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EUROPEAN SOCIAL CHARTER

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

submitted by

THE GOVERNMENT OF THE CZECH REPUBLIC

Report registered by the Secretariat

on 28 March 2024

CYCLE 2024

MINISTRY OF JUSTICE

Office of the Agent of the Czech Government before the European Court of Human Rights

Follow-up to the decision of the European Committee of Social Rights in case No. 157/2017 *European Roma Rights Centre (ERRC) and Mental Disability Advocacy Centre (MDAC) v. the Czech Republic*

Report submitted by the Czech Government on 28 March 2024

I. INTRODUCTION

On 17 June 2020, the European Committee of Social Rights (“the Committee”) ruled, in the case of a collective complaint lodged by the European Roma Rights Centre (“the ERRC”) and the Mental Disability Advocacy Centre (“the MDAC”) against the Czech Republic, that the Czech Republic violates Article 17 of the European Social Charter (“the Charter”) by placing young children in early childhood medical care institutions (now commonly known as “children centres”). The Committee concluded unanimously that:

- the application of the legal framework of institutional care and operation of children centres as provided for by Act no. 372/2011 on health services (“the Health Care Act”) does not ensure appropriate protection and care for children under the age of three;
- adequate measures have not been taken to provide children under the age of three with services in family-based and community-based family-type settings and to progressively de-institutionalise the existing system of early childhood care;
- 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 three.

Conversely, the Committee did not conclude that there was discrimination against children of Roma origin or children with disabilities.

On 16 June 2021, the Committee of Ministers of the Council of Europe adopted Recommendation [CM/RecChS\(2021\)16](#). Having regard to the response submitted by the Government to the Committee’s decision of 20 November 2020 (DD(2021)44), the Committee recommended that the Czech Republic:

- pursue the work already initiated and take all necessary measures to ensure that the application of the legal framework of institutional care and operation of children centres as provided by the Health Care Act guarantees appropriate protection and care for children under the age of three;
- take appropriate measures to provide children under the age of three with services in family-based and community-based family-type settings and to pursue the progressive de-institutionalisation of early childhood care;
- take all necessary measures to ensure the right to appropriate protection and care services of Roma children and children with disabilities under the age of three;
- indicate the actions taken to comply with this recommendation in the next report on follow-up to decisions in collective complaints.

II. IMPLEMENTATION OF THE COMMITTEE'S DECISION

Even before the Committee issued its decision, the Government were already aware of shortcomings in the system of substitute care for children under the age of three and had long been trying to minimise the number of young children placed in institutional care. These efforts were twofold. First, the Government have sought to prevent children from being placed in institutional care in general, while at the same time concentrating on arresting the unequal impact that institutional care has on children of Roma origin and children with disabilities.

However, efforts to achieve legislative change had failed, despite the recommendations of numerous international bodies, including the [UN Committee on the Rights of the Child](#). An amendment to the Health Care Act that would abolish early childhood medical care institutions for children under the age of three and set an age limit before which a child cannot be placed in institutional care was also recommended by the Ombudsman in his [2020 annual report](#).

Significant progress was not made until after the Committee's decision was published. Two major legislative amendments were adopted in order to implement the decision. The Ministry of Labour and Social Affairs, working mainly with the Ministry of Health and other experts, prepared two amendments to the relevant laws. In parallel, a number of accompanying measures were taken to expand services for children under the age of three, including Roma children and children with disabilities, in family-based and community-based family-type settings. The aim of implementing the decision is to provide children, especially those under the age of three, who find themselves removed from the care of their biological family, with better conditions for their development.

A. PUBLICATION OF THE DECISION AND NOTIFICATION TO THE BODIES CONCERNED

The Ministry of Justice published a translation of the decision on its [website](#) and a summary of it in [Zpravodaj kanceláře vládního zmocněnce č. 4/2020](#) (Bulletin of the Office of the Government Agent no. 4/2020). The translation of the decision, together with a summary, was also sent to the Constitutional Court, regional courts, the Ministry of Labour and Social Affairs, the Ministry of Health, the Office of the Government, the Ombudsman, the regions, and all other relevant bodies dealing with this issue. All child protection agencies were briefed via the Ministry of Labour and Social Affairs.

Guardianship judges were informed on multiple occasions about the Committee's decision and its implications for their practices at training events held by the [Judicial Academy](#).

B. WORK PLAN FOR THE IMPLEMENTATION OF THE DECISION

[Committee of Experts for the Execution of Judgments of the European Court of Human Rights and the Implementation of the European Convention on Human Rights](#), as the Government agent's advisory body, addressed the execution of the Committee's decision for the first time at its [meeting on 13 May 2021](#).

While there was a decline in the population of children in early childhood medical care institutions, they still numbered more than 200 at the beginning of 2021. One of the main short-term measures taken was the regular charting of the number of children placed in early childhood medical care institutions, with a focus on the number of children under the age of three (children over the age of three can also be found in these institutions), including voluntary placements, i.e. children placed there by agreement with their parents. The Government also concentrated on avoiding these voluntary placements and strengthening outreach social services and alternative forms of care, including, for example, the placement of a child with a parent.

Long-term measures included the gradual transformation of early childhood medical care institutions with a view to keeping young children, especially those under three years of age, out of

institutional care. In this context, it was desirable to set age thresholds for the placement of children in institutional care in order to ensure that, even if this service was abolished in the Health Care Act, young children would not continue to be placed in other types of institutional care (e.g. homes for persons with disabilities). There were also plans aimed at bolstering preventive social services, allocating these services appropriate funding, and adopting measures targeted at improving the situation relating to the provision of appropriate care services in family-based and community-based family-type settings for groups of vulnerable children, such as children with disabilities and children of Roma origin. An essential element in the implementation of the decision was the adoption of legislative measures that would completely prevent children under the age of three, i.e. all children, including Roma children and children with disabilities, from being placed in early childhood medical care institutions.

The Committee of Experts revisited the execution of the Committee's decision at its meetings held on [15 November 2022](#) and [5 September 2023](#).

C. KEY LEGISLATIVE CHANGES

1. AMENDMENT TO THE ACT EFFECTIVE AS OF 1 JANUARY 2022

The first wave of efforts to implement the decision culminated on 8 October 2021 with the publication of an amendment to Act no. 359/1999 on Social and Legal Protection of Children ("the Children Protection Act") and other related acts in the Collection of Legislative Acts. This amendment [no. 363/2021](#), effective as of 1 January 2022, inter alia (i) drastically curtailed the placement of young children in early childhood medical care institutions; (ii) introduced the mandatory consent of a child protection agency to the placement of children in early childhood medical care institutions by agreement with the parents; and (iii) increased the stipend granted to foster carers.

With a view to the gradual deinstitutionalisation of children up to the age of three, section 43 of the Health Care Act was amended so that the placement of children in early childhood medical care institutions was limited solely to situations where their health requires long-term inpatient care (i.e. where outpatient care is not sufficient). The amendment also removed the possibility of placing children in such a facility on account of their exposure to risks caused by an inappropriate social environment. In addition, Act no. 292/2013 on special judicial proceedings established that a court may issue an interim measure ordering the out-of-home placement of a child solely further to an application by a competent child protection agency. Consequently, a court cannot issue such an interim order on the basis of an application from other persons, authorities, or institutions (including the child's parents) or even *ex officio*.

The amendment also responded to the Committee's criticism of voluntary placements in early childhood medical care institutions, i.e. the admission of a child to such an institution by agreement with the parents. Now, such a placement requires the consent of a child protection agency, which must be requested within three working days of the child's placement in the institution. The child protection agency must decide whether to grant or refuse consent within eight days of submission of the request. The aims of this measure are, on the one hand, to ensure that the locally competent child protection agency is always promptly informed of a child's placement by agreement in an institution and of the reasons for the agreement, and, on the other hand, to ensure that the child's voluntary placement in an institution is terminated promptly if the child protection agency finds no sufficiently serious and objective reasons for such placement.

