

**EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITE EUROPEEN DES DROITS SOCIAUX**

May 2025

**Finding on
Follow-up to the Complaint No. 157/2017
European Roma Rights Centre (ERRC) and Mental
Disability Advocacy Centre (MDAC) v. Czech Republic**

Assessment of follow-up: European Roma Rights Centre (ERRC) and Mental Disability Advocacy Centre (MDAC) v. Czech Republic, Complaint No. 157/2017, decision on the merits of 17 June 2020, [Recommendation CM/RecChS\(2021\)16](#)

1. Decision of the European Committee of Social Rights on the merits of the complaint

In its decision, the European Committee of Social Rights (ECSR) found that the situation in Czech Republic is in violation of Article 17 of the 1961 European Social Charter (the right of mothers and children to social and economic protection) on the grounds that:

A. the application of the legal framework of institutional care and operation of children centres as provided for by the Health Care Act does not ensure appropriate protection and care for children under the age of 3.

The ECSR noted that Article 971 of the Civil Code provides a clear preference for family care and substitute family care, and that institutional care in any form is only a measure of last resort in respect of all children, without discrimination on the grounds of age or race. In particular, Article 971 of the Civil Code lists the exceptional situations in which a child can be placed in children centres. Priority to care by another natural person to whom the child is entrusted under a court decision, including foster parents should be given. According to Article 971, placement of children in institutions, as a measure of last resort, must also be regularly reviewed by the courts. The ECSR however noted that, on the basis of Section 43§1 of the Health Care Act, a child can be placed in a children centre not only pursuant to a court decision, but also based on an agreement concluded between the child centre and the child's legal guardian (which is known as a so-called "voluntary placement").

The ECSR considered that the so-called "voluntary placement" offers no guarantees that the placement in institutions of children below the age of 3 years 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. Furthermore, the ECSR noted that under the legal regime of the Health Care Act there is no limitation on the maximum duration of the stay in institutions, nor a legal obligation on the institution to inform the competent local authority responsible for the protection of the child about the institutionalisation.

B. adequate measures have not been taken to provide children under the age of 3 with services in family-based and community-based family-type settings and to progressively de-institutionalise the existing system of early childhood care.

The ECSR held that Article 17 implies an obligation to initiate and carry forward a deinstitutionalisation process, by effectively making community-based family-type services available to all young children who cannot grow up in a family environment or are temporarily or definitively deprived of their family's support.

The ECSR observed that the process of reducing the number of young children in children centres was slow and not significant, with the number of children placed in institutions still being very high. The ECSR further noted that the high number of children placed in institutions is clearly linked to the practice known as "voluntary placement", which unduly facilitates the placement of young children in institutions, allowing a complete bypass of the Civil Code provisions specifying that institutional care must be a measure of last resort. In addition, the ECSR noted that in recent years no adequate policies, financial or operational measures were put into place to promote the realisation of services in family-based and community-based family-type settings. The ECSR finally noted that more resources were devoted to children centres than to community-based family support.

C. necessary measures have not been taken to ensure the right to appropriate protection and appropriate care services of Roma children and children with disabilities under the age of 3.

The ECSR emphasised that when it is generally acknowledged that a particular group of children is or could be faced with disproportionate care risks in comparison with the majority of the population, as is the case for both Roma children and children with disabilities, States have an obligation to collect data on the extent of the problem. (ERRC v. Italy, Complaint No. 27/2004, decision on the merits of 7 December 2005, §23).

The ECSR noted that the Czech authorities do not collect such data, indispensable for the proper protection of Roma children and children with disabilities. It also noted that, whatever may be the actual numbers of Roma children and children with disabilities under the age of 3 placed in institutions, there are significant indications that these numbers remain high. The ECSR considered that Czech Republic had failed to take measures to ensure to Roma children and children with disabilities under the age of 3 the appropriate protection and care services they need.

2. Information provided by the Government

The Government provided information in relation to the follow-up to this complaint in their submissions dated 28 March 2024 and 4 February 2025.

The Government states that on 1 January 2025, Act No. 242/2024 Coll., amending Act No. 359/1999 Coll. On the Social and Legal Protection of Children and other related acts, entered into force. It states that this amendment responds to the shortcomings identified by the ECSR in its decision. The amendment was drafted by the Ministry of Justice in cooperation with an expert working group and was subsequently approved by the Government and both chambers of the Parliament of Czech Republic.

