

# COMMISSIONER FOR HUMAN RIGHTS OF THE COUNCIL OF EUROPE

DUNJA MIJATOVIĆ

REPORT FOLLOWING HER VISIT TO THE CZECH  
REPUBLIC FROM 20 TO 24 FEBRUARY 2023



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## SUMMARY

Commissioner Dunja Mijatović and her team visited the Czech Republic from 20 to 24 February 2023. This report covers the following topics: general issues in relation to human rights protection in the Czech Republic (chapter 1), the human rights of Roma (chapter 2), the rights of people with disabilities (chapter 3), and certain other human rights issues raised during the visit (chapter 4).

### **General issues in relation to human rights protection**

The Czech Republic has a well-established system for human rights protection. The ratification, in 2017, of the Council of Europe Convention on Action against Trafficking in Human Beings is a welcome addition to this system. To further enhance its human rights framework, the Czech Republic should ratify the revised European Social Charter of 1996. Progress should be made in establishing a National Human Rights Institution in line with the Paris Principles, and a future Children's Ombudsman should be adequately resourced to fulfil its functions.

The fragmentation of responsibilities, both within the central government and within the decentralised system which divides powers between the state, regional and municipal authorities, appears to be contributing to the lack of systemic progress in addressing key human rights issues. Consideration should be given at all governance levels to how to overcome this critical problem.

### **The rights of Roma**

Tangible progress on the advancement of the rights of Roma and their equal treatment has by and large been lacking. The success of the Strategy for Roma Equality, Inclusion and Participation depends on the political priority accorded to it, enhanced coordination, proper resourcing, and concerted follow up action. The newly-established position of the Government Commissioner for Romani Minority Affairs requires all the necessary political backing.

The establishment of a compensation mechanism for forced sterilisation was a crucial step in providing the victims with a measure of long-awaited justice. However, it is over-reliant on medical evidence, and a clear methodology for the assessment of compensation claims, including clear guidance on the submission and assessment of other evidence than medical files, should be developed. Preventing the burden of proof falling disproportionately on victims and ensuring adequate human resources and expertise for assessing claims are among the other steps necessary to ensure effective access to the reparations to which victims are entitled.

The discrimination of Roma children in education is a persisting problem. The focus on the continuous refinement of testing tools has not provided an answer to the long-standing question of discrimination in the education system, and a paradigm shift in this regard remains necessary. There is a need for a comprehensive strategy to desegregate the education system, including the improvement of enforcement action against potentially discriminatory catchment areas. Proposals to change the way in which teaching assistance for pupils with special education needs is allocated should not reduce the availability of teaching support and inadvertently divert children from mainstream to special education. More efforts are also necessary to support and promote the good practices of more inclusive education that exist in various places in the Czech Republic, while a holistic approach to tackling discrimination and segregation in education needs to be taken.

Roma continue to face discrimination in virtually every area of life. A redoubling of efforts in key sectors where Roma face discrimination is necessary, including by creating clear frameworks for social housing,

improving protections against discrimination in the labour market, and tackling discrimination and violence by the police. Hate speech and the spread of prejudice by public officials remains an urgent issue to tackle. There is welcome progress in the creation of a memorial on the site of the former concentration camp in Lety u Písku.

The Czech authorities and Czech citizens have made extraordinary efforts in response to the arrival of Ukrainian refugees. However, the treatment of Ukrainian Roma who fled to the Czech Republic since the start of the war is an issue of concern, following consistent and credible reports of unjustified differential treatment of Ukrainian Roma in such areas as assistance and registration.

### **Persons with disabilities**

To effectively realise the right of persons with disabilities to live independently in the community, concerted action must be taken to replace institutional social and health care services with community-based ones. The continuing investment in the construction and refurbishing of institutions runs counter to the deinstitutionalisation agenda and should be halted. Good examples of transformation from an institutional setting to community-based services are available but they mostly appear to depend on individual initiatives, rather than being the result of systemic change. The allocation of financial resources to responsible authorities on a one-year budget cycle inhibits the long-term planning that is necessary for such transformation processes. Rising costs of services for persons with disabilities risk forcing such persons to seek care in institutions. Persons with disabilities should receive adequate individualised funding to ensure adequate coverage of disability-related expenses and enable them to exercise their right to live independently in the community.

As regards involuntary placement in social care and health care institutions, as well as involuntary treatment, steps must be taken to ensure effective access to justice to those affected, whilst systemic change towards the provision of health care on the basis of free and informed consent is necessary.

Judicial practice too often focuses on limiting the legal capacity of persons with disabilities, rather than making use of supported decision making. Capacity-building among the judiciary with respect to the relevant international standards and guidance, and about arrangements for the support that persons with disabilities may require in exercising their legal capacity, should be improved.

Ill-treatment of persons with disabilities is of great concern, and combating this must be accorded the utmost priority, including by adequately resourcing oversight bodies. However, to effectively address the risk of ill-treatment in institutions, swift progress on deinstitutionalisation is essential.

The enforcement of requirements for the broadcasting of programmes with subtitles or sign language, and their gradual expansion, is necessary to ensure that people with hearing impairments can enjoy their right to access to information and communication on an equal basis with others.

### **Other issues raised**

Regarding violence against women and domestic violence, the decision by the Czech government to propose to Parliament that the Istanbul Convention is ratified is a welcome step that members of the Parliament should support, whilst avoiding false narratives about the content and role of the Convention. The authorities should move forward with their intention to amend the definition of rape in the Criminal Code so that it is entirely based on the absence of free consent.

Regarding the human rights of lesbian, gay, bisexual, transgender and intersex (LGBTI) people, the current legal gender recognition procedure, which requires a surgical intervention, is in clear violation of the

European Convention on Human Rights and requires urgent reform to bring it in line with the Czech Republic's obligations and with international human rights best practice. Registered partnerships do not provide for comprehensive protection of the rights of same-sex couples and the introduction of equal marriage would be a welcome step to that end.

## INTRODUCTION

1. The Commissioner for Human Rights of the Council of Europe, Dunja Mijatović (the Commissioner), carried out a visit to the Czech Republic from 20 to 24 February 2023. The visit focused on the human rights of Roma and of people with disabilities. During the visit, several other human rights issues were also discussed.
2. During the visit, the Commissioner met with Karel Dvořák, Deputy Minister of Justice; Zuzana Freitas Lopesová, Deputy Minister of Labour and Social Affairs; Jakub Dvořáček and Josef Pavlovic, Deputy Ministers of Health; Klára Šimáčková Laurenčíková, Government Commissioner for Human Rights; Lucie Fuková, Government Commissioner for Romani Minority Issues; as well as representatives of the Ministry of Foreign Affairs, the Ministry of Education, Youth and Sports, and the Ministry of Interior. In addition, she met with the Public Defender of Rights and the Deputy Public Defender of Rights, as well as representatives of civil society. As part of her programme, the Commissioner also visited the Grafická elementary school in Prague and the Centre for Social Services in Stod.
3. The Commissioner would like to thank the Permanent Representation of the Czech Republic to the Council of Europe and the authorities in Prague for their assistance in organising her visit.<sup>1</sup>

## 1. GENERAL ISSUES IN RELATION TO HUMAN RIGHTS PROTECTION

### 1.1. HUMAN RIGHTS FRAMEWORK

4. The Czech Republic has a well-established system for human rights protection, and it is party to the major Council of Europe and international treaties, which it expanded by ratifying the Council of Europe Convention on Action against Trafficking in Human Beings in 2017. In the area of social rights, the Czech Republic is among the 16 member states that have accepted the collective complaint procedure in relation to the European Social Charter. However, the Czech Republic has only ratified the European Social Charter of 1961, and not the revised Charter of 1996. A gap remains in relation to the Czech Republic's non-ratification of the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (the Istanbul Convention, see 4.1).
5. At the central government level, there is an elaborate structure in place to address human rights issues, including the position of Government Commissioner for Human Rights, who has taken on an

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<sup>1</sup> This report was finalised on 4 September 2023. All online documents quoted in the report were last accessed on that date.

increasingly wide array of responsibilities,<sup>2</sup> and various consultative bodies.<sup>3</sup> This structure was recently expanded with a Government Commissioner for Romani Minority Affairs.<sup>4</sup>

6. Regarding national human rights structures, the Public Defender of Rights plays a key role in monitoring human rights. Among its functions, the Public Defender of Rights is the Czech Republic's equality body, acts as the national preventative mechanism under the Optional Protocol to the UN Convention Against Torture (CAT), is charged with forced returns monitoring, and provides the monitoring function under the UN Convention on the Rights of Persons with Disabilities (CRPD).
7. At the moment, the Czech Republic does not have a National Human Rights Institution (NHRI). However, work is ongoing on amending the Act on the Public Defender of Rights, which would establish the Public Defender as an NHRI. The Commissioner encourages all actors involved in this process to ensure that the NHRI, once established, meets all the criteria set out in the Principles relating to the Status of National Institutions (the [Paris Principles](#)), including having a broad mandate and powers based on international human rights standards, independence guaranteed by the Constitution or primary legislation, pluralism of composition, sufficient resources and sufficient powers of investigation. The changes to the Act would also create a Children's Ombudsman within the institution. The Commissioner welcomes this development as a boost to the protection of children's rights in the Czech Republic.
8. The Commissioner wishes to acknowledge that the Czech Republic is currently facing a considerable human rights challenge in relation to the arrival of large numbers of Ukrainian refugees since the start of Russia's war of aggression on Ukraine. Data from the UN High Commissioner for Refugees (UNHCR) puts the number of Ukrainians currently receiving protection in the country at almost 365,000.<sup>5</sup> This makes the Czech Republic one of the main receiving countries of Ukrainian refugees, especially in relation to the size of its population. Just after the start of the war, the Commissioner carried out [emergency missions](#) to Council of Europe member states at the forefront of receiving Ukrainian refugees, including the Czech Republic. Already at that time, she praised the enormous efforts made by authorities and citizens in welcoming people fleeing Ukraine. During her most recent visit, almost two years later, the Commissioner was again able to discuss with the authorities the steps that they had taken, and the impact the presence of Ukrainian refugees is having on many different issues, including housing, education and health care. The Commissioner takes this opportunity to reiterate her deep appreciation for the efforts made by the whole of Czech society.
9. However, the visit of the Commissioner of February 2023 did not primarily focus on the situation of Ukrainian refugees. Rather, it aimed to follow up on long-standing issues addressed by successive Commissioners over the years, especially as regards the human rights of Roma and of people with disabilities. The situation of Ukrainian refugees is therefore not discussed separately in this report.

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<sup>2</sup> In February 2023, the Government Commissioner for Human Rights was also designated as the [National Coordinator for the Integration of War Refugees](#).

<sup>3</sup> These [advisory and consultative bodies](#) include, in relation to the topics discussed in this report, the [Government Council for Human Rights](#), the [Government Council for Roma Minority Affairs](#), and the [Government Board for Persons with Disabilities](#).

<sup>4</sup> See section 2.1.

<sup>5</sup> UNHCR, [Operational Data Portal: Ukraine Refugee Situation](#) (data as of 27 August 2023). According to data from the Ministry of Interior, a total of 522 541 persons had been granted temporary protection status between 24 February 2022 and 4 June 2023. Out of that number, 341 177 active temporary protections were registered as of 4 June 2023. Czech Ministry of Interior, Migration Snapshot May 2023.



Where relevant, some comments will be made about this situation as it relates to the key topics of this report.<sup>6</sup>

## 1.2. TACKLING LONG-STANDING HUMAN RIGHTS ISSUES

10. Despite the generally well-established framework for tackling human rights issues, complemented by a range of strategy documents and action plans, certain important human rights issues have remained long-standing concerns. This is particularly the case for the human rights situation of Roma and people with disabilities. Both issues have been the focus of work by the Commissioner's Office since its establishment. Each successive Commissioner urged the Czech Republic to take swift and decisive action to tackle these deep-rooted problems. However, systemic improvement has often been limited and many of the issues identified by the Commissioner's predecessor during his [country visit in 2012](#) are still of concern more than a decade later, as described in the subsequent chapters of this report.
11. The Commissioner notes that the authorities generally appeared to be very aware of these challenges. However, she is concerned that a solution to long-standing human rights issues in relation to Roma and people with disabilities is being held back by fragmentation of responsibilities, both within the central government and within the wider decentralised system which divides powers between the state and regional and municipal authorities. Often in her discussions, the fragmentation and the diffusion of powers across different levels was identified as a significant barrier to implementing and enforcing legislation and policies focused on improving human rights in specific sectors. It is not for the Commissioner to suggest how member states should make their constitutional arrangements, or how they should divide competences between the state government and regional and municipal authorities. However, from the perspective of her human rights mandate, the Commissioner feels obliged to signal her concern at how these arrangements in the Czech Republic may be preventing a real breakthrough in key areas, including tackling segregation in the education system and advancing deinstitutionalisation.

## 1.3. CONCLUSIONS AND RECOMMENDATIONS

12. The Commissioner calls on the Czech government to complement its ratification of Council of Europe human rights instruments, including by ratifying the revised European Social Charter.
13. The Commissioner encourages the government to make progress on the establishment of a National Human Rights Institution that would meet the requirements of an A-status institution in relation to its compliance with the Paris Principles. The future Children's Ombudsman should be adequately resourced to fulfil its functions.
14. The Commissioner calls on the authorities at all levels to consider how to address their fragmented and diffuse responsibilities, and the lack of enforcement mechanisms for the implementation of laws and policies that would impact on key human rights issues such as segregation in education and institutionalisation, in order to make progress on long-standing human rights issues in relation to the situation of Roma and people with disabilities.

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<sup>6</sup> In this respect, the situation of Ukrainian Roma is specifically addressed as a topic of concern within the wider discussion of the human rights of Roma in the Czech Republic (see section 2.5). For other links between the Ukrainian refugees situation and the particular issues of focus during this visit, see for example paragraph 51, highlighting the challenges of integrating Ukrainian children in the education system within the wider context of efforts to improve inclusive education.

## 2. THE RIGHTS OF ROMA

15. This chapter first briefly outlines some institutional developments of relevance to the human rights of Roma (section 2.1). Subsequently, it addresses two key areas of focus during the Commissioner’s visit, namely the situation of victims of forced sterilisation (section 2.2) and the issue of inclusive education (section 2.3). The chapter also provides brief observations about wider issues of discrimination of Roma in the Czech Republic (section 2.4) and about the specific situation of Roma from Ukraine (section 2.5).

### 2.1. INSTITUTIONAL DEVELOPMENTS

#### 2.1.1. THE STRATEGY FOR ROMA EQUALITY, INCLUSION AND PARTICIPATION 2021-2030

16. The human rights of Roma in the Czech Republic have been a long-standing issue of concern for the Commissioner and her predecessors. A key instrument in relation to this topic is the [Strategy for Roma Equality, Inclusion and Participation \(Strategy for Roma Integration\) 2021-2030](#). The strategy’s overall vision is “to overcome all historically conditioned disadvantages of the Roma minority to achieve a state with no unjustified and unacceptable differences between a significant portion of Roma and most of the majority society to the disadvantage of the former in any sphere of social life”. The strategy’s central pillars focus on emancipation and desegregation, while reducing antigypsyism, increasing the level of educational attainment of Roma, and ensuring equal access to quality housing, employment, quality health care and social services.
17. The strategy acknowledges that progress on the advancement of the rights of Roma and their equal treatment has by and large been insufficient over the last decades.<sup>7</sup> It contains many commitments that could lead to important progress. However, some of the Commissioner’s interlocutors doubted that the strategy would deliver fundamental change. It remains to be seen whether the objectives of the strategy will be sufficiently operationalised and resourced to be translated into improvements on the ground. The structural barriers to implementing human rights policies resulting from the fragmented and decentralised government structures, as highlighted in section 1.2 above, also represent a serious challenge to the successful achievement of the strategy’s objectives. Many of the objectives relate to policy areas that fall under the responsibilities of different Ministries, or regional and local authorities, and may often also involve private actors.
18. The Commissioner stresses the crucial importance of attributing high political priority to improving the human rights situation of Roma, including by ensuring sufficient support across the whole government, as well as by expressing this support clearly in communicating with the public. In this respect, she notes that the current government’s [Policy Statement](#) does not explicitly address tackling discrimination of Roma.

#### 2.1.2. THE GOVERNMENT COMMISSIONER FOR ROMANI MINORITY AFFAIRS

19. The Czech government appointed the first Government Commissioner for Romani Minority Affairs in December 2022. The Commissioner for Romani Minority Affairs should play a leading role in fostering coherence among the different stakeholders involved in the implementation of the Strategy for Roma

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<sup>7</sup> The strategy acknowledges that “[t]he situation of the Roma minority is one of the most pressing issues in Czech society after 1989”, posing “a serious challenge in the areas of human rights and social economics”. Furthermore, the strategy notes that “it has not been possible to set the developments in this area on an overall positive track”, causing the persistence of “marginalisation, social exclusion and territorial segregation”.

Integration, and in working closely with other key actors in relation to Roma issues, including the Government Commissioner for Human Rights, the Government Council for Romani Minority Affairs, the Agency for Social Inclusion, the Ministry of Labour and Social Affairs, and regional and local structures. The Commissioner welcomes the establishment of this new position. She hopes that this position will contribute to overcoming some of the problems arising out of the fragmented and decentralised administrative structures mentioned in section 1.2, and that it will usher in a more coherent approach to the inclusion of Roma in Czech society, as well as enabling Roma to participate more easily in decision making at all levels of public life. The position of Commissioner for Romani Minority Affairs is currently only a part-time one, and the effectiveness of this role will depend (among other things) on receiving sufficient support, both in terms of resources and political backing.

### 2.1.3. CONCLUSIONS AND RECOMMENDATIONS

20. The Commissioner calls on the Czech authorities to ensure that the implementation of the Strategy for Roma Equality, Inclusion and Participation 2021-2030 is accorded the necessary political priority, made subject to effective coordination between different responsible ministries, properly resourced and followed up, and based on constructive co-operation with civil society.
21. The Commissioner calls on the government to show full support for the new mandate of Government Commissioner for Romani Minority Affairs, and ensure that she is properly resourced to fulfil her functions.

## 2.2. VICTIMS OF FORCED STERILISATION

### 2.2.1. INTRODUCTION

22. In 2005, the first Czech Ombudsman revealed a practice, mainly during communist times but also afterwards, of unlawful sterilisation. This practice mainly targeted Roma women, although a smaller number of non-Roma women in a vulnerable situation were also subjected to it. Since then, each Commissioner has raised this issue as a serious human rights violation and has called for victims to receive reparations.<sup>8</sup> A series of judgments by the European Court of Human Rights, addressing similar issues in other countries, found that such practices amounted to violations of Articles 3 and 8 of the European Convention on Human Rights (ECHR).<sup>9</sup>
23. Following a long campaign by victims calling for an accessible compensation mechanism, a concrete legislative proposal to meet these demands was put forward in 2020. The Commissioner wrote two letters in support of the adoption of a mechanism, one to the [Chamber of Deputies](#) and one to the [Senate](#). The legislation establishing a compensation mechanism, [Act No. 297/2021 Coll.](#) on the provision of a one-time sum of money to persons sterilised in violation of the law and on the amendment of related acts, entered into force on 1 January 2022.
24. Under the Act, persons who were subjected to an unlawful sterilisation between 1 July 1966 and 31 March 2012 in a medical facility on the territory of the present-day Czech Republic are eligible for compensation amounting to CZK 300 000 (approximately € 12 500). Victims must make an application

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<sup>8</sup> See Commissioner Gil-Robles, [report](#) on the Czech Republic (2003-2005), CommDH(2006)15, 29 March 2006, paragraph 2.6; Commissioner Hammarberg, [report](#) following the visit to the Czech Republic from 17 to 19 November 2010, CommDH(2011)3, 3 March 2011, section II e; Commissioner Muižnieks, [letter](#) to the Prime Minister of the Czech Republic, Mr Bohuslav Sobotka, CommHR/NS/sf 070-2015, 6 October 2015.

<sup>9</sup> See, in particular, [V.C. v. Slovakia](#), application no. 18968/07, judgment of 8 November 2011.

with the Ministry of Health, which administrates the compensation scheme and makes decisions on claims received. Applicants must provide a description of the relevant facts, including the medical facility where the sterilisation was carried, the date of the sterilisation, and a description of the circumstances in which the sterilisation took place. In support of this claim, they should provide documentary evidence or “other means of evidence” showing that the sterilisation took place and that it was unlawful. The Ministry of Health should decide on claims within 60 days and effectuate a payment within 30 days of a positive decision. Any claims for compensation must be submitted within three years of the entry into force of the Act. As of 15 August 2023, 1,177 applications for compensation have [reportedly](#) been submitted, of which 630 were processed. Of these, 412 have led to the awarding of compensation, while 141 claims were rejected and 77 procedures stopped. Over 500 applicants are awaiting a decision.

#### 2.2.2. CONCERNS ABOUT THE IMPLEMENTATION OF THE COMPENSATION MECHANISM

25. The Commissioner has [welcomed](#) the establishment of a compensation mechanism, and considers it a crucial step in providing a measure of long-awaited justice to victims. However, ahead of her visit, the Commissioner received several reports that victims were having difficulties getting their claims for compensation recognised, and that the implementation of the compensation mechanism was proving challenging. As part of her visit, the Commissioner met with several women who had been subjected to forced sterilisation, as well as those campaigning for justice with them or representing them in legal proceedings. She also discussed the implementation of the mechanism with government representatives. The discussions during the visit revealed a number of problems.
26. One of the key problems identified was the mechanism’s almost exclusive reliance on medical records to assess the eligibility of applicants for compensation. As the Commissioner heard, attempts by potential applicants to obtain their medical records from healthcare facilities often ran into problems due to medical files being unavailable. Regarding the latter, she notes that Czech law requires medical files to be kept for 40 years, after which time they can be lawfully disposed of. However, the compensation scheme covers cases starting from 1966, which means that a considerable group of victims may be unable to access medical evidence of their sterilisation, even if rules on the retention of files are meticulously followed. Furthermore, in contravention of the retention rules, medical files have sometimes been disposed of before the 40-year deadline. With the passage of time, medical files may have also been destroyed due to fires, floods, or other reasons. In other instances, the files have simply been lost. Under such circumstances, the lack of medical evidence cannot be attributed to victims. Nevertheless, as the Commissioner learned, applications for compensation have been dismissed on this basis. The insistence on medical records may also act as a deterrent to other victims who would like to submit an application for compensation but who feel like this may be a fruitless exercise.
27. A key issue in relation to the implementation of the compensation scheme therefore centres around how to advance claims and have these accepted in the absence of medical files. In this respect, the Commissioner recalls that Act 297/2021 Coll. also refers to ‘other evidence’ that can be accepted as part of the compensation procedure. However, as victims and those supporting them reported to the Commissioner during her visit, no guidance had been issued to decision makers about what kind of ‘other evidence’ might be accepted in lieu of medical files, and how to proceed in such cases. In this situation, officials responsible for decision making reportedly also generally did not accept other forms of evidence than medical files.

28. The Czech government has stated that “the requirement to produce appropriate medical documentation confirming unlawful sterilization had proven to be an obstacle” and that “new forms of documentation were now accepted.”<sup>10</sup> However, as of August 2023, the lack of medical documentation was still identified as a key obstacle to compensation claims, and the Government Commissioner for Human Rights continued to be in negotiation with the Ministry of Health to expand the means of evidence beyond the existing medical documentation, such as through testimonies.<sup>11</sup> Information received by the Commissioner from civil society suggests that other evidence has been accepted in exceptional cases, but that no clarity has been provided on the systematic use of evidence other than medical files.
29. Regarding cases in which medical evidence was available, the Commissioner heard concerns that decision making had been inconsistent, including the consideration of the reasons that were listed in medical files for the sterilisation procedure, or in regard of the alleged consent given by the victim.<sup>12</sup> She was also informed about cases with similar facts in which some applicants were awarded compensation and others were not. Victims attributed such inconsistencies in decision making to the lack of a clear methodology for deciding on claims.
30. Another concern raised with the Commissioner was that the burden of supplying (medical) evidence is disproportionately placed on the victims, even though the Act foresees a proactive role for the authorities. The Commissioner notes that the facts surrounding forced sterilisation, including as a state policy, should now be widely known by decision makers (for example, as regards the locations where these occurred during specific periods). Nevertheless the Act does not include a specific legal presumption that an applicant who can provide basic information about the circumstances of the sterilisation was indeed subjected to an unlawful procedure.
31. The Commissioner was informed about significant delays in awarding compensation in certain cases. This further adds to the victims’ wait for justice, some of whom are now at an advanced aged. Some have passed away before receiving any compensation. Concerns were raised with the Commissioner that human resources at the Ministry of Health were too limited to deal with applications in a timely manner. Furthermore, it was suggested that decision makers lack sufficient expert support, including in relation to knowledge about the historical occurrence of forced sterilisation, the human rights considerations, dealing with victims and compensation claims, and the impact of cultural issues. The Commissioner notes that in the pre-legislative phase, the creation of a commission of experts to make a first assessment of files before moving these on to the relevant Ministry for a decision had been suggested, but that such a commission was never established.
32. The current issues with the implementation of the mechanism are preventing a significant number of victims from having access to prompt and adequate reparations. It is crucial to ensure that current applications are dealt with fairly and quickly, that rejected applications are reassessed on the basis of a clear methodology, and that victims who are yet to make applications can still do so effectively. In

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<sup>10</sup> Human Rights Council, fifty-third session, 19 June-14 July 2023, [report](#) of the Working Group on the Universal Periodic Review: Czechia, A/HRC/53/4, 15 March 2023.

<sup>11</sup> *Česká televize*, “[Stovky nezákonně sterilizovaných žen stále čekají na odškodnění. Chybí jim zdravotní dokumentace](#)” [Hundreds of illegally sterilised women are still waiting for compensation. They lack medical documentation], 18 August 2023.

<sup>12</sup> In this respect, also see A. Štefanidesová, “[Protiprávní sterilizace: Jak \(ne\)funguje odškodňovací mechanismus?](#)” [Unlawful sterilisation: how does the sterilisation mechanism (not) work], *Pravo21*, 29 November 2022. The Commissioner notes that at least in some cases identified, such as a denial of compensation in a case in which the reason for sterilisation was listed in the medical file as ‘Roma’ has since been reversed by the Ministry.

this regard, the duration of the scheme, which is due to close at the end of 2024, may be too short to ensure access to all victims.

33. The Commissioner was able to hear first-hand the importance that victims attach to compensation as an acknowledgement of the harm inflicted on them, and as a measure of the justice which they have long awaited. Uncertainties about the scheme, as well as the difficulties in pursuing medical evidence, are adding to the emotional and psychological burdens that victims already face, and they are sometimes humiliating to the victims, which risks retraumatising them. The act of sterilisation has also had long-term effects on their family and social lives. Some victims are still struggling to get sufficient support in relation to their sexual and reproductive health and rights, for example, in accessing IVF treatment.

### 2.2.3. CONCLUSIONS AND RECOMMENDATIONS

34. The establishment of the compensation mechanism for victims of forced sterilisation was an important step to deal with a historical injustice. It is now crucial to swiftly address any problems in the implementation of the mechanism so that victims can receive prompt and adequate reparations for the serious human rights violations to which they were subjected. To this end, the Commissioner calls on the authorities to take the following steps:
  - to establish a clear methodology for the assessment of compensation claims, ensuring consistency and fairness. This should include clear guidance on the submission and assessment of evidence other than medical files.
  - once such a methodology is established, to reassess rejected claims in light of the new guidance.
  - to take measures to prevent the burden of proof being disproportionately put on victims, including by working on the presumption that claimants are indeed victims of unlawful sterilisation.
  - to ensure sufficient human resources to enable decisions to be made within the deadline of 60-days, and to provide decision makers in the Ministry of Health with sufficient expert support in relation to the human rights, cultural and historical issues involved, as well as in relation to working with victims and reparations claims.
  - to ensure sufficient information about any updated procedures is provided to victims and to proactively reach out to potential victims to enable them to submit claims. The extension of the running time of the compensation scheme should be considered to ensure access to all victims.
  - to consider organising the existing caseload of compensation claims so that those at an advanced age are prioritised.
35. In all these steps, the authorities should work closely with victims and organisations supporting them, so that any barriers in the process are quickly identified and eliminated. The Commissioner also emphasises the role of Parliamentarians in closely monitoring the mechanism's implementation and working with the government to ensure the progress and fairness of the mechanism.

## 2.3. INCLUSIVE EDUCATION

### 2.3.1. OVERALL DEVELOPMENTS

36. The discrimination of children in the Czech education system, both Roma children and children with disabilities, remains one of the most long-standing issues of concern for the Commissioner's Office,<sup>13</sup> and this issue has been a continuous topic of attention for international bodies,<sup>14</sup> including those of the Council of Europe.<sup>15</sup> Regarding Roma children, the judgment of the European Court of Human Rights in the case of *D.H. and Others v. the Czech Republic*, delivered by the Grand Chamber in 2007, is of particular significance. The Court found that the much higher likelihood of children of Roma origin being assessed as having 'mild mental disabilities', and thus being assigned to special primary schools, constituted a violation of Article 14 ECHR (prohibition of discrimination), in conjunction with Article 2 of Protocol No. 1 ECHR (right to education). Fifteen years since the delivery of this judgment, it continues to be under the supervision of the Committee of Ministers.<sup>16</sup>
37. During the visit, the Commissioner discussed the specific aspects of the *D.H.* case, but also focused on the wider issue of inclusive education and the persistent problem of the segregation of Roma children in the education system, which extends beyond the violations found by the Court. She notes that some of the points addressed here also relate to the inclusion of children with disabilities.<sup>17</sup>
38. Despite steps taken by the Czech authorities in recent years,<sup>18</sup> the Commissioner's discussions during her visit indicated that progress in including Roma children in the education system remains minimal.<sup>19</sup> This is supported by the publication, in May 2023, of a [comprehensive study](#)<sup>20</sup> (hereinafter: the PAQ-STEM study) into the causes of Roma pupil overrepresentation in programmes with reduced outcome. The Commissioner welcomes that the Ministry of Education, Youth and Sports commissioned this

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<sup>13</sup> See Commissioner Gil-Robles, [report](#) on his visit to the Czech Republic from 24 to 26 February 2003, CommDH(2003)10, 15 October 2003, paragraphs 6-9; Commissioner Gil-Robles, [follow-up report](#) on the Czech Republic (2003-2005), CommDH(2006)15, 29 March 2006, paragraph 2.2; Commissioner Hammarberg, [Report](#) following the visit to the Czech Republic from 17 to 19 November 2010, CommDH(2011)3, 3 March 2011, section II d; Commissioner Muižnieks, [report](#) following his visit to the Czech Republic from 12 to 15 November 2012, CommDH(2013)1, 21 February 2013, part I.4; Commissioner Muižnieks, [letter](#) to the Prime Minister of the Czech Republic, CommHR/NS/sf 042-2016, 7 October 2016; Commissioner Mijatović, [letter](#) to the Prime Minister and the Minister of Education, Youth and Sports of the Czech Republic, CommHR/DM/sf 094-2018, 19 December 2018; Commissioner Mijatović, Rule 9 [submission](#) to the Committee of Ministers in relation of the supervision of the execution of the judgment of the European Court of Human Rights in the case of *D.H. and Others v. the Czech Republic*, CommDH(2020)24, 22 October 2020.

<sup>14</sup> This issue has been the subject of numerous recommendations by UN bodies and is subject to an infringement procedure by the European Commission.

<sup>15</sup> See, for example, European Commission against Racism and Intolerance (ECRI), [report](#) on the Czech Republic (sixth monitoring cycle), 8 December 2020, paragraphs 78-84; Advisory Committee on the Framework Convention for the Protection of National Minorities (ACFC), Fifth [opinion](#) on the Czech Republic, adopted on 31 May 2021, paragraphs 131-143.

<sup>16</sup> See Department for the Execution of Judgments of the ECHR, [Status of Execution](#) in the case of *D.H. and Others v. the Czech Republic*.

<sup>17</sup> On which some additional comments are made in section 3.1, paragraph 76.

<sup>18</sup> Which include amendments to the Education Act and the introduction of a compulsory and free of charge final year of preschool education for all 5-year-old children, among many other steps of note.

<sup>19</sup> ECRI, its March 2023 [conclusions](#) on the implementation of recommendations in respect of the Czech Republic made during the sixth monitoring cycle, finds that recommendations on the ending of segregation of Roma children in school have not been implemented and that efforts by the authorities "have so far been insufficient to adequately address the problem.

<sup>20</sup> The Ministry of Education Youth and Sports commissioned this study, which was carried out by Prokop Analysis and Quantitative Research (PAQ) and the Institute of Empirical Research (STEM).

study, as a recognition of the need for further action in this area. However, the study's results give cause for considerable concern.

39. In particular, the study concludes that there has been no reduction of Roma pupils in special classes, nor of their segregation within regular classes and schools, over the past five years.<sup>21</sup> Roma children continue to be vastly overrepresented in special classes or schools, in proportion to the overall population. The legislative changes to the Education Act, which were considered a major step in meeting the requirements of the *D.H.* case, have not brought about significant change in this regard, or they have had limited success at best.<sup>22</sup> The study also found that transfers to special classes often occurred in the first years of compulsory schooling. In special education, the percentage of Roma children educated according to a programme with reduced requirements had actually increased.<sup>23</sup>
40. The Commissioner welcomes the study's important recommendations to address the aforementioned issues. This adds to the large body of recommendations to the government, including that of the Expert Forum set up under the aegis of the Czech Agent to the European Court of Human Rights,<sup>24</sup> the Public Defender of Rights, and international bodies. The Commissioner would like to add to this her observations on several points that were particularly discussed during the visit.

### 2.3.2. A PARADIGM SHIFT ON TESTING

41. The testing of pupils is a long-standing concern in relation to the misdiagnosis of Roma children and which is considered a key factor in solving the issues identified in the *D.H.* judgment. The government has acknowledged that "the current practices of school counselling facilities are unable to discern between mild mental disabilities and effects brought by a different socio-cultural environment and different living conditions, i.e. social disadvantage."<sup>25</sup> During her visit, the authorities informed the Commissioner about ongoing steps to update and modernise diagnostic tools and to encourage school counselling facilities, which carry out testing, to use these tools.
42. However, the Commissioner notes that there is not just a problem with how testing is being carried out, which might be addressed to some extent by updating the tools used. In her view, there is an inherent problem with the role of testing in the overall education system, which cannot be addressed by refining diagnostic tools. In 2013, the Commissioner's predecessor already noted that he did "not believe that perfecting of the testing system should lie at the heart of reforming an education system that, as it now stands, tends to exclude, rather than to include."<sup>26</sup> He called for a paradigm shift that would place emphasis on the assessment of pupils' needs and on the provision to them of appropriate support.<sup>27</sup> He warned that efforts to fine-tune the testing system should not undermine progress towards achieving this paradigm shift, and that testing was used to single children out for segregation, rather than supporting them in mainstream education.<sup>28</sup>

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<sup>21</sup> PAQ-STEM study, page 9.

<sup>22</sup> PAQ-STEM study, page 11.

<sup>23</sup> From 40 per cent in 2017 to 70 per cent in 2021, see PAQ-STEM study 2023, p. 10.

<sup>24</sup> [Communication](#) from the Czech government in the case of *D.H. and others v. the Czech Republic*, DH-DD(2022)606, 3 June 2022, Annex 2.

<sup>25</sup> *Ibid.*, page 14.

<sup>26</sup> [Report](#) by Commissioner Muižnieks following his visit to the Czech Republic from 12 to 15 November 2012, CommDH(2013)1, 21 February 2013, paragraph 51.

<sup>27</sup> *Ibid.*

<sup>28</sup> *Ibid.*, paragraph 64.



43. More than a decade later, it is clear to the Commissioner that while efforts to revise outdated testing methods are welcome, the focus on refining testing tools has not provided an effective answer to the long-standing questions of discrimination and segregation in the education system. Even if more refined diagnostic tools were in use (which is not the case yet in all school counselling facilities), the role of testing still appears to be primarily focused on assigning Roma pupils to different kinds of education from those received by the majority of children in the Czech Republic. In this way, testing continues to be used as a tool to exclude, rather than assign to them appropriate support within the mainstream education system.<sup>29</sup> The focus on refining testing may also be detracting important attention from the need for systemic change to tackle biases, prejudices, discrimination and segregation of Roma children in education.
44. From her discussions with the authorities, the Commissioner has observed little recognition of the need for a paradigm shift on testing, and her impression is that the focus remains on fine-tuning diagnostic tools. During her discussions, repeated reference was also made to the fact that, before a child can be assigned to an educational programme with reduced outcomes (whether in mainstream education or in special schools), their parents must give consent to such a course of action – a practice which the authorities maintain acts as a safeguard against discriminatory outcomes of the testing procedure. The Commissioner believes this suggestion runs counter to the lived experience described over many years, which shows that this ‘safeguard’ has proven to be largely ineffective (for a variety of reasons) and that it cannot be considered as a sufficient check on the role that testing outcomes play in determining the educational path of Roma pupils. In line with her general comments about decentralisation in the Czech Republic in section 1.2, she highlights the severe limits that the responsible ministry faces in addressing non-discriminatory practices by testing centres, exemplified best by one interlocutor noting that the central authorities were largely “outsiders in this process” of testing.

### 2.3.3. TACKLING SEGREGATION AND THE ISSUE OF CATCHMENT AREAS

45. The issues of discrimination and segregation in education go much further than the question of misdiagnosis. In this respect, the Commissioner welcomes that certain issues appear to be given more consideration recently, including the role of catchment areas of schools. A fair drawing and implementation of socially balanced catchment areas for pupils is an important element of any comprehensive desegregation strategy.<sup>30</sup> In the Czech Republic, the drawing of school districts is a responsibility of municipalities. The Commissioner heard from civil society that in some cases municipalities may deliberately draw such districts to concentrate Roma children in particular schools, which can lead to schools overwhelmingly attended by Roma pupils even in areas where Roma do not make up the majority of the population. NGOs, drawing on their own research, pointed out to the Commissioner instances of schools being virtually Roma-only in areas where Roma were a minority among the local population, while nearby schools in the same area only had very few Roma pupils. The researchers suggested that the drawing of school districts had contributed to this outcome. The Commissioner notes that the Ministry of Interior, following a [review](#) of 126 newly drawn districts in 2022, did not find that any of these districts had a ‘segregationist character’. Nevertheless, during the Commissioner’s meetings with government officials, the need to monitor the potentially discriminatory drawing of school districts was acknowledged. She welcomes this heightened

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<sup>29</sup> Also see, Commissioner for Human Rights, [Fighting school segregation in Europe through inclusive education](#), Position paper, September 2017, part IV.7, which calls on states to prohibit testing a selection tool.

<sup>30</sup> Commissioner for Human Rights, [Fighting school segregation in Europe through inclusive education](#), Position paper, September 2017, part IV.10,

awareness of the importance of socially balanced catchment areas as part of an overall approach to inclusive education. The Commissioner was informed that discussions at the central government level are ongoing about possibilities to improve monitoring of the impact of catchment areas and, where necessary, to intervene.

#### 2.3.4. ENSURING APPROPRIATE LEVELS OF SUPPORT

46. While steps to move towards a more inclusive system are necessary, it is equally crucial that no steps backward are made. In this respect, the Commissioner was informed about proposed changes to the Education Act which could affect the level of teaching assistance available to individual children with special education needs. The proposed change would allocate funding for teaching assistance to schools, on the basis of certain parameters, rather than assigning such support to individual pupils. According to the authorities, the proposed change would streamline assistance and keep it cost-effective. However, several of the Commissioner's interlocutors, while not disagreeing with the idea of better streamlining assistance, were concerned that this change would de facto reduce the level of assistance available, in particular in schools where there are larger numbers of pupils needing additional support.<sup>31</sup> The Commissioner has earlier expressed concerns about proposed measures that would affect the access to appropriate assistance to pupils, which may force them into special education if the level of support in mainstream education is not adequate.<sup>32</sup> The authorities shared with the Commissioner their view that the proposed changes would not affect the overall level of support available. Nevertheless, the Commissioner stresses that any changes to the support system must take into consideration the concerns expressed by organisations working on inclusive education, and should in no way create a situation in which inclusion is hampered in practice.

#### 2.3.5. PROMOTING GOOD PRACTICES

47. The Commissioner is encouraged by small pockets of good practices that show that progress towards inclusive education is possible. In this respect, she points to her visit to the Grafická primary school in the Prague 5-Smíchov district. The Commissioner had the opportunity to meet with the school's leadership, parents and pupils in the school. At one point threatened with closure, the school has now made a remarkable transformation from being almost completely segregated (Roma only) to having pupils of all backgrounds, including children with disabilities and children from a wide variety of nationalities. A number of factors have contributed to this process, including the school seeking international and national partnerships, creating more flexibility in the curriculum, investing in relations with parents and doing extensive community outreach (such as informing Roma families about their rights). Above all, what stands out is the vision and persistence of the school's Director, who had been the driving force behind this change.
48. The Commissioner underscores that good examples such as Grafická and other schools that have made similar progress require follow up at all levels of government, and they need to be examined closely to identify elements that can be replicated elsewhere. At the same time, these examples show that change, while possible, continues to depend heavily on the goodwill and motivation of individuals who see the value of inclusive education, rather than on a concerted country-wide process of

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<sup>31</sup> See, for example, [comments](#) by the Czech Professional Society for Inclusive Education (ČOSIV) on the draft amendment to the Education Act, 27 November 2022; SPOLU (Together)'s [comments](#) on the amendment to the Education Act, 19 December 2022. Also see 3.1 in relation to children with disabilities.

<sup>32</sup> [Letter](#) of the Commissioner to the Czech Prime Minister and the Minister of Education, Youth and Sports, CommHR/DM/sf 094/2019, 19 December 2019. The proposals that could lead to the reduction of the number of teaching assistants in mainstream classes at that time were not implemented.

transformation. The Commissioner notes that Grafická continues to face barriers, often associated with the overall education environment in the Czech Republic, such as in finding quality teaching and support staff that is sufficiently trained in dealing with pupils from diverse backgrounds, and who are incentivised to work in schools with high levels of diversity.<sup>33</sup> State-level investment is needed to improve the skills the professional development of teachers to enable them to implement a more inclusive approach, and to ensure that teaching staff and assistants are sufficiently remunerated. More generally, the Commissioner encourages all relevant authorities to make full use of the lessons learned from Grafická and other schools that have taken important steps towards inclusion, with a view to supporting those initiatives and enabling their rollout across the Czech Republic. In this respect, the Commissioner also notes the Czech government's continuing constructive engagement with the [INSCHOOL project](#) of the European Union and the Council of Europe, focusing on inclusive education policies and innovative education practices for all children, including Roma children.<sup>34</sup>

### 2.3.6. THE NEED FOR A HOLISTIC APPROACH

49. There is now a wide evidence base on the issues of discrimination and segregation in education, and a clear set of important recommendations for the Czech authorities to tackle these, including those emerging from the PAQ-STEM study, the Expert Forum, as well as long-standing recommendations from the Public Defender of Rights, civil society, and international bodies, including the Commissioner herself. The issues set out above represent some of the specific aspects that require attention to move towards a truly inclusive education system, but they are not the only issues requiring attention. The Commissioner notes, for example, that many of the issues addressed above will interact with other initiatives, such as the government's intention to ensure equal access to quality education for everyone in its [Strategy for the Education Policy of the Czech Republic up to 2030+](#).
50. Tackling this long-standing issue should not just be regarded as a technical exercise, but warrants a holistic approach. As the Commissioner noted in her [submission](#) to the Committee of Ministers of September 2020 within the context of the execution of the above-mentioned *D.H.* judgment, the process of tackling discrimination in education has too often focused primarily on legislative and technical measures related to the organisation of the Czech education system in a somewhat narrow sense. To achieve real progress in tackling this complex and socially sensitive issue, renewed efforts are necessary to address the wider societal issues affecting the exclusion of Roma children from quality mainstream education, including the impact of institutionalised antigypsyism, poverty, social exclusion and territorial segregation, the lack of protection of Roma children from hostility and violence, resistance to inclusion by professionals and the public at large, and inclusion in the curriculum of human rights, non-discrimination and enhancing knowledge of Roma history and culture. Even then, discrimination in education cannot be addressed successfully if discrimination in other areas, some of which are discussed in section 2.4, are not tackled.
51. The Commissioner acknowledges that the arrival of Ukrainian refugees in the Czech Republic, including many children, has presented an additional challenge for the Czech education system.<sup>35</sup> It requires the Czech government to make choices about the use of resources and presents schools with dilemmas as they are faced with even larger groups of pupils requiring extra support. This challenge cannot be

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<sup>33</sup> In this respect, also see Commissioner for Human Rights, [Fighting school segregation in Europe through inclusive education](#), Position paper, September 2017, part IV.11, which highlights the importance of allocating the best teachers to the most challenging schools.

<sup>34</sup> Grafická school has in the past also been a partner school in this project.

<sup>35</sup> See, for example, Council of Europe Special Representative of the Secretary General on Migration and Refugees, [report](#) of the fact-finding mission to the Czech Republic, 4-6 May, SG/Inf(2022)25, 5 July 2022, part IV.1.2.

underestimated. However, it should also provide fresh impetus for the adoption of a truly inclusive approach; an approach which should be the guiding principle in any future decision-making. As mentioned by some of the Commissioner's interlocutors, including by government representatives, the arrival of Ukrainian children in many Czech schools also exposes more people to a diversity of backgrounds, and provides a stepping stone for a better understanding of the need and possibilities of inclusion of children from other backgrounds.

### 2.3.7. CONCLUSIONS AND RECOMMENDATIONS

52. The Commissioner regrets that many of the same problems of discrimination and segregation of Roma children in education identified in the *D.H.* judgment, and in the Commissioner's predecessors' successive country visits, continue to persist. This is the case despite measures taken by the government and many years of discussion about moving towards a more inclusive education system. The Commissioner stresses that the time for a real breakthrough has arrived and that authorities at all levels should redouble their efforts to deliver a truly inclusive education system.
53. To this end the authorities should swiftly follow up on recent recommendations made in this respect, including those arising from the PAQ-STEM study and the Expert Forum, as well as longer-standing recommendations by the Public Defender of Rights, civil society and international bodies.
54. The Commissioner calls on the responsible authorities, and especially on the Ministry of Education, Youth and Sports, to work towards a paradigm shift on the role that testing plays in the Czech education system and its exclusionary outcomes.
55. The Commissioner highlights the importance of developing a comprehensive desegregation strategy targeting Roma in the education system. She encourages the authorities to take concrete action on improving the possibilities of enforcement in regard of potentially discriminatory catchment areas.
56. The government should ensure that any changes in relation to the provision of assistance to pupils with special education needs does not reduce the availability of individualised support and does not have the unintended effect of diverting children from mainstream to special education.
57. The authorities at the state, regional and municipal levels should review the available good practices, and recognise and support these, as well as ensure that these good practices are promoted across the areas for which they are responsible. They should make further investments to ensure that teaching and support staff have all the necessary skills to deal with pupils from diverse backgrounds and with different needs, and provide sufficient incentives for high-quality staff to take up positions in those schools where they are most needed.

### 2.4. FURTHER COMMENTS ON DISCRIMINATION OF ROMA

58. The issues discussed in the previous paragraphs cannot be separated from the fact that Roma in the Czech Republic continue to face discrimination in virtually every area of life, which (alongside education) includes housing, employment and their interaction with the police. The Commissioner wishes to present some brief observations on these topics, as they have been the focus of many of her predecessors' reports and they continue to deeply impact the lives of Roma in the Czech Republic. She notes, however, that these observations are not intended to comprehensively capture the many issues that require further attention.
59. Regarding the situation of Roma in the labour market, the Commissioner notes that [European Commission Against Racism and Intolerance \(ECRI\)](#) has highlighted that there are no special

employment programmes for Roma and that general measures to stimulate employment to help those disadvantaged in the labour market may not be sufficient to improve the access of Roma, especially those with low formal education outcomes. These measures also do not address the widespread discrimination of Roma in the field of employment. The Commissioner notes that the [UN Committee on the Elimination of Racial Discrimination](#) (CERD) has recommended that targeted measures to promote the access of Roma to formal employment are developed, with particular attention placed on the issue of intersectionality. Action towards the private sector to tackle employment discrimination is also necessary. In this regard, ECRI has also recommended that the Public Defender of Rights' powers as an equality body are extended to enable it to conduct enquiries into and obtain evidence from the private sector.<sup>36</sup>

60. In relation to housing, the Commissioner notes that no official data is collected on access to housing for Roma, and no specific housing programmes exist to support them. Social housing regulations are generally the responsibility of local authorities. The Public Defender and several NGOs have warned of systematic discrimination by local authorities towards Roma, including when purporting to combat 'undesirable social phenomena'.<sup>37</sup> Discrimination and anti-Roma sentiment also significantly affects the possibility of Roma renting accommodation from private landlords. Recent [research](#) suggests that Roma are five times less likely to be accepted as tenants than non-Roma. Many Roma continue to live in unsuitable housing, which can lead to situations that seriously infringe on their private and family lives, as well as on their right to health, and in some cases their right to life is put at risk.<sup>38</sup> Overall, concerted action to provide alternative accommodation to Roma living in condemned housing has been lacking.<sup>39</sup> Local authorities have also attempted to prevent Roma from accessing specific types of housing support by establishing so-called 'benefit free zones', although this has been subject to a successful legal challenge.<sup>40</sup> Nevertheless, the Commissioner is concerned that certain local authorities may continue to look for ways to prevent Roma from enjoying their right to adequate housing on an equal footing with others.
61. During her discussions with representatives of Roma-led organisations, the Commissioner heard about the ongoing lack of trust in the police among many in the Roma community, especially in relation to the handling of potentially discriminatory incidents and alleged police violence. The case of Stanislav Tomáš, a Roma man who died in an ambulance after an encounter with the police in June 2021, and in whose case video footage emerged of two police officers kneeling on his neck, is emblematic in this respect. The case led to a [call](#) by the Council of Europe's Secretary General for an urgent, thorough and independent investigation. In December 2021, the then-Deputy Public Defender of Rights issued a report suggesting that the police had played a significant role in the death, including by delaying calling an ambulance and neglecting Mr Tomáš' health condition. Nevertheless, an investigation by the General Inspectorate of the Police Services (GIBS) was closed in March 2022. The Prosecutor General's Office subsequently also confirmed that the decision of the police not to open an investigation was lawful. During her visit, the Commissioner was told about further efforts by Mr Tomáš' family to challenge these decisions. In August 2023, the European Roma Rights Centre and

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<sup>36</sup> The Commissioner understands that implementing this recommendation may be part of the process of the amendment of the Act on the Public Defender of Rights mentioned in paragraph 7.

<sup>37</sup> Also see ECRI, [report](#) on the Czech Republic (sixth monitoring cycle), 8 December 2020, paragraph 88.

<sup>38</sup> Shortly before the Commissioner's visit, a [ceiling collapsed](#) in a rental apartment in the city of Ústí nad Labem, burying a young Roma family under the rubble, although all were recovered and survived.

<sup>39</sup> In some cases, attempts to re-house Roma have reportedly resulted in practices, such as accommodating them in container modules.

<sup>40</sup> On 31 August 2021, the Constitutional Court of the Czech Republic found such 'benefit free zones' to be [unconstitutional](#). Also see, European Roma Rights Centre (ERRC), "[Czech Constitutional Court bans 'benefit free zones'](#)", 1 September 2021.

Forum for Human Rights [announced](#) they had filed an application in Mr Tomáš' case with the European Court of Human Rights.

62. Many of the issues mentioned above are underpinned by the antigypsyism that remains prevalent in Czech society. The Commissioner is particularly concerned about frequent anti-Roma expressions, some of which may amount to hate speech, by national and local politicians, and being aired in the media. In this respect, the Commissioner notes ECRI's concerns about a "growing trend towards xenophobic populism in the Czech Republic",<sup>41</sup> which also impacts on Roma. Anti-Roma sentiments are still frequently expressed in the public domain, including by local and national politicians, and aired in the media. She welcomes, however, that several high-profile figures have made concerted efforts to send a message of inclusion, including the President's visits to and interactions with Roma communities since his inauguration in March 2023.
63. As part of effectively tackling antigypsyism, there is a need for enhancing awareness of Roma culture and history, including in the curriculum of schools, as has been repeatedly emphasised by the Commissioner,<sup>42</sup> as well as others within the Council of Europe.<sup>43</sup> As regards memorialisation of the Roma Holocaust, which should be an integral part of this awareness raising, the Commissioner and her predecessors have closely followed the proceedings in relation to the dismantling of the pig farm established on the site of a former World War II concentration camp in Lety u Písku.<sup>44</sup> On this issue, there has been encouraging progress since the farm was cleared, an archaeological survey of the site was carried out, and a tender to build a memorial was awarded in January 2023, with a timeline for its opening in 2024.

#### 2.4.1. CONCLUSIONS AND RECOMMENDATIONS

64. The Commissioner calls on the authorities to redouble their efforts in key sectors where Roma face disadvantages and discrimination, including by creating clear frameworks for social housing, by improving protections against discrimination in the labour market, and to tackle discrimination and violence by the police. In this regard, she calls on the authorities to promptly implement the numerous outstanding recommendations by ECRI, CERD and other relevant international bodies.
65. The Commissioner reiterates the role of government officials and elected representatives in combating hate speech and providing a positive example in countering prejudice. In line with [Recommendation CM/Rec\(2022\)16](#) of the Committee of Ministers of the Council of Europe on combating hate speech, the Commissioner calls on all persons in leadership positions, given their position of influence, to avoid engaging in, endorsing or disseminating hate speech, and urges them to promote a culture of human rights and non-discrimination.

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<sup>41</sup> ECRI, [report](#) on the Czech Republic (sixth monitoring cycle), 8 December 2020, paragraph 26.

<sup>42</sup> See, for example, Commissioner for Human Rights, "[Roma Holocaust Memorial Day: let's keep Roma history alive to shape an inclusive Europe today and tomorrow](#)", 1 August 2023; Commissioner for Human Rights, "[Combating discrimination against Roma through history teaching](#)", 6 April 2023.

<sup>43</sup> See, for example, the [statement](#) by Secretary General of the Council of Europe on European Roma Holocaust Memorial Day, 2 August 2023, as well as ECRI, [Preventing and combating antigypsyism and discrimination against Roma and Travellers: factsheet](#), 2 August 2023, which draws on ECRI's key recommendations to member states and supplements its [General Policy Recommendation No. 13 on combating antigypsyism and discrimination against Roma](#) and other relevant general policy recommendations.

<sup>44</sup> See, for example, Commissioner for Human Rights, "[The Commissioner urges the Czech authorities to create the necessary conditions to build a monument on the former Nazi concentration camp for Roma in Lety u Písku](#)", 12 May 2017.

66. In view of long-standing calls by successive Commissioners, the Commissioner welcomes the significant steps taken towards turning the site of the former concentration camp in Lety u Písku into a memorial site. The Commissioner will continue to monitor progress around this very important effort to acknowledge and commemorate the Roma Holocaust.

## 2.5. THE TREATMENT OF UKRAINIAN ROMA

67. As noted in chapter 1 of this report, the Commissioner welcomes the extraordinary efforts of both the Czech authorities and Czech citizens in response to the arrival of Ukrainian refugees. While this issue is not covered separately in this report, some specific concerns were raised with the Commissioner in the context of her focus on the human rights of Roma.

68. Already during the Commissioner and her team's [emergency missions](#) to countries at the forefront of receiving Ukrainian refugees in March 2022, of which the Czech Republic was part, anecdotal reports were received of Roma having been treated differently than other Ukrainians. The report of the fact-finding mission to the Czech Republic of the Council of Europe's Special Representative of the Secretary General on Migration and Refugees (SRSG), carried out in May 2022, also highlighted difficulties for Ukrainian Roma in accessing support and protection.<sup>45</sup>

69. During the Commissioner's visit, representatives of organisations that worked directly with Ukrainian Roma in the Czech Republic also recounted numerous instances of discrimination of Ukrainian Roma. These included: Ukrainian Roma families being left for long periods at train stations as others were quickly moved on to registration and accommodation; restricting access to registration for temporary protection until Ukrainian Roma had accommodation whilst this was not required for others; the setting up of specific tent housing for Roma; and (largely) unsubstantiated suggestions that many Ukrainian Roma were holders of Hungarian citizenship and therefore ineligible for temporary protection. Public rhetoric against Ukrainian Roma was also often stigmatising and discriminatory.<sup>46</sup>

70. The Commissioner acknowledges the challenges that authorities at all levels faced shortly after the start of the war, and the continuing enormity of the task ahead of them in providing long-term support to large numbers of refugees from Ukraine. However, she finds that reports of differential treatment of Ukrainian Roma have been consistent and credible. Such differential treatment, in her view, cannot be justified by some of the reasons put forward by the authorities, such as the size of many of the Roma families, the assumption that they would want to leave the Czech Republic soon, or the alleged possession of other nationalities. In the view of the Commissioner, the differential treatment accorded to Ukrainian Roma, especially as observed in the first period since the start of the war, illustrates the challenge that still needs to be met in overcoming deeply-rooted prejudices against Roma. This has not only negatively impacted on the right of Ukrainian Roma to equal protection to other Ukrainians in the Czech Republic. It also appears to have had a corrosive effect on the trust of Czech Roma communities in the authorities. In this respect, the Commissioner was struck by the disappointment expressed by representatives of Roma-led organisations about the fact that different authorities, when faced with Ukrainian Roma who profoundly needed the protection of the state, had resorted to discriminatory measures.

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<sup>45</sup> Council of Europe Special Representative of the Secretary General on Refugees and Migration's [report](#) of the fact-finding mission to the Czech Republic, 4-6 May 2022, SG/Inf(2022)25, published 5 July 2022, part IV.3.

<sup>46</sup> See, for example, Amnesty International, [World Report 2023: Czech Republic](#); European Roma Rights Centre, [Roma Rights under Siege: Monitoring Reports from One Year of War in Ukraine](#), February 2023.

### 2.5.1. CONCLUSIONS AND RECOMMENDATIONS

71. The Commissioner urges authorities at all levels to ensure that Ukrainian Roma receive the same access to temporary protection and to services and support as other Ukrainians in the Czech Republic, and to quickly act in the face of any reports of discriminatory treatment.

## 3. PERSONS WITH DISABILITIES

### 3.1. GENERAL DEVELOPMENTS

72. The situation of persons with disabilities in the Czech Republic has been a continuous point of attention for successive Commissioners.<sup>47</sup> The Commissioner welcomes that, as of 1 January 2018, the Public Defender of Rights has been given the mandate to act as the independent body to promote, protect and monitor the implementation of the Convention on the Rights of People with Disabilities (CRPD). She also welcomes the ratification, on 24 August 2021, of the Optional Protocol to the CRPD, enabling the UN Committee on the Rights of Persons with Disabilities to receive and consider communications from or on behalf of persons with disabilities in the Czech Republic. As regards the Council of Europe framework, the Czech Republic is party to the European Social Charter of 1961,<sup>48</sup> but it has not yet ratified the revised Social Charter of 1996.
73. A [National Plan for the Promotion of Equal Opportunities for Persons with Disabilities \(2020-2025\)](#) is in place. The plan notes that some progress was made during the implementation of a previous action plan, but also that during that period “in effect no systemic changes took place with the exception of the field of education.”<sup>49</sup> The National Plan sets out to reform psychiatric care, through the gradual establishment of support and field services provided by Mental Health Centre multidisciplinary teams, as well as the transformation of psychiatric hospitals.<sup>50</sup> However, the Commissioner notes that some civil society organisations have suggested that this transformation process “has been going on for years with little appreciable outcome”.<sup>51</sup>
74. The Ministry of Labour and Social Affairs has overall responsibility for CRPD implementation, but issues relating to persons with disabilities touch upon the portfolios of many different actors. Civil society members who spoke with the Commissioner raised concern about the lack of sufficient coordination of CRPD implementation at the ministerial level, as well as a lower level of priority possibly being accorded to this work.
75. Regarding specific issues relating to the rights of persons with disabilities, the remainder of this chapter covers the following topics: the right to live independently and to be included in the community (3.2), involuntary placement in social care and health care institutions and involuntary treatment (3.3), limitations on legal capacity (3.4), the protection of persons with disabilities from ill-

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<sup>47</sup> The issue was already addressed during the first country visit, see the [report](#) following the country visit of Commissioner Gil-Robles, 24-26 February 2003, published 15 October 2003, paragraphs 40-41.

<sup>48</sup> However, as regards Article 15, “The right of physically or mentally disabled persons to vocational training, rehabilitation and social resettlement”, the Czech Republic only accepted to be bound to the second paragraph contained therein, see [Reservations and Declarations](#) of the Czech Republic regarding the European Social Charter.

<sup>49</sup> National Plan 2020-2025, page 9.

<sup>50</sup> *Ibid.*

<sup>51</sup> See Validity, “[Czechia: reports expose shocking use of mechanical restraints in psychiatric institutions](#)”, 30 September 2022.



treatment (3.4), and the accessibility of information and communication (3.5). Conclusions and recommendations are presented in section 3.6.

76. The issue of inclusive education has already been the subject of attention in section 2.3 in respect of Roma children, and many of the issues addressed there are also pertinent to the realisation of the right to inclusive education of children with disabilities. The Commissioner specifically notes that her concerns about the proposed changes to the system of teaching assistance (see 2.3.4) were especially strongly raised by stakeholders working with children with disabilities. Any de facto reduction of individualised support may have a particularly adverse effect on the ability of children with disabilities to enjoy their fundamental right to inclusive education. Another specific concern raised with the Commissioner related to the right of children with hearing impairments to education in Czech sign language. The Commissioner was particularly told about the lack of teachers proficient in sign language, and of qualified interpreters, including the absence of sufficient resources for the development of these competencies and a mechanism to verify teachers' proficiency. Further observations on the specific situation of people with hearing impairments are included in section 3.5.

### 3.2. THE RIGHT TO LIVE INDEPENDENTLY AND TO BE INCLUDED IN THE COMMUNITY

77. The situation of persons with disabilities living in social care institutions or receiving long-term care in health care institutions was a key area of focus during the visit. As stressed by the [Parliamentary Assembly of the Council of Europe](#) (PACE), ensuring that people with disabilities can live independently and are included in the community is a precondition for the full enjoyment of their rights and fundamental freedoms. The Commissioner also notes in this respect the specific provisions of Article 19 CRPD, which require states to ensure the right of persons with disabilities to live in the community, with choices equal to others.<sup>52</sup> She recalls that the CRPD, to which the Czech Republic is a party, is the key international instrument providing specific standards regarding the rights of people with disabilities.
78. To effectively protect and realise the rights of people with disabilities, in 2013, the Commissioner's predecessor called on the Czech authorities to develop a comprehensive plan to replace institutional services with community-based services, which would have measurable targets, clear timetables and budgets, and a strategy to monitor progress. Pending the transition to community-based options, the Czech Republic was urged to adopt a non-admissions policy to prevent new placements of persons with disabilities in institutions.<sup>53</sup> Furthermore, in a [letter](#) sent to the Czech government in October 2016, the Commissioner's predecessor expressed concerns about the persistently high numbers of people (especially with psychosocial disabilities) living in institutions and being separated from the rest of Czech society, and about the practice of continuing to invest more resources in institutional settings than in support services to enable persons with disabilities to live independently.
79. One of the goals of the National Strategy for the Development of Social Services 2016-2025 is the transition from an institutional model of care for persons with disabilities to a model focused on

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<sup>52</sup> Article 19 CRPD requires state parties to facilitate full enjoyment by persons with disabilities of their right to live in the community, with choices equal to others, and their full inclusion and participation in the community, including by ensuring that they can freely choose their living arrangements and have access to a range of in-home, residential and other community support services to prevent isolation and segregation from the community.

<sup>53</sup> [Report](#) following the visit by the Commissioner for Human Rights to the Czech Republic, 12-15 November, CommDH(2013)1, 21 February 2013, paragraph 100.

supporting those persons in their ‘natural environment’.<sup>54</sup> However, civil society actors working in the field of the rights of people with disabilities raised concerns about the transition process foreseen by the government. Many suggested there had been a deprioritisation of the deinstitutionalisation agenda over the last few years, with some believing that the authorities have lost interest in the issue. A comprehensive action plan on deinstitutionalisation has yet to be finalised, despite repeated calls. During her meeting with the Ministry of Labour and Social Affairs, the Commissioner was informed about intentions to finalise an action plan. This would be a welcome sign of the government’s commitment to deinstitutionalisation.

80. In the meantime, admissions to institutions have continued. The Commissioner’s discussions during her visit suggest that the Strategy may not be reaching its objectives with respect to the transition to community-based support services. In November 2022, the Public Defender of Rights [reported](#) that “large institutions still predominate and there is a lack of community-based social services that would enable people with disabilities to lead independent lives as required by Article 19 of the [CRPD]”. New, often large-scale, institutional facilities are still being built, and tenders continue to be published for these projects or for the refurbishment of existing institutions. While this may be contributing to improved standards in some institutional settings, it also maintains the institutionalisation of people with disabilities and runs counter to the stated objective of moving to a community-based model. A specific concern raised was that EU funds, especially from the Recovery and Resilience Plan would still be used for the construction or reconstruction of larger institutions.<sup>55</sup>
81. Efforts to move towards the provision of community-based services are an exception and appear to be driven by individual initiatives, rather than structural change. One such example is the Centre for Social Services in Stod (Plzeň region), where the Commissioner had the occasion to observe the results of a process of transformation from a fully institutional setting to the provision of small-scale residential care and home-based services. The Commissioner visited different facilities operated by the Centre for Social Services and spoke to the Centre’s leadership as well as a representative of the responsible regional authorities. This transformation had been underpinned by a clear shared vision by the regional authorities and the Centre’s management. The Commissioner was also informed about the Centre’s intensive work with local communities in identifying appropriate settings for the provision of services and in addressing misconceptions, which were important factors in making the transformation possible.
82. The Commissioner was informed that this is the only service provider in the Plzeň region that has reached this stage of transformation, and that country-wide only a handful of other centres are in a similar situation. In many places, a similar approach has not yet taken root. Civil society members noted that those appointed to the lead service providers may not always have the experience or foresight to move to the provision of support services in the community. Vested financial interests of providers running institutionalised facilities may also play an important role in maintaining the status quo. The administrative governance structure in the Czech Republic, characterised by a high level of decentralisation, also means that state-level strategies may have a limited impact on such factors, and thus on actual deinstitutionalisation on the ground.<sup>56</sup>

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<sup>54</sup> The Commissioner notes that the wording used in the Strategy may require further consideration in light of the CRPD standards concerning the right to live ‘in the community’.

<sup>55</sup> See, for example, the [letter](#) from the Association for Deinstitutionalisation (JDI) the European Commission of September 2022.

<sup>56</sup> In this respect, the Commissioner notes that the [National Plan for the Promotion of Equal Opportunities for Persons with Disabilities \(2020-2025\)](#) acknowledges that it is not possible for a non-legislative document to “assign tasks to territorial authorities” (p. 11).

83. Interlocutors noted that there was no comprehensive legal framework setting out the specific conditions to be met for community-based support services, leading to ad hoc approaches across the country. The lack of adequate and reliable funding was also identified by some interlocutors as an impediment to deinstitutionalisation. They not only highlighted that transformation processes should be adequately funded, but also noted the impact of the one-year budget cycle through which state-level resources are allocated to regions. This, it was suggested, created a high level of year-on-year uncertainty about available resources, and strongly inhibited the long-term planning that is necessary for a transformation from an institutionalised to a community-based approach. The Commissioner is encouraged by the fact that representatives of the Ministry of Labour and Social Affairs showed themselves to be well aware of the difficulties created by the one-year funding cycle, and that there were discussions about extending this funding cycle. However, the authorities also expressed concern about the solutions they could find in this respect, since the budget cycle is determined by the multi-source funding used by the government (including EU funding). This, in the Commissioner's view, is an issue to be addressed by all actors involved to ensure that funding cycles do not impede deinstitutionalisation and the further development of community-based support services.
84. Financial issues were also identified as a major constraint for persons with disabilities currently living independently. Civil society representatives warned that the increases in payment rates for services had significantly reduced the amount of support that persons with disabilities could purchase from their care allowance under the Social Services Act. The impact of this was particularly felt by persons who were the most dependent on such community-based support. The Commissioner was informed that calls to increase the care allowance at a rate commensurate to the loss of purchase power had so far been rejected by the authorities. She heard concerns that such financial constraints, in combination with wider proposed changes to the system of allowances and social services,<sup>57</sup> could severely affect the access of persons with disabilities to the types of support that allowed them to live independently in the community. In the face of these constraints, the Commissioner's interlocutors feared that persons with disabilities would increasingly have to turn to institutionalised care.

### 3.3. INVOLUNTARY PLACEMENT IN SOCIAL AND HEALTH CARE INSTITUTIONS AND INVOLUNTARY TREATMENT

85. Involuntary placement in closed social care institutions or hospitals, as well as involuntary treatment, has been repeatedly raised as a concern in the Czech Republic. The Commissioner recalls that involuntary placements trigger the application of safeguards under Article 5 ECHR (right to liberty and security), which are interpreted by the European Court of Human Rights in consideration of standards set out by the CRPD. In particular, Article 14 CRPD provides for states' obligation to ensure that persons with disabilities enjoy, on an equal basis with others, their right to liberty and security, and that the existence of a disability shall in no case justify a deprivation of liberty.<sup>58</sup>
86. In the Czech Republic, involuntary hospitalisation must be communicated to a court, which must then decide whether the conditions for this hospitalisation were met, and how long this can last. Interlocutors noted, however, that the requirements for involuntary hospitalisation set out in Czech law are not always interpreted as restrictively as they should. Organisations working with persons faced with involuntary hospitalisation expressed concerns about the lack of information available to persons with disabilities about their rights when affected by involuntary hospitalisation, as well as

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<sup>57</sup> Such as the abolition of tax relief for non-working spouses, which would affect family carers in particular, as part of a package to consolidate finances and reduce the budget deficit.

<sup>58</sup> See, for example, *N. v. Romania*, application no. 59152/08, [judgment](#) of 28 November 2017, paragraph 147

significant barriers to accessing legal support from inside institutional settings. They also complained that court rulings often almost exclusively relied on information provided by the institutions themselves, and that the quality of legal representation during review proceedings was often unsatisfactory, as many legal aid providers are underpaid and overworked, and many guardians are appointed at a very late stage with little time to prepare properly for judicial proceedings. Further concerns related to situations in which a person initially gives consent to placement in an institution but then withdraws it – in such cases the appropriate judicial reviews are not always triggered, according to legal aid providers.

87. During her visit, the Commissioner also heard consistent concerns about the laws and practices for involuntary placement in social care institutions. It appears that the legal framework does not guarantee that periodic judicial reviews of placement, following the initial approval by a court, take place in all cases. The Commissioner notes in this respect that the Committee on the Prevention of Torture (CPT), in its 2019 report on the Czech Republic, expressed regret that, once involuntary admission to a social care establishment has been approved by a court, no automatic reviews of the lawfulness of placement are provided by law. The CPT therefore recommended that the relevant legislation be amended accordingly.<sup>59</sup>
88. Involuntary placement in institutions also exposes persons with disabilities to a series of other human rights violations, including involuntary treatment. The Commissioner learned from civil society representatives that consent to hospitalisation by a guardian of a person with disability is often erroneously regarded by staff in institutions as consent to treatment. This can also extend to life-altering interventions, such as those impacting on the sexual and reproductive rights of those involved, including forced sterilisation.<sup>60</sup> The Commissioner [reiterates](#) her position that the effective protection of the rights of people with disabilities requires a systemic change towards the provision of health care on the basis of free and informed consent.<sup>61</sup>

### 3.4. LEGAL CAPACITY

89. The above issues are intimately connected to the issue of legal capacity. As highlighted by the Commissioner on various occasions, legal capacity reforms are crucial to ensure that persons with disabilities can live independently, are fully included in the community, and never lose their say on decisions regarding their health.<sup>62</sup> The case law of the European Court of Human Rights recognises in this respect that the non-recognition of a person's legal capacity severely limits their human rights. In particular, the Court has held that the full deprivation of legal capacity is a very serious interference with the right to private life under Article 8 ECHR, which secures to individuals a sphere within which

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<sup>59</sup> CPT, [Report](#) to the Czech government on the visit to the Czech Republic carried out by the European Committee on the Prevention of Torture and Inhuman and Degrading Treatment or Punishment from 2 to 11 October 2018, CPT/Inf (2019)23, 4 July 2019, pages 60-61.

<sup>60</sup> The CRPD Committee has highlighted that “under the Civil Code and the Health Care Act, guardians of persons with disabilities are authorized to give consent for the sterilization of the person concerned, thus subjecting that person to forced sterilization without his or her free and informed consent.” See its [Concluding observations](#) on the initial report of the Czech Republic, CRPD/C/CZE/CO/1, 15 May 2015, paragraph 36.

<sup>61</sup> See also, Parliamentary Assembly of the Council of Europe (PACE), [Resolution 2291\(2019\)](#) on ending coercion in mental health: the need for a human rights-based approach, 26 June 2019. The Commissioner further recalls the provisions of Articles 23 and 25 CRPD, which protect the rights of persons with disabilities in matters relating to family and parenthood (right to retain their fertility on an equal basis with others) and health (right to health care on the basis of free and informed consent).

<sup>62</sup> Commissioner for Human Rights, [“Reform of mental health services: an urgent need and a human rights imperative”](#), Human Rights Comment, 7 April 2021; Commissioner for Human Rights, [“Addressing the invisibility of women and girls with disabilities”](#), Human Rights Comment, 21 April 2022.

they can freely pursue the development and fulfilment of their personality.<sup>63</sup> Furthermore, as a party to the CRPD, the Czech Republic should safeguard the right of persons with disabilities to equal recognition before the law, which includes their right to enjoy legal capacity on an equal basis with others in all aspects of life (Article 12 CRPD).<sup>64</sup>

90. In 2014, the Czech Civil Code was amended to eliminate the possibility of fully depriving people with disabilities of their legal capacity. However, the possibility of limiting legal capacity and placing people with disabilities under guardianship remains in place.<sup>65</sup> Limitation of legal capacity is subject to an assessment by a court whether the person involved is at risk of serious harm if enacting their full legal capacity, whether this justifies interference with the person's autonomy (proportionality), and whether less restrictive measures would suffice (subsidiarity).<sup>66</sup> In 2020, the Public Defender of Rights published a [research report](#) about the courts' practices in relation to legal capacity. It noted a "prevailing conservatism" in courts' decision making, manifested in particular by an emphasis on limiting legal capacity, to the detriment of support measures to assist persons in exercising legal capacity. During the Commissioner's visit, both the extensive use of the possibility to limit legal capacity and the procedures for doing so were raised as key issues of concern by her interlocutors. It has been suggested that the number of persons whose legal capacity has been limited has increased,<sup>67</sup> including since the individual cases of people whose legal capacity had been fully deprived under the pre-2014 system were reviewed, and limits on legal capacity were often imposed instead. The Commissioner was informed by organisations working directly with people who have had restrictions placed on their legal capacity that such limitations are often imposed with the widest possible range, meaning that a person is limited in all areas of life except those specifically excluded by law.<sup>68</sup>
91. According to information provided to the Commissioner, despite the legal requirement to use the least restrictive measures, supported decision making was only used in a very small number of cases. There was concern that Czech courts, which have significant experience with the deprivation or limitation of legal capacity, lacked training and knowledge about the use of supportive measures to prevent interfering with legal capacity. In this respect, the Commissioner was informed about a pilot project, under the aegis of the Justice Academy, to place social workers in a number of courts to help assist judges in identifying appropriate measures. But there remains a clear need to further enhance

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<sup>63</sup> See *Shtukaturov v. Russia*, application no. 44009/05, [judgment](#) of 27 March 2008, paragraphs 83 and 90; *N. v. Romania* (2), application no. 38048/18, [judgment](#) of 16 November 2021, paragraph 53.

<sup>64</sup> The CRPD Committee has stressed that this right is premised on key CRPD principles, including respect for the inherent dignity of persons, and reaffirmed that a person's status as a person with a disability or the existence of an impairment "must never be grounds for denying legal capacity or any of the rights provided for in Article 12." It has called on states to ensure that full legal capacity is restored to persons with disabilities who have been denied these rights, on an equal basis with others. See: Committee on the Rights of Persons with Disabilities, [General Comment No. 1\(2014\)](#), Article 12: Equal recognition before the law, paragraphs 4 and 9.

<sup>65</sup> Committee on the Rights of Persons with Disabilities, [Concluding observations](#) on the initial report of the Czech Republic, CRPD/C/CZE/CO/1, 15 May 2015, paragraphs 22-23.

<sup>66</sup> Civil Code, section 55(1) and (2).

<sup>67</sup> The above-mentioned report by the Public Defender of Rights found that a limitation of legal capacity had been imposed in 58% of the examined cases. However, the Commissioner was informed about ongoing academic research, covering court decisions from 2014 to 2021 (drawing on Ministry of Justice [data](#)), which found that legal capacity had been limited in more than 80% of relevant cases.

<sup>68</sup> The range of limitations can be extremely broad. The Public Defender of Rights' 2020 report found, for example, that limitations had been placed on the capacity to act in the following areas: disposal of property, the conclusion of other contracts, decision making about health services, handling benefits, pensions and negotiations with the authorities, the conclusion of contracts for social services, will and inheritance, labour relations, processing of personal documents, marriage, gifts, determination of paternity, adoption, as well as parental responsibility and voting rights, pages 41-43.

awareness of appropriate standards in relation to legal capacity within the judiciary on a broad scale, and to closely monitor the implementation of those standards.

### 3.5. PROTECTION OF PERSONS WITH DISABILITIES FROM ILL-TREATMENT

92. In the report following the 2012 visit to the Czech Republic by the Commissioner's predecessor, the disproportionate use of restrictions and restraints against people with disabilities in social care institutions or psychiatric hospitals was highlighted as a particular issue of concern.<sup>69</sup> In this respect, the Commissioner welcomes that legislative amendments to the Healthcare Services Act banned the use of netted cage beds in psychiatric hospitals from 1 January 2022.<sup>70</sup> Despite this important step, other mechanical and chemical restraints continue to be used. The Commissioner notes that the CRPD Committee, in 2015, found that the use of such restraints in psychiatric institutions remained common.<sup>71</sup> The same appears from the findings of the Committee on the Prevention of Torture in its [2019 report](#), which highlighted, as a "matter of serious concern" that some residents of social care institutions received large doses of highly sedating medication, and that resort was made to poly-pharmacy. During her visit, civil society organisations working with persons with disabilities and other interlocutors confirmed that such concerns remain relevant in 2023.
93. The use of force, including restraints in different forms, against persons with disabilities in institutional settings has come under increasing scrutiny in the period prior to the Commissioner's visit. A particularly shocking example came to light in September 2022, when a previously unpublished report of an inspection of a psychiatric hospital in Opava, carried out in 2018, was [released to the public](#). It revealed that a woman had been restrained to her bed almost continuously for 12 years.<sup>72</sup> While this treatment ended following the inspection, it shows the extreme vulnerability of persons with disabilities in institutions to abusive practices, as well as gaps in the oversight system to identify such incidents in a timely manner.
94. The treatment of people with disabilities in institutions received further public attention following the death of Dorota Šandorová, a woman with intellectual disabilities who was residing in a social care facility in Jindřichův Hradec (South-Bohemia Region), in January 2022. Details of her case were [published](#) in November 2022, showing that a staff member had physically manhandled her, including by twisting her arms behind her back and pushing hard on her chest, subsequently leaving her unconscious on her bed. She was found dead the next morning. The case has led to a civil society [campaign](#) calling for systemic changes to ensure a dignified life for all people with disabilities, and the organisation of a [Night of Dignity](#) in memory of Ms Šandorová.
95. The Commissioner welcomes that, during her discussions with government representatives, the seriousness of these cases was recognised, as well as the need to ensure better protection for the rights of persons with disabilities. She welcomes the creation of a working group under the Prime Minister's office, chaired by the Government Commissioner for Human Rights, to prepare a draft

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<sup>69</sup> [Report](#) following the visit by the Commissioner for Human Rights to the Czech Republic, 12-15 November, CommDH(2013)1, 21 February 2013, paragraphs 95-96.

<sup>70</sup> Validity, "[Czechia: long-awaited ban on cage beds in psychiatric institutions enters into force](#)", 21 March 2022. The issue of the use of netted cage beds was the subject of a complaint with the European Committee on Social Rights, see [Validity Foundation – Mental Disability Advocacy Centre v. Czech Republic](#), complaint No. 188/2019 registered on 5 December 2019.

<sup>71</sup> CRPD concluding observations, paragraph 31.

<sup>72</sup> Also see: Validity, "[Czechia: reports expose shocking use of mechanical restraints in psychiatric institutions](#)", 30 September 2022.

National Strategy for Supporting People with Intellectual Disabilities and Challenging Behaviour. She looks forward to the proposals emerging from this working group.

96. Government representatives furthermore highlighted to the Commissioner that the outdated building infrastructure in some social care and psychiatric institutions hampers the provision of appropriate care. Inadequate numbers of properly trained staff in many institutions was also identified by some interlocutors as increasing the risk of ill-treatment. Nevertheless, the Commissioner would like to stress that the prevailing approach in the Czech Republic, which still favours providing support and care in institutionalised settings, and the focus on improving institutions, rather than on deinstitutionalisation, is itself an important factor in creating an environment in which abuses can take place. Progress on deinstitutionalisation should therefore be a central part of any action plan to prevent human rights violations against people with disabilities.
97. A particular issue raised by some of the Commissioner's interlocutors was the inability, due to a lack of knowledge, of many care providers to appropriately respond to behavioural and communication challenges, which often aggravated the poor treatment of persons with disabilities. Lack of expertise often resulted in behavioural challenges being regarded only from a psychiatric perspective, and leading to the long-term placement of concerned persons in psychiatric hospitals, and the use of mechanical and chemical restraints.
98. The Commissioner also discussed the issue of the oversight of institutions by relevant inspectorates, as well as the role of public prosecutors. The Public Defender of Rights also plays a crucial monitoring role (both under its mandate as a national preventative mechanism and as the monitoring body for the CRPD). While government officials acknowledged some challenges, such as the large number of institutions and service providers that require attention, as well as the need for adequate resources to carry out oversight, the Commissioner was not made aware of any concrete plans to strengthen oversight mechanisms. She notes that, in a [statement](#) last year, the Public Defender of Rights warned that some of the facilities visited by his Office had "never had an inspection of social services in the entire period of their existence".<sup>73</sup>

### 3.6. ACCESSIBILITY OF INFORMATION AND COMMUNICATION

99. Access to information and communication is essential for the full inclusion and participation of persons with disabilities in the community and is a core element of the right to freedom of expression, as provided by Article 10 ECHR.<sup>74</sup> During her visit, specific concerns were raised with the Commissioner about access to information for people with a hearing impairment. Under the Act on the operation of radio and television broadcasting, holders of a national broadcasting license must meet specific requirements in the amount of programmes supported by subtitles. An amendment in 2022 raised this from 15% of programming to 30% by 30 June 2025. This is a welcome increase, but it is still limited. Furthermore, the Commissioner received information that certain commercial broadcasters were largely failing to meet even these limited requirements, while others mainly tried to meet them by

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<sup>73</sup> The statement also notes that, of the 208 homes for people with disabilities listed on the Register of Social Service Providers, inspections had only taken place of two such homes in the preceding year, with the number of inspections not higher in pre-Covid 19 times.

<sup>74</sup> Access to information and communication is also subject to the provisions of the CRPD. Article 9 CRPD (Accessibility) requires state parties to take appropriate measures to ensure persons with disabilities can access the physical environment, as well as information and communications, on an equal basis to others. Article 21 CRPD (Freedom of expression and opinion, and access to information) requires that states provide information intended for the general public to persons with disabilities in accessible formats and technologies appropriate to different kinds of disabilities, and to encourage the media, including providers of information through the internet, to make their services accessible to persons with disabilities.

transmitting programmes adapted to people with hearing impairments at inconvenient times, such as late at night, or that subtitles were only provided for reruns, while programmes during more regular broadcasting hours were often shown without subtitles. Furthermore, she understands that the public service broadcaster Czech Television (*Česká televize*), which has been exceeding its legally required minimum of 70% adapted programming, may be aiming to reducing the amount of subtitled programmes to this minimum, or a figure only slightly above it. If this plan would be implemented, this would result in a significant reduction in the accessibility of information by people with hearing impairments.

100. The Commissioner notes that the lack of access to televised news severely impacts how people with hearing impairments enjoy their right to access to information, which in turn negatively affects their right to full inclusion and participation in the community. While this is the case in any circumstance, gaps in news provision for people with hearing impairments are particularly problematic in times of crisis or upheaval, which have been frequent with the Covid-19 pandemic and the war in Ukraine.

### 3.7. CONCLUSIONS AND RECOMMENDATIONS

101. The Commissioner recognises that certain steps have been made in relation to the protection of the human rights of persons with disabilities. However, she is also concerned that many of the issues identified above as being of concern are very similar to those flagged as urgent issues by her predecessor more than a decade ago, and which have been the subject of recommendations by international bodies at many different points in the intervening period. To create real progress on many of the long-standing issues affecting people with disabilities, the authorities should redouble their efforts.
102. The Commissioner encourages the Czech Republic to ratify the revised Social Charter of 1996.
103. She calls on the government to ensure that strategic priorities regarding persons with disabilities are met effectively, including by strengthening coordination between different ministries, as well as between the state and decentralised authorities.
104. The authorities should further ensure that changes in the system of allocating support in schools do not negatively impact on the ability of children with disabilities to be included in mainstream education, and invest in the development of teachers' competencies to meet the needs of children with disabilities.
105. The government should ensure that deinstitutionalisation is implemented with all urgency, including by the swift adoption of a comprehensive deinstitutionalisation action