77.

¹⁴ Ibid., paras. 67-68.

¹⁵ Ibid., paras. 78 and 80.

Czech criminal law.¹⁶ The existing definition of the crime provided for under Section 149 of the Criminal Code mixes up different forms of ill-treatment (torture, inhuman and degrading treatment and punishment), does not cover all the elements of the definition of torture contained in Article 1 of the CAT, and fails to acknowledge discrimination as one of the possible purposes. In addition, the law lacks any distinctions between the acts of torture from other forms of ill-treatment on the grounds of *mens rea* and requires this even for cases of cruel or inhuman treatment. Finally, the law fails to explicitly criminalise degrading treatment. All these deficiencies substantively limit the provision's applicability in the practice, such as challenging degrading conditions in large residential institutions or psychiatric hospitals. Such a situation results in de facto impunity for acts of torture, cruel, inhuman, and degrading treatment.

Recommendations:

Czechia must amend its criminal law in order to enable to prosecute all acts of torture and other forms of ill-treatment, whether committed by State or non-State agents. To this end, Czechia must:

- **separate the crime of torture from the crime of other inhuman, cruel or degrading treatment;**
- **appropriately define the elements of torture to comply with Article 1 (1) CAT and to cover all purposes, including discrimination;**
- **explicitly criminalise degrading treatment;**
- **criminalise also those acts of cruel, inhuman or degrading treatment that are committed through negligence;**
- **explicitly ensure that also private persons, particularly private educational, health and social care facilities, may be held liable for the acts of ill-treatment.**

(c) Failure to effectively investigate ill-treatment (obligation of notification and medical confidentiality)

15. Effective protection from ill-treatment requires effective investigation. To ensure effective investigation, national legislation should also incorporate appropriate notification mechanisms. However, Czech legislation contains serious deficiencies in this regard.

16. The Czech Public Defender of Rights ("the Ombudsperson") concluded in her report that "*systematic visits [of the National Preventive Mechanism] indicated that the medical reports on examination and treatment lack parameters required for an investigation of ill-treatment*".¹⁷ The Health Care

¹⁶ CAT Committee, Concluding observations: Czech Republic, CAT/C/CZE/CO/6, 6 June 2018, para. 8-9.

¹⁷ The Office of the Public Defender of Rights, Report of the National Preventive Mechanism, Ochrana před špatným zacházením 2019 (Protection against ill-treatment 2019), published 1/2/2019, available in Czech at:

https://www.ochrance.cz/uploads-import/ochrana_osob/Zpravy-vyrocní/VZ_DET_2019_CZ.pdf [accessed 7/6/2021], p. 7.

Act¹⁸ lays down a statutory confidentiality requirement and prohibits a physician to submit information on signs of ill-treatment (e. g. physical signs of ill-treatment as an assault by an inmate, disproportionate use of force by a police officer or a member of the prison service, or complaints disclosed to a physician by a patient) to the authorities empowered to investigate ill-treatment without the person's consent. The reason behind insufficient reporting and participation on the prevention of ill-treatment by physicians lie also in the lack of methodological guidance on the role of physicians in tackling ill-treatment and guidance on documentation of ill-treatment.¹⁹

17. The Ombudsperson also refers to the provision of the Health Care Act²⁰ regulating health care services for prisoners and expresses that the prisoners are awarded with a lower standard of medical confidentiality in comparison to the standards of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.²¹ The Health Care Act states that medical examination must be conducted within sight of a prison officer and out of hearing of the prison officer. In some circumstances as in cases of risk to the life, health, or safety of the physician (or another specialist worker or of the property) a prison officer is allowed to listen to the medical examination. Such provision violates medical confidentiality and hinders the identification and prevention of ill-treatment.²²

Recommendation:

Czechia must amend its legislation to incorporate appropriate notification and investigative mechanisms for the acts of ill-treatment, particularly in the context of the person's deprivation of liberty.

¹⁸ Act no. 372/2011 Coll.

¹⁹ Statement of the Public Defender of Rights on the list of issues prior to submission of the seventh periodic report on the Czech Republic due in 2022 on measures implemented to perform its obligations under the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, available in English at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCAT%2fINP%2fCZE%2f44406&Lang=en [accessed 7/6/2021], p. 7.

²⁰ Section 46 (1) (g) of Act no. 372/2011 Coll.

²¹ The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, Health care services in prisons, CPT/Inf(93)12-part, Extract from the 3rd General Report of the CPT, published in 1993, available in English at: <https://rm.coe.int/16806ce943>, para 51.