A. With regard to the application of relevant provisions of the Health Care Act in respect of children under the age of 3

The Government states that Act No. 242/2024 Coll., amending Act No. 359/1999 Coll. On the Social and Legal Protection of Children and other related acts, has repealed the legislation on early childhood medical care institutions criticised by the ECSR in its decision on the merits (Sections 43 and 44 of the Health Care Act). It further states that in view of such amendments' entry into force, all early childhood medical care institutions were closed by 31 December 2024.

B. With regard to measures aimed to provide children under the age of 3 with services in family-based and community-based family-type settings and to progressively de-institutionalise the existing system of early childhood care

The Government states that in accordance with the amendments introduced through Act No. 242/2024 Coll. Which entered into force on 1 January 2025, all early childhood medical care institutions were closed by 31 December 2024 (see above under A).

In their submission dated 28 March 2024, the Government provides information on measures taken to accompany the legislative changes such as:

- projects implemented by the Ministry of Labour and Social Affairs aimed at preventing the removal of children from their families such as “*Support for systemic changes in care-related services for vulnerable children, young people and families in Czech Republic*”;

- projects of the Ministry of Labour and Social Affairs focused on development programmes for senior staff of child protection agencies and workshops and training on parental skills;
- a project aimed at simplifying the process of providing substitute family care to vulnerable children and making foster care more attractive to potential candidates from the general public (“*Standardisation of the process of providing substitute family care to children*”).

The Government further provides information on the National Shared Register of Temporary Foster Carers which became operational on 1 February 2024. Furthermore, the National Shared Register of Applicants for the Mediation of Substitute Family Care was launched in autumn 2023. The latter enables individual regional authorities to run a quick search in other regions for suitable foster carers or adoptive parents for children for whom they are unable to find a substitute family in their home region.

The Government also provides two examples of gradual transformation of early childhood medical care institutions or their services. For example, the Liberec Region introduced two new social services in a children centre – social rehabilitation and a day care centre for children with disabilities. The Olomouc Region approved the transformation of an early childhood medical care institution into a community-type home for persons with disabilities as of 2024. The Government acknowledges that this is a gradual process that has not yet been implemented in a number of regions.

In addition, the Government states that with a view to implementing the ECSR’s decision, the Ministry of Labour and Social Affairs repeatedly approached the management of early childhood medical care institutions in order to “chart” the number of children under the age of 3. The Government states that reports show that between 2018 and 2022, the number of children under the age of 3 decreased by 69%. It further states that a 2023 report shows that children over the age of three are placed in the early childhood medical care institutions, and that only a third of the children in these institutions (i.e. 142) were children up to three years of age (inclusive).

C. With regard to measures aimed to ensure the right to appropriate protection and appropriate care services of Roma children and children with disabilities under the age of 3

The Government firstly refers to the fact that in accordance with the amendments introduced through Act No. 242/2024 Coll. Which entered into force on 1 January 2025, all early childhood medical care institutions were closed by 31 December 2024 (see above under A).

The Government further provides information on other measures aimed at providing support for children from different ethnic backgrounds and children with disabilities such as:

- practical guides such as *Toolkit for Assessing the Situation of Younger Children (up to 10 Years of Age)* and *Toolkit for Assessing the Situation of Children with Disabilities* were prepared for the staff of child protection agencies;
- as of 1 January 2022, understanding the specific needs of particularly vulnerable groups of children, especially children of other ethnicities, children with disabilities, sibling groups, and children who have experienced ill-treatment, abuse, or neglect, became a mandatory topic of the training of applicants for the mediation of adoption or foster care;
- the indexation of the amounts of the foster carer stipend and the foster care allowance payable to foster carers and guardians caring for children with disabilities; and
- as of 2022, a new entitlement to an increased foster carer stipend for foster carers and guardians caring for a child dependent on level I assistance (mild dependence) and for

temporary foster carers who have had at least one child placed in their care who has level I dependence (an increase in the stipend by 90% compared to 2022) or at least one child who has level II to IV dependence (an increase in the stipend by 108%);

The Government states that, in light of the above-mentioned steps taken (A, B and C), Czech Republic is satisfied that it has remedied the violations found by the ECSR and brought the situation of children under the age of 3 in relation to the right to grow up in a family-based setting in conformity with Article 17 of the 1961 Charter.