As to the promotion of foster care and an increase in the number of foster carers, amendments to the Children Protection Act and a Government regulation resulted in a significant increase in both foster care benefits and the State foster care allowance between 2022 and 2024. There was an increase in the monthly foster carer stipend payable to foster carers providing unmediated foster

care by an average of a third to a half, depending on the number of children placed in their care and these children's state of health. For example, the base amount of the foster carer stipend for caring for one child increased by 57% for long-term foster carers and by as much as 70% for temporary foster carers. The stipend for foster carers caring for children with disabilities was also significantly increased, including newly that for foster carers caring for children who are dependent on the level I assistance of another natural person (mild dependency). Furthermore, the amounts of the foster carer stipend are now set via multiples of the minimum monthly wage, which means that any increase in the monthly minimum wage on the basis of indexation automatically leads to an increase in the amount of the foster carer stipend. The lump-sum allowance upon taking charge of a child, intended to cover foster carers' initial costs of having a child in their care, was increased by 35%. The monthly child needs allowance, a substitute for child support from parents for dependent children placed in foster care, the amounts of which are graduated according to the age and health of the child, has risen by 27% over the past two years as a result of indexation. The State foster care allowance, intended to cover the costs of the provision of assistance and support to foster carers by a child protection agency or designated accompanying organisations, including the costs of assistance with personal care, professional counselling assistance, respite care, and ongoing training, was increased by approximately 12% to CZK 59,400 (up from CZK 48,000) per calendar year as of 2022.

2. CURRENT DRAFT AMENDMENT TO RELEVANT LAWS

Within the scope of the draft Government amendment to the Children Protection Act and other related acts, which is currently under discussion, the following is proposed:

- **the complete repeal of legal provisions on early childhood medical care institutions in the Health Care Act and the cessation of their operation as at 31 December 2024;**
- an increase in the age threshold for the provision of residential services to the youngest children in the regulation of court-ordered educative measures and in the regulation of children's emergency care facilities from three to four years of age, so that this threshold is set in conformity with section 48 of Act no. 108/2006 on social services ("the Social Services Act"), and Act no. 109/2002 on institutional or protective care in school facilities and on preventive educative care (with effect as of 1 January 2025);
- **a blanket ban on the provision of residential services to children under the age of four in homes for persons with disabilities** – the abolition of the exemption for children under the age of four who are dependent on level III and IV assistance from another natural person (with effect as of 1 January 2026);
- the establishment of an exception to the total ban on the provision of residential services to very young children by children's emergency care facilities, so that these facilities are able to provide protection and assistance to children up to the age of four, both for a limited period of no longer than one month and in cases involving sibling groups (with effect as of 1 January 2025).

At its [meeting on 5 September 2023](#), the Committee of Experts welcomed information on the submitted draft amendment to the law. The Committee endorsed the need to repeal sections 43 and 44 of the Health Care Act and to permanently end the early childhood medical care institution service as soon as possible, but no later than 1 January 2025.

The above amendment was also welcomed by the Government's Committee on the Rights of the Child, which, in its [submission](#) to the Government Council for Human Rights of 26 April 2023, called on the Council to recommend that the Government add a proposal to the draft amendment that the ordering of institutional care for preschool children up to the age of seven be avoided, with a five-year transitional period so that the system can be adapted, and that the operation of early childhood

medical care institutions be discontinued no later than 1 January 2025. The Committee on the Rights of the Child also recommended that efforts be made to pass the amendment as soon as possible. On 27 April 2023, in response to the submission by the Committee on the Rights of the Child, the Government Council for Human Rights adopted a [resolution](#) on the age threshold and on the termination of the early childhood medical care institution service.

The Government approved the draft amendment to the law on 4 October 2023 under [Resolution no. 734](#).

The draft amendment was subsequently presented to the Parliament of the Czech Republic for debate. It is currently under discussion in the Chamber of Deputies as [Chamber Document no. 573](#). On 13 December 2023, the Chamber of Deputies approved the draft in its first reading.

Further to an amendment approved under a [resolution of the Committee on Social Policy of the Chamber of Deputies of the Czech Republic of 14 February 2024](#), it is proposed that the draft Government amendment to the Children Protection Act and other related acts be changed and supplemented as follows:

- an extension to the maximum period for which it would be admissible to provide protection and assistance, via children's emergency care facilities, to children under the age of four from one month to a total period that, as a rule, would not exceed two months;
- the postponement, until 1 January 2027, of the effect of a blanket ban on the provision of residential services to children under the age of four in homes for persons with disabilities;
- **an increase in the age threshold for the placement of children in all forms of substitute institutional care** (children's emergency care facilities, homes for persons with disabilities, school facilities for institutional care) on the basis of a court-ordered interim measure, a court-ordered educative measure, a judgment ordering institutional care, or an agreement, from the age of four **to the age of seven** (with effect as of 1 January 2028).

The draft amendment to the law is currently facing its [second reading in the Chamber of Deputies](#).

Once the draft amendment has been passed, it will no longer be possible to place children under the age of three or four in institutional facilities in the Czech Republic. This ban applies to all children without discrimination, including Roma children and children with disabilities. The draft amendment definitively abolishes the legislation – criticised by the Committee – on early childhood medical care institutions in sections 43 and 44 of the Health Care Act. Additionally, the draft amendment – over and above the Committee's decision – introduces an age threshold of seven years for the placement of children in institutional care.

D. MEASURES TO ACCOMPANY THE LEGISLATIVE CHANGES

1. SUPPORT FOR THE PREVENTION OF THE REMOVAL OF CHILDREN FROM THEIR FAMILIES

In addition to the above-mentioned legislative changes and support for an increase in the number of foster carers, numerous other measures have been taken to prevent the removal of children from their families. Support for the prevention of the removal of children from parental care and support for the deinstitutionalisation of substitute care for children has been and is the subject of several projects implemented by the Ministry of Labour and Social Affairs. The stand-out project in this respect was *“Support for systemic changes in care-related services for vulnerable children, young people, and families in the Czech Republic”*, implemented between October 2018 and the end of 2022. This project mainly focused on:

- the creation of regional models for a network of services for families with children and for the families of children who are placed in substitute institutional care, with an emphasis on preventive services, in order to ensure that as many children as possible remain in parental care, thereby contributing to a reduction in the total number of children placed in institutional care;
- a reassessment of the situation of children in institutional care at the time of the project in order to:
 - identify children in respect of whom there are no grounds for them to be placed in institutional care and who can be brought up in their own or a substitute family-based setting;
 - set up the planning of measures by a child protection agency, parents, and other stakeholders so that conditions are gradually put in place for children to be removed from institutional care;
 - assess the scope and content of social and follow-up services for families with children that will be necessary for children to remain safely with their families upon their return from institutional care;
 - assess the level of cooperation between the institutional care facility, the child protection agency, the family, and where appropriate the children themselves (i.e. the level of case work);
- conduct systematic personal visits to children in institutional care facilities, facilities belonging to the Ministry of Labour and Social Affairs (homes for persons with disabilities where children under the age of 18 are placed, and children's emergency care facilities), the Ministry of Education, Youth and Sports (diagnostic institutes, children's homes, children's homes with schools, educational institutions), and the Ministry of Health (children centres, early childhood medical care institutions).

Under the project, 5,297 child situation assessments and individual child protection plans were reviewed, more than 200 institutional care facilities were visited, more than 1,500 interviews were conducted with children and staff at facilities, and 136 seminars were held for 1,600 members of child protection agency staff. The project also resulted in methodology for structured assessment and individual child protection plans (ICPPs), which was specifically focused on the topic of institutional care and distributed to all staff of child protection agencies and institutional care facilities so that a uniform approach could be adopted to the assessment and ICPPs of children who were not included in the project, as well as for children who are being considered for institutional care.

In the current programming period, the Ministry of Labour and Social Affairs is implementing the projects *“Unification of the approach to vulnerable children”* and *“Standardisation of the process of providing substitute family care to children”*. The aim of the project *“Unification of the approach to vulnerable children”* is to set up an optimal model and basic standards, processes, and procedures for multidisciplinary cooperation across departments in the provision of protection and assistance to vulnerable children, to implement methods aimed at ensuring that children participate in key areas of their lives, and to create a regional standard for a network of services for children, as well as a regional medium-term multidisciplinary plan of services for vulnerable children and their families, for each of the regions participating in the project. These projects include development programmes for senior staff of child protection agencies and workshops and training on parental skills.

The purpose of the project *“Standardisation of the process of providing substitute family care to children”* is to streamline and simplify the process of providing substitute family care to vulnerable children, and to interlink the skills of those interested in providing substitute family care with the

children's needs. Particular attention is paid to the opportunities that exist to provide substitute family care to children with specific needs and to make foster care more attractive to potential candidates from the general public. One of the activities currently being carried out is the pilot testing of structured reporting by child protection agencies on persons interested in substitute family care, which encompasses 8 regions and 29 municipalities with extended powers.

2. SUPPORT FOR CHILDREN FROM DIFFERENT ETHNIC BACKGROUNDS AND CHILDREN WITH DISABILITIES

In 2022, as part of the project *“Support for systemic changes in care services for vulnerable children, young people, and families in the Czech Republic”*, an [Analysis of the Needs of the Child in the Context of Residential Care](#) was conducted and published. This analysis has a chapter devoted to the formation of regional network models for children and families, with an emphasis on preventive services for families with children in institutional care and families at risk of having their children removed, including services at the intersection of social and health care. The analysis is a follow-up to the output of an earlier project of the Ministry of Labour and Social Affairs entitled *“Systemic development and support of child protection instruments”*, in particular the [Guide to Networking Services for Children and Their Families](#) and the [Optimal Model of the Minimum Network of Services for Children and Their Families at the Level of Municipalities with Extended Powers](#) from 2019.

Under the project *“Support for systemic changes in care services for vulnerable children, young people, and families in the Czech Republic”*, the practical guides [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.

With effect as of 1 January 2022, an amendment to Decree no. 473/2012 of the Ministry of Labour and Social Affairs on the implementation of certain provisions of the Children Protection Act resulted in the supplementation of section 3(1) to include the fact that a mandatory part of the training of applicants for the mediation of adoption or foster care is the topic of understanding and meeting 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. Another new part added to the training of applicants for the mediation of substitute family care is the topic of the identity of a child in substitute family care.

In order to reinforce support for the foster care of children with disabilities, the indexation of the amounts of the foster carer stipend and the foster care allowance payable to foster carers and guardians caring for children dependent on assistance from another natural person at level II (moderate dependency), level III (severe dependency), and level IV (total dependency) was considerably increased as of 2022. Similar indexation has been applied to the amounts of the allowance to cover the needs of a child in foster care, which is payable at increased amounts for children who are dependent on assistance from another natural person at levels I to IV, in addition to the care allowance under the Social Services Act. As of 2022, there has been a completely new entitlement to an increased foster carer stipend for foster carers and guardians caring for a child dependent on level I assistance from another natural person (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%). This remedied the previously unacceptable situation where temporary foster carers were entitled to a flat-rate foster carer stipend regardless of the number and health of children placed in their care, and provided a stronger incentive for temporary foster carers to accept children with disabilities and sibling groups.

3. NATIONAL SHARED REGISTER OF TEMPORARY FOSTER CARERS

The National Shared Register of Temporary Foster Carers, which is administered and maintained by the Ministry of Labour and Social Affairs, went fully operational on 1 February 2024, when data from all regional authorities was entered in it. On that date, there were 879 temporary foster carers in the register, which is 144 more than on 1 January 2022. Of those 879 temporary foster carers, 406 stated that they were prepared to provide emergency care to vulnerable children in crisis situations where children found themselves without any care at all, or without age-appropriate care. Since 2022, this informal emergency care, which temporary foster carers may provide only on the basis of a request from a child protection agency, has been a new alternative to the placement of vulnerable children in the care of a children's emergency care facility or another type of residential facility.

In autumn 2023, the Ministry of Labour and Social Affairs launched a National Shared Register of Applicants for the Mediation of Substitute Family Care, which 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.

4. GRADUAL TRANSFORMATION OF EARLY CHILDHOOD MEDICAL CARE INSTITUTIONS

In some regions, early childhood medical care institutions are gradually being transformed (or their services are being transformed). For example, the [Liberec Region](#) has introduced two new social services in a children centre – social rehabilitation and a day care centre for children with disabilities. The [Olomouc Region](#) has approved the transformation of an early childhood medical care institution into a community-type home for persons with disabilities as of 2024. This home for persons with disabilities will also provide other social services, such as social rehabilitation or a respite service. The management of some regions has yet to make a final decision on the method of transformation. This is a gradual process that has not yet been implemented in a number of regions.

5. NUMBER OF CHILDREN IN EARLY CHILDHOOD MEDICAL CARE INSTITUTIONS

An October 2022 [report on research](#) by the NGO LUMOS in children centres shows that in just two years, between 2018 and 2020, the number of children in children centres fell by almost 100 children. The largest reduction was in the number of children up to the age of three (inclusive), i.e. the cohort for whom children centres were primarily established. The number of these children went down by approximately 180 (40%) – in 2018, there were 441 children up to the age of three in all children centres, but by 2020 this number had dropped to 265.

In implementing the Committee's decision, the Ministry of Labour and Social Affairs repeatedly approaches the management of early childhood medical care institutions in order to chart the current number of children under the age of three and to ascertain other data. The 2022 [final report](#) shows that the downward trend in numbers of the youngest children in early childhood medical care institutions continued in 2021 and 2022. Between 2018 and 2022, the number of children under the age of three decreased by 69%.

The 2023 [final report](#) shows that children over the age of three are also placed in these institutions, and that only a third of the children in early childhood medical care institutions (i.e. 142) were children up to three years of age (inclusive).

The situation in the various early childhood medical care institutions is addressed on an ongoing basis at methodological consultations of the Ministry of Labour and Social Affairs with representatives of regional authorities, most recently on 6 February 2024.

6. NEW CHILD PROTECTION AND FAMILY SUPPORT ACT

The Ministry of Labour and Social Affairs is preparing a [bill on child protection and family support](#) to replace the much-amended and outdated 1999 Children Protection Act. This bill is being drafted by the Ministry in cooperation with the professional community. The issue of age thresholds for the placement of children in institutional care is also discussed at working party meetings.

At its [meeting on 5 September 2023](#), the Committee of Experts welcomed the information on the upcoming bill on child protection and family support and advocated for the establishment of age thresholds for the placement of children in institutional care.

In January 2024, substantive principles for the new legislation on child protection and family support were finalised and submitted to the Ministry's management for assessment. The main tenets of these substantive principles are also being presented and discussed at political level.

For children under the age of three, the substantive principles of the new legislation envisage that the families of these children will be provided with "child protection and family support services". These will be provided on a contractual basis by registered service providers and in particular will include:

- the provision of counselling and direct assistance to children and parents to prevent adverse social situations or risks to the child;
- assistance to parents in dealing with rights and obligations arising from their parental responsibility and in coping with adverse social situations;
- assistance in the protection of the rights, claims, and legitimate interests of the child;
- help for children in meeting their social, educational, and other needs;
- the provision of emergency child care;
- the provision of emergency (crisis) assistance to parents.

These are services provided predominantly in the child's own social setting. Besides child protection and family support services, it will also be possible to provide court-ordered temporary or long-term foster care services to children under the age of three.

III. CONCLUSION

The Czech Republic has long been aware that children under the age of three are being inappropriately placed in early childhood medical care institutions. By analysing and applying the conclusions of the Committee's decision and the recommendation of the Committee of Ministers of the Council of Europe, it was thus able to build on discussions that had already taken place.

To implement the Committee's decision, the Ministry of Labour and Social Affairs, working with other experts, has prepared an amendment to the Children Protection Act and related acts, which will definitively abolish the service of early childhood medical care institutions, and it will no longer be possible to place children under the age of three or four, including Roma children and children with disabilities, in institutional care facilities. The amendment has reached an advanced stage of the legislative process. Once it has been approved by the Chamber of Deputies, it will be debated by the Senate and submitted to the President of the Republic for signature. The amendment is expected to take effect as of 1 January 2025. Numerous accompanying measures have also been taken.

In the light of the foregoing, the Czech Republic is satisfied that it has remedied the violation found by the Committee and aligned the rights of children under the age of three to grow up in a family-based setting with Article 17 of the Charter.