²² Statement of the Public Defender of Rights on the list of issues prior to submission of the seventh periodic report on the Czech Republic due in 2022 on measures implemented to perform its obligations under the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, available in English at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCAT%2fINP%2fCZE%2f44406&Lang=en [accessed 7/6/2021], p. 6-7. See also Concluding observations of CAT Committee regarding the report of the Czech Republic of 2018, CAT/C/CZE/CO/6, paras. 12-13.

(d) Failure to ensure effective monitoring of the legality of detention and detention conditions

18. Although deprivation on the ground of disability is a *per se* violation of Article 14 of the UN Convention on the Rights of Persons with Disabilities as well as the right to health²³, it is still a widespread practice, incorporated in national legislations. Czechia is not an exception and applies both civil and forensic detention due to disability. A radical reform leading to elimination of this practice is inevitable. In the interim Czechia also fails to ensure effective, regular, and independent monitoring of psychiatry facilities, including their closed wards, where both civil and forensic detentions take place.
19. Monitoring of places where persons are deprived of their liberty is vital for the prevention of torture and other forms of ill-treatment. In Czechia, persons who are detained in psychiatric facilities are still deprived of regular and independent monitoring of the legality of their detention and the conditions of their detention. The CAT Committee has recommended that Czechia ensure the effective monitoring and independent assessment of the conditions in institutions.²⁴ Reports²⁵ of the Ombudsperson point to the issue of the lack of monitoring of the detention conditions and also to the shortcomings of the complaint procedure and recommends amendment of the relevant acts.²⁶ Over time there were efforts, mainly proposals for amendments prepared by the Government's Committees²⁷, to change the situation, however, all of the attempts remained unsuccessful.

Recommendations:

Czechia must adopt a comprehensive, targeted and time-framed strategy to eliminate all forms of detention on the ground of disability and

²³ The UN Special Rapporteur on the right to health, Dainius Pūras, emphasises in his report on the right to health and deprivation of liberty that "while some forms of confinement, including retention in hospitals and in psychiatric and other medical facilities, may constitute *de facto* deprivation of liberty, virtually all forms of confinement without informed consent represent a violation of the right to health." – A/HRC/38/36, para. 6.

²⁴ CAT Committee, Concluding observations: Czech Republic, CAT/C/CZE/CO/4-5, 13. 7. 2012, para 21.

²⁵ Statement of the Public Defender of Rights on the list of issues prior to submission of the seventh periodic report on the Czech Republic due in 2022 on measures implemented to perform its obligations under the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, available in English at:

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCAT%2fINP%2fCZE%2f44406&Lang=en [accessed 7/6/2021], p. 4.

²⁶ Act on Asylum, The Foreigners' Residence Act, and the Act on Specific Healthcare Services.

²⁷ The motion of the Government's Committee against Torture is available in Czech at: <https://www.vlada.cz/cz/ppov/rlp/vybory/proti-muceni-a-nelidskemu-zachazeni/ze-zasedani-vyboru/zasedani-vyboru-20--10--2016-151627/> [accessed 19/1/2021].

The approval of the Government's Human Rights Council is available in Czech at: <https://www.vlada.cz/cz/ppov/rlp/cinnost-rady/zasedani-rady/jednani-rady-dne-22--listopadu-2016-155104/> [accessed 19/1/2021].

Information on the discussions on the draft amendment in the Chamber of Deputies, including the information of the government's disagreement, are available in Czech at:

<https://www.psp.cz/sqw/historie.sqw?o=8&T=521> [accessed 19/1/2021].

duly pursue its implementation Czechia must ensure that the strategy will comply with the UN Convention on the Rights of Persons with Disabilities, its principles and obligation deriving therefrom.

In the interim, Czechia must ensure that persons who are held in disability-based detention in psychiatric hospitals are not deprived of effective, regular, and independent monitoring of the legality and conditions of their detention as well as access to effective, timely and independent complaint mechanisms.

II. RIGHT TO HEALTH AND INDEPENDENT LIVING

20. Health, being a state of physical, mental, and social well-being and not merely the absence of disease or infirmity, is closely connected with the person's living arrangement. This connection becomes particularly important in the case of persons with disabilities who are often subject to living in a specific institutional environment. Even before the adoption of the UN Convention on the Rights of Persons with Disabilities that explicitly enshrined the right to independent living (Article 19), Paul Hunt as the UN Special Rapporteur on the right to health argued, in the context of the rights of persons with mental disabilities, the right to health required the provision of community-based services instead of institutions, while institutionalisation constituted a violation of the right to health.²⁸ This position was held also by his mandate successors, particularly by Dainius Pūras who dedicated one of his thematic reports directly to the relationship of the right to health and deprivation of liberty, covering different forms of confinement in different institutions for various purposes.²⁹ Besides, Dainius Pūras as the UN Special Rapporteur on the right to health touched on the issue of institutional response to situations of vulnerability also in his other reports where he addressed institutionalisation as a form of social exclusion of persons with disabilities "which symbolizes a core obstacle to recovery and the full enjoyment of their right to mental health".³⁰

21. The Czech Republic still applies a strong culture of institutionalisation of persons with disabilities across different age groups and different types of disabilities. Below, we provide disaggregated information on institutionalisation of persons with disabilities, including older persons and children.

(a) Failure to deinstitutionalise the social care system for persons with disabilities

²⁸ E/CN.4/2005/51, paras. 83-86.

²⁹ A/HRC/38/36, 2018.

³⁰ A/HRC/44/48, 2020, para. 59.

22. Social care services in the Czech Republic continue to be provided mostly in segregated institutional settings. UN bodies³¹ have repeatedly expressed concerns about the slow progress of the deinstitutionalisation process in Czechia and have recommended to step up the process and allocate sufficient resources for the development of support services in local communities so all persons with disabilities can enjoy their rights to independent living and inclusion in the community.³²
23. Deinstitutionalisation of the social care system is foreseen in national strategic documents, particularly the National Strategy of Development of Social Services 2016-2025. The Strategy admits that there is a lack of outreach services that would ensure the support of the person in the community as well as “community-based residential services”³³ and thus lists as one of its 10 strategic goals “to ensure the transition from the institutional model of care to support people in the natural environment”. To implement this goal the Strategy requires: i) the adoption of a transition plan, ii) creation of the conditions to provide the necessary social services capacities of outreach, ambulatory and residential forms; and iii) to ensure the protection of the rights and quality of life of people in institutions for the transition from institutional care to community-based care.³⁴
24. Unfortunately, none of these specific goals have been achieved yet. The National Strategy was complemented by an Action Plan, but only from 2017 to 2018. The Action Plan connected the implementation of transformative efforts with the transition plan which should have been adopted by 2017.³⁵ Nonetheless, the transition plan has not yet been adopted and the whole transformation process has stopped.

³¹ UN CRPD Committee, Concluding Observations: Czech Republic, CRPD/C/CZE/CO/1, 15 May 2015, para. 39. UN Committee on Economic, Social and Cultural Rights, E/C.12/CZE/CO/2, 23 June 2014. CAT Committee, Concluding observations: Czech Republic, CAT/C/CZE/CO/4-5, 13. 7. 2012, para 21.

³² UN CRPD Committee, Concluding Observations: Czech Republic, CRPD/C/CZE/CO/1, 15 May 2015, para. 39.

³³ The National Strategy for the Development of Social Services 2016 – 2025 [Strategie rozvoje sociálních služeb 2016-2020], p. 18. Available in Czech at: <https://www.mpsv.cz/documents/20142/577769/NSRSS.pdf/>. The reference to „community-based residential services“ is made directly by the National Strategy. The submitting organisations would like to point out that regarding the General Comment no. 5 of the UN CRPD Committee this practice is not compliant with the right to independent living under Article 19 of the UN Convention on the Rights of Persons with Disabilities: „Neither large-scale institutions with more than a hundred residents nor smaller group homes with five to eight individuals, nor even individual homes can be called independent living arrangements if they have other defining elements of institutions or institutionalisation.“ – CRPD/C/GC/5, para. 16 (c).

³⁴ The National Strategy for the Development of Social Services 2016 – 2025 [Strategie rozvoje sociálních služeb 2016-2020], p. 57. Available in Czech at: <https://www.mpsv.cz/documents/20142/577769/NSRSS.pdf/>.

³⁵ Measure A.1.1. The Action Plan is available in Czech at: <https://www.mpsv.cz/strategicke-a-analyticke-dokumenty-k-socialnim-sluzbam> .

25. On the contrary, the Parliament is currently discussing a proposal to amend the Social Services Act³⁶ that follows an earlier government proposal. The proposal does not contain any deinstitutionalising measure, it will only simplify the administrative system for social services providers. Doing so, theoretically opens the door to lifelong institutionalisation of persons with disabilities at one place, in one facility. Furthermore, it contains a mechanism that would automatically increase the payments for social services according to the increase of prices without including the same mechanism for increasing the care allowance. The proposal has been strongly criticised in an open letter of Inclusion Czech Republic [Společnost pro podporu lidí s mentálním postižením v České republice]³⁷ that argues that it worsens the opportunity to live independently in Czechia. Nonetheless, the Government has given a favourable opinion on the proposal.³⁸
26. Other steps taken also show a serious weakness in the Government's commitment to the deinstitutionalisation of social care services. The Unity for Deinstitutionalisation [Jednota pro deinstitutionalizaci] associating organisations and experts who support the process of deinstitutionalisation and transformation of services for persons with disabilities and the Alliance for Individualised Support [Aliance pro individualizovanou podporu] pointed out in their joint open letter of February 2021 that the Ministry of Labour and Social Affairs was preparing a grant call as part of the IROP programme. The total amount to be allocated is 3,103 billion CZK (EUR 0,122 billion³⁹) should be distributed "disproportionately"⁴⁰ in favour of residential services instead of outreach and ambulatory services. Furthermore, both organisations emphasised that the planned participation rate is too high and thus disqualifies small social services providers, again in favour of the big ones that usually run institutions. Finally, the grant call does not exclude institutions with more than 100 clients from its potential beneficiaries.⁴¹
27. The administration of EU funds enabling to fund building new institutions or renovating the existing ones is a violation of both the EU and international law. The UN CRPD Committee has clearly stated that such practices violate the obligation to respect deriving from the right of persons with disabilities to independent living under Article 19 of the UN Convention on the Rights of Persons with Disabilities. However, Czech government seems to ignore this obligation.

³⁶ Act no. 108/2006 Coll., on Social Services.

³⁷ The open letter is available in Czech at: http://www.spmPCR.cz/wp-content/uploads/2021/03/Dopis_poslancum_SPMPCR.pdf.

³⁸ The Government's opinion is available in Czech at: <https://www.psp.cz/sqw/text/fiskt.sqw?o=8&ct=1143&ct1=1>.

³⁹ The Exchange rate by the European Central Bank of 15/6/2021: 25,422 CZK for 1 EUR. Available at: https://www.ecb.europa.eu/stats/policy_and_exchange_rates/euro_reference_exchange_rates/html/eurofxref-graph-czk.en.html.

⁴⁰ The term refer to the position to the Unity for Deinstitutionalisation expressed in the open letter.

⁴¹ The open letter is available in Czech at: <http://jdicz.eu/spolecne-vyjadreni-k-navrhum-mpsv-na-rozdelovani-prostredku-na-socialni-sluzby/>.

Recommendation:

Czechia must adopt concrete, targeted and time-framed steps to deinstitutionalise social care services. To this end Czechia should at first properly implement its strategic documents, particularly the National Strategy for Development of Social Services 2016-2025. Czechia must pay due attention that the process of deinstitutionalisation of social care services does not lead to the establishment of new institutions, although much smaller and better equipped. The General Comment no. 5 of the UN CRPD Committee should serve as a primary guideline throughout the whole process.

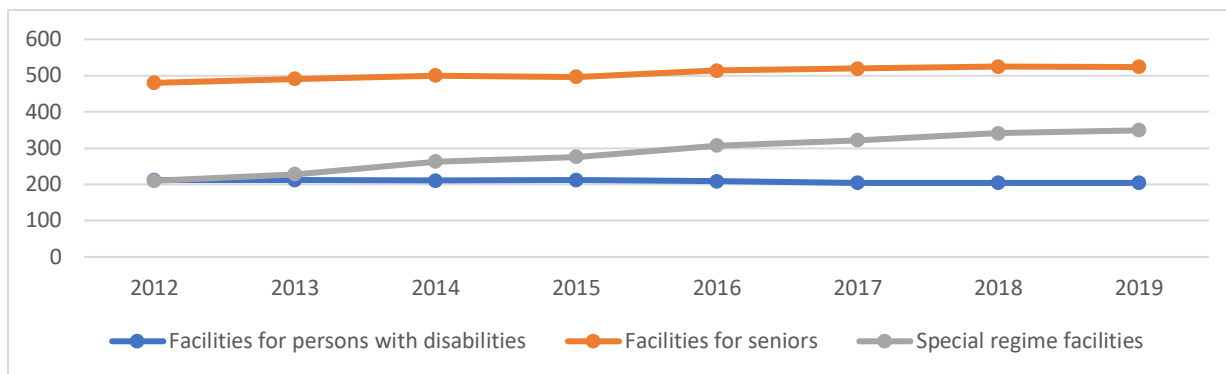
(b) Failure to include older persons with disabilities in the deinstitutionalisation process

28. The UN CRPD Committee has expressed deep concerns about older persons and points to the lack of plans to provide support services in local communities for older persons with disabilities.⁴² In Czechia, older persons, including older persons with disabilities, remain the most institutionalised group. The Government fails to collect disaggregated data on institutionalised persons (see below) but according to the latest data, only facilities for seniors accommodated 35,859 clients and special regime facilities where older persons are also massively represented, with 19,833 clients.⁴³ Since the alternatives to institutional care for older persons are significantly underdeveloped, the number of unfulfilled applications for these services is growing every year and so is growing the number of these facilities, their capacities, and the number of their clients (see charters no. 1 and 2).

Charter no. 1: Number of residential social care facilities 2012-2019

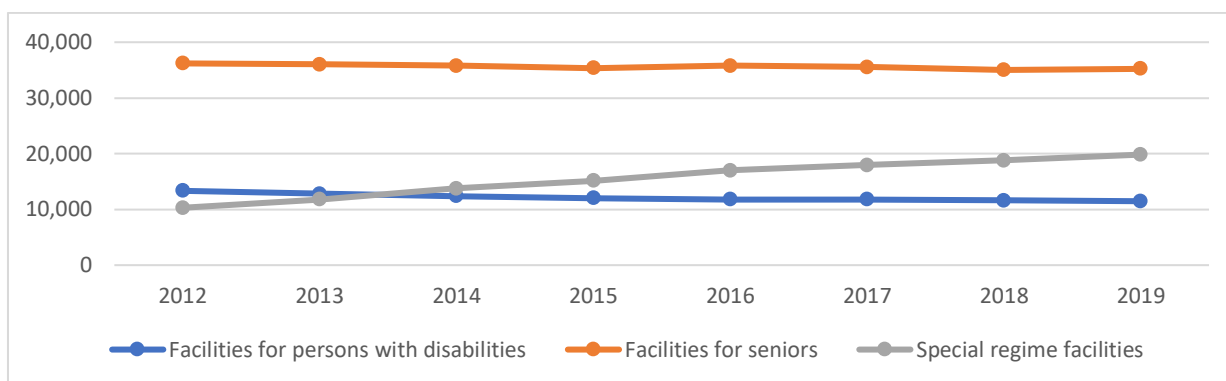
⁴² UN CRPD Committee, Concluding Observations: Czech Republic, CRPD/C/CZE/CO/1, 15 May 2015, para. 38.

⁴³ Data of the Ministry of Labour and Social Affairs.



Source: Ministry of Labour and Social Affairs

Charter no. 2: Number of clients of residential social care facilities 2012-2019



Source: Ministry of Labour and Social Affairs

29. The Government considers older persons to fall outside the ambit of deinstitutionalisation. All existing policies concentrate on the need to develop community alternatives and the support of informal care but fail to include as an objective the progressive elimination of existing institutions and the prevention of the establishment of new institutions or enlargement of existing ones. For example, the National Strategy for the Development of Social Services 2016-2025 explicitly provides that the objective of the transition from institutional to community-based care should not be understood “as the elimination of the necessary or new capacities, for instance, in the domain of services for seniors. However, a suitable way to resolve this situation is to plan new capacities of community services.”⁴⁴

30. Furthermore, the Government promotes institutionalisation as its major strategy for support of older persons in its budgetary allocations. For instance, in 2020 the Ministry of Labour and Social Affairs decided to allocate more than 753 million CZK (EUR 29,62 million)⁴⁵ to increase “the

⁴⁴ The National Strategy for the Development of Social Services 2016 – 2025 [Strategie rozvoje sociálních služeb 2016-2020], p. 18. Available in Czech at: <https://www.mpsv.cz/documents/20142/577769/NSRSS.pdf/>.

⁴⁵ The Exchange rate by the European Central Bank of 15/6/2021: 25,422 CZK for 1 EUR. Available at: https://www.ecb.europa.eu/stats/policy_and_exchange_rates/euro_reference_exchange_rates/html/eurofxref-graph-czk.en.html.

capacities, quality of the environment and services” of facilities for seniors. The amount was 82,5 million CZK (EUR 2,25 million)⁴⁶ higher than in the previous year and will increase the capacities of facilities for seniors by 1,174 beds.⁴⁷

31. Besides, older persons are institutionalised not only in the social care system but also in the health care system. The choice of the system is often simply a matter of chance – both systems institutionalise the same groups of older persons, i. e. older persons who are dependent on the support of other persons and overlap significantly. Residential health services providing long-term care to older persons are not so numerous as residential social care facilities. However, they do not significantly differ from those facilities in their capacity and organisation. While they propagate institutionalisation of older persons, as health care facilities they are separated from national deinstitutionalisation processes.

Recommendation:

Czechia must stop excluding older persons who are dependent on the support of other persons, including older persons with disabilities, from the right to independent living and deinstitutionalisation process. Czechia must ensure that older persons are not forced to live in institutional environment, not even due to the lack of alternative forms of support. The outreach and ambulatory services must be prioritised, and the State must guarantee their availability, accessibility, affordability, adaptability and acceptability for older persons as well.

(c) Failure to deinstitutionalise services for children with disabilities

32. Another massively institutionalised group in the Czech Republic is children, including children with disabilities. In 2019 there were 7,853 institutionalised children in different types of institutions (see table no. 1).

Table no. 1: The number of children in closed regime institutions (diagnostic institutions, children homes with school, closed educational institutions) 2016-2019

	<i>Infant homes</i>	<i>Facilities for children requiring</i>	<i>Children homes</i>	<i>Diagnostic institutions</i>	<i>Children homes with school</i>	<i>Closed educational institutions</i>	<i>Homes for persons with</i>	<i>Total number of institution</i>

⁴⁶ Ibid.

⁴⁷ The press release by the Ministry of Labour and Social Affairs of 6/5/2020. Available at: <https://www.mpsv.cz/web/cz/-/mpsv-rozhodlo-o-prideleni-podpory-na-zvysovani-kapacit-domovu-pro-senioru>.

		immediate assistance					disabled	disabled children
2015	1 174	778	3751	376	728	983	538	8 328
2016	1 037	629	3785	390	720	1009	543	8 113
2017	922	720	3846	369	682	941	497	7 977
2018	876	504	3831	377	749	926	448	7 711
2019	818	523	3 950	378	796	950	438	7 853
2020	No data yet	469	3948	358	732	976	No data yet	No data yet

Source: Ministry of Health, Ministry of Labour and Social Affairs, Ministry of Education, Youth and Sports

33. The Czech system of institutional care for children has long been criticised for its fragmentation. Different institutional facilities for children deprived of the family care are administered by different ministries, namely the Ministry of Health (infant homes), the Ministry of Education, Youth and Sports (children's homes, children's homes with schools, diagnostic institutions, and closed educational facilities for adolescents) and the Ministry of Labour and Social Affairs (facilities for children requiring immediate assistance, homes for persons with disabilities). This fragmentation was set up in the early 1950s when the childcare system was reformed according to the "Soviet model". Non-residential forms of support for vulnerable children and their families are available predominantly in the system of social services administered by the Ministry of Labour and Social Affairs.

34. Analyses prepared by the Ministry of Social and Labour Affairs confirm that the unification of the system is an indispensable precondition for its effective management and funding. Already in 2008, the Analysis of the current state of institutional provision of childcare,⁴⁸ prepared on the Government's request and approved by them, emphasised the need to unify the whole system. This objective became part of the National Strategy to Protect Children's Rights, adopted in January 2012 following the Concluding Observations of the UN Committee on the Rights of the Child from 2011.⁴⁹ Unfortunately, this objective has been never implemented. In August 2017, the then minister of labour and social affairs submitted to the government a non-legislative material providing legal and factual arguments for the unification of the childcare system and defining the necessary legislative steps that needed to be undertaken to achieve this aim, but the government did not approve this material.

35. Since then, the idea to unify the fragmented childcare system seems to have been abandoned. If anything, the Government has prepared only sectional proposals for change without the ambition to achieve unification.

⁴⁸ The analysis is available in Czech at: <https://docplayer.cz/27481132-Analyza-soucasneho-stavu-institucionalniho-zajisteni-pece-o-ohrozene-defi.html>.

⁴⁹ Objective no. 12: Unification of childcare systém. The National Strategy is available in English at: <https://www.mpsv.cz/documents/625317/625903/strategy.pdf/16525ab3-48d2-cae2-a057-f1ab8be379c2>.

The current National Strategy to Protect Children's Rights 2021-2029 does not mention the unification of the system to ensure that there one system of management funding, but refers only to "approaches" across the (fragmented) system.⁵⁰

36. Recently, the ECSR addressed the problem of institutionalisation of young children in Czechia in its decision on *European Roma Rights Centre (ERRC) and Mental Disability Advocacy Centre (MDAC) v. the Czech Republic* of 17/6/2020, complaint no. 157/2017. The decision concerned one segment of the system of institutional care for children – infant homes (according to the legislation "children homes for children up to 3 years of age) regulated by the Health Care Act.⁵¹ In its decision, the ECSR criticised so-called "voluntary stays", i.e. stays based solely on the consent of the child's parents, since the legal framework of these stays did not provide children with adequate safeguards before unnecessary institutionalisation. Furthermore, the ECSR held that Czechia has not taken adequate measures to ensure the availability of alternative services for children that are disproportionately impacted, namely Roma children and children with disabilities.

37. Czechia is currently struggling with the implementation of the ECSR's decision. The Czech Parliament is just about to approve a proposal to amend the Health Care Act. The proposal has been prepared in close cooperation and with the support of the Government. Unfortunately, it does not achieve the elimination of the infant institutions. The amendment replaces only one type of institution with another. These new institutions – centres of complex care for children, will not be formally part of the alternative care system, meaning that placements by court order will no longer be possible. Unfortunately, the new legislation does not eliminate "voluntary stays", criticised by the ECSR in the cited decision. The facilities are proposed to be designed for "children with serious chronic illness" or "children with other disabilities" from 0 to 18 years, for whom they are planned to offer a wide range of services, including residential placement. Placements will not be limited in time and would require only the consent of the child's parents and the indication of the stay by a doctor from outside the centre. Since placements would not be formally part of alternative care, they would not be monitored in any way. The new legislation would not exclude the possibility that a child with disabilities would be subjected to long-term institutionalisation in the new centres without any public authority knowing it.⁵²

⁵⁰ Sub-objective 1: There are unified approaches to securing and promoting the best interests of the child. The National Strategy is available in Czech at: https://www.mpsv.cz/documents/20142/225508/NARODNI+STRATEGIE+OCHRANY+PRAV+DETI+2021_2029_FINAL.pdf/4d20b44e-a8c5-6882-d46f-a8d0fb7695d5.

⁵¹ Act no. 372/2011 Coll., Health Care Act, §§ 43-44.

⁵² Chamber of Deputies of Parliament of the Czech Republic, Parliamentary Press 944, Amendment of the Health Care Act, The status of negotiations to date: 16 June 2021, available in Czech at: <https://www.psp.cz/sqw/text/tiskt.sqw?O=8&CT=944&CT1=0>, [accessed 17/6/2021].

38. To put it simply, the new legislation, if adopted, would mean mainly: 1) the enlargement of the age group of children who can be institutionalised in health care facilities, including for extended periods of time, throughout their whole childhood; and 2) the abolishment even of the few safeguards children currently have.

Recommendation:

Effective deinstitutionalisation of alternative care for children in Czechia is dependent on unification of the whole system under the government of only one ministry. Otherwise, all reforms would be only partial and ineligible to lead to the end of institutional care for children in Czechia. Any adopted reform must lead transparently and directly to the elimination of institutional care and not just replace one type of institutional service for children by another. Czechia must not leave any group of children behind its deinstitutionalisation efforts, including children with disabilities.

(d) Failure to collect disaggregated data on institutionalised persons

39. The ECSR has identified a duty to collect equality data to inform policies as far back as 2004⁵³ and the State's obligation to collect appropriate and disaggregated data is also enshrined directly by the UN Convention on the Rights of Persons with Disabilities (Article 31). The collection of appropriate and disaggregated data, not only according to disability but also by other protected grounds like ethnicity, age, gender, etc. is particularly important in the context of institutionalisation and the implementation of deinstitutionalisation policies. Unfortunately, Czechia completely fails to collect these data concerning all institutionalised groups – persons with disabilities, older persons, and children.

40. The ECSR dealt with this issue concerning Czechia in its above-cited decision of 17/6/2020⁵⁴ in which the ESCR noted that the Czech authorities failed to collect disability and ethnic data about young children in institutional care, which are indispensable for the proper protection of Roma children and

⁵³ ECSR stipulated that where it is known that a certain category of persons is, or might be, discriminated against, it is the national authorities' duty to collect data to assess the extent of the problem (European Roma Rights Centre v. Greece, Complaint No. 15/2003, decision on the merits, 8 December 2004, para. 27). The gathering and analysis of such data (with due safeguards for privacy and against other abuses) is indispensable to the formulation of rational policy (European Roma Rights Centre v. Italy, Complaint No. 27/2004, decision on the merits, 7 December 2005, para. 23). 17. Similarly, the UN General Assembly adopted a resolution (A/RES/70/1, Transforming our world: the 2030 Agenda for Sustainable Development, 21 October 2015) stating that quality, accessible, timely and reliable disaggregated data are needed to help with the measurement of progress and to ensure that no one is left behind.

⁵⁴ European Roma Rights Centre (ERRC) and Mental Disability Advocacy Centre (MDAC) v. Czech Republic, decision on the merits of 17/6/2020, collective complaint no. 157/2017.

children with disabilities.⁵⁵ Nevertheless, the scope of the State's failure is significantly wider and concerns also other institutionalised groups. Czechia should establish a comprehensive framework for data collection to implement effective deinstitutionalisation strategies.

Recommendation

Czechia must implement a system for collection of data on institutionalised persons disaggregated by disability as well as other relevant protected grounds to enable to prepare and implement effective deinstitutionalising policies, addressing appropriately disability as well as all the relevant intersectionality.

III. RIGHT TO HEALTH AND EQUALITY BEFORE THE LAW – GUARDIANSHIP AND LEGAL CAPACITY

(a) Failure to eliminate substitute decision-making and promote supported decision-making options, including in the field of health care and reproductive health

41. Concerning persons with disabilities the right to health is closely related to their right to equality before the law, including the right to have their legal capacity recognised on an equal basis with others in all aspects of life, including in health care matters. The UN CRPD Committee has emphasised that legal capacity “acquires a special significance for persons with disabilities when they have to make fundamental decisions regarding their health,…” while “the denial of legal capacity to persons with disabilities has, in many cases, led to their being deprived of many fundamental rights, including ..., the right to marry and found a family, reproductive rights, the right to give consent for intimate relationships and medical treatment, ...”⁵⁶ The UN CRPD Committee has also stated that the right to health imposes on States “an obligation not to permit substitute decision-makers to provide consent on behalf of persons with disabilities” in terms of medical treatment.⁵⁷
42. Unfortunately, the Czech Civil Code no. 89/2012 Coll., adopted in 2012, in force since 2014, still allows for restriction of legal capacity on the basis of disability. The Civil Code encompasses provisions that allow general courts to restrict a person's legal capacity in specific matters, including family and reproductive rights; in concrete the right to marry⁵⁸ and parental

⁵⁵ European Roma Rights Centre (ERRC) and Mental Disability Advocacy Centre (MDAC) v. Czech Republic, decision on the merits of 17/6/2020, collective complaint no. 157/2017, para 173.

⁵⁶ CRPD/C/GC/1, para. 8.

⁵⁷ Ibid., para. 41.

⁵⁸ According to Section 673 of the Civil Code, a “person cannot enter into marriage if his or her capacity has been restricted in this respect”. The court can restrict a woman's right to enter into marriage on the basis of her disability. Although the Government does not make any statistics available, based on our direct experience, courts are frequently using this measure against young women with intellectual disabilities.

responsibility⁵⁹. These restrictions regularly affect persons with intellectual and psycho-social disabilities, and particularly women. What is striking for the purposes of this report is that the restriction of legal capacity also concerns the right to informed consent in health care. The Health Care Act provides for a possibility to restrict one's capacity to give informed consent and make independent decisions about their healthcare decisions.⁶⁰ Despite the Government being already informed that such laws violate international human rights law and having received recommendations to repeal the provisions mentioned above⁶¹, the Czech Government has failed to take any steps in this regard.

Recommendation:

Czechia must adopt necessary legislative amendments to eliminate the practice of substitute decision-making and to promote supported decision-making, including decision-making about the provision of health care and reproductive health.

(b) Failure to provide accessible information about health, health care treatment and procedures in an accessible language for people (with intellectual and psychosocial) disabilities

43. The lack of available material in alternative formats does not allow the realisation of the right to health, especially as far as the encouragement of individual responsibility in matters of health, as promoted by Article 11 of the ESC. It also creates problem with the provision of health services without their free and informed consent. Existing accessible materials are in particular provided by organisations of persons with disabilities and non-governmental organisations, thanks to small grants by the Ministry of Health⁶² but there are no official documents or a systematic approach to provide accessible material.

Recommendation:

⁵⁹ According to Section 865 (2) of the Civil Code, "the court deciding on restriction of legal capacity can decide also on parental responsibility". Following this provision, when deciding on the restriction of legal capacity of a parent and usually mother, the court is under an obligation to decide on parental responsibility. The definition of parental responsibility is set out in Section 858 of the Civil Code covers the care of the child in its entirety, including health care, education, child contact, etc. In practice, restrictions of parental responsibility are made automatically when women with mental disabilities have their legal capacity restricted, and this is based on false and ungrounded assumptions that parents with mental disabilities are unfit to take care of a child.

⁶⁰ Section 23 (3) (e) of the Health-Care Act.

⁶¹ UN CRPD Committee, Concluding Observations: Czech Republic, CRPD/C/CZE/CO/1, 15 May 2015, paras. 45 and 46.

⁶² See the yearly reports about of the National Plan for the Promotion of Equal Opportunities for Persons with Disabilities 2015–2020, e.g.: 2016 <https://www.vlada.cz/cz/ppov/vvzpo/dokumenty/zprava-o-plneni-opatreni-narodniho-planu-podpory-rovnych-prilezitosti-pro-osoby-se-zdravotnim-postizenim-na-obdobi-v-roce-2016-159996/> and 2019: <https://www.vlada.cz/assets/ppov/vvozp/dokumenty/Zprava-o-plneni-NPPRP-v-roce-2019.pdf>

Czechia must adopt an effective system of ensuring accessibility of health care information for all persons with disabilities, including persons with mental disabilities. The system must include clear determination of responsibility for accessibility of medical information of relevant subjects and bodies.

List of representatives:

Ms. Anna Sležková, forum@forumhr.eu
Senior Lawyer, **FORUM**

Mr. Sándor Gurbai, sandor@validity.ngo
Impact Manager, **Validity Foundation**

Ms. Camille Latimier, camille.latimier@spmPCR.cz
Director, **Inclusion Czech Republic**