3. Assessment of the follow-up

The ECSR acknowledges the Government's efforts and measures taken with a view to implementing the ECSR's decision and the Committee of Ministers' recommendation.

It welcomes in particular the amendment brought by the Act No. 242/2024 Coll., amending Act No. 359/1999 Coll. on the Social and Legal Protection of Children and other related acts, which repealed Sections 43 and 44 of the Health Care Act.

A. With regard to the application of relevant provisions of the Health Care Act in respect of children under the age of 3

In its decision on the merits, the ECSR found that the application of Sections 43 and 44 of the Health Care Act No. 372/2011 constituted a violation of Article 17 of the 1961 Charter (see decision on the merits, §156).

The ECSR notes that according to the information provided by the Government on 4 February 2025, the Act No. 242/2024 Coll., amending Act No. 359/1999 Coll. On the Social and Legal Protection of Children and other related acts, repealed Sections 43 and 44 of the Health Care Act and all early childhood medical care institutions were closed by 31 December 2024.

As the legislation found to be in violation of the Charter has been repealed, the ECSR considers that the situation has been brought into conformity with Article 17 of the 1961 Charter on this point.

B. With regard to the failure to take adequate measures to provide children under the age of 3 with services in family-based and community-based family-type settings and to progressively de-institutionalise the existing system of early childhood care

In its decision on the merits, the ECSR considered that the Government failed to take significant and targeted steps to deinstitutionalise the existing system of early childhood care, and to provide young children with services in family-based and community-based family-type settings (see decision on the merits, §165).

From the Government's statement, the ECSR notes that in view of the legislative amendments which came into force on 1 January 2025, all early childhood medical care institutions were closed by 31 December 2024. Since these institutions ceased operating as of this date and as of 1 January 2025 it is no longer possible to place children under the age of 3 in such institutions, the Committee acknowledges that concrete steps were taken to deinstitutionalise the system of early childhood care.

The ECSR also takes note of the various measures taken by the authorities aimed at providing children under the age of 3 with services in family-based and community-based family-type settings (listed in the information provided by the Government above).

In the absence of information indicating that children under the age of 3 are not provided with services in family-based and community-based family-type settings, and in the absence of any other information challenging the Government's statement, the ECSR considers that the situation has been brought into conformity with Article 17 of the 1961 Charter on this point.

C. the failure to take necessary measures to ensure the right to appropriate protection and appropriate care services of Roma children and children with disabilities under the age of 3

As stated above, the ECSR notes that according to the Government, all early childhood medical care institutions were closed by 31 December 2024. The ECSR further notes that as of 1 January 2025, all children under the age of 3, including Roma children and children with disabilities, can no longer be placed in such institutions.

The ECSR also takes note of the measures the Government indicates were taken with the aim to support children from different ethnic backgrounds and children with disabilities such as the preparation of practical guides/toolkits and the inclusion of relevant topics in the training of applicants for the mediation of adoption or foster care, as well as the indexation of the amounts of the foster carer stipend and the foster care allowance payable to foster carers and guardians caring for children with disabilities and a new entitlement to an increased foster carer stipend in certain situations.

While observing that it lacks information indicating that Roma children and children with disabilities under the age of 3 are not provided with appropriate protection and appropriate care services, and in the absence of any other information challenging the Government's statement, the ECSR considers that the situation has been brought into conformity with Article 17 of the 1961 Charter on this point.

Finding

The Committee finds that:

- (A) the situation has been brought into conformity with Article 17 of the 1961 Charter with respect to the application of the legal framework of institutional care and operation of children centres as provided for by the Health Care Act (Sections 43 and 44 were repealed);
- (B) the situation has been brought into conformity with Article 17 of the 1961 Charter with respect to the failure to take adequate measures to provide children under the age of 3 with services in family-based and community-based family-type settings and to progressively de-institutionalise the existing system of early childhood care (those institutions were closed at the end of 2024);
- (C) the situation has been brought into conformity with Article 17 of the 1961 Charter with respect to the failure to take necessary measures to ensure the right to appropriate protection and appropriate care services of Roma children and children with disabilities under the age of 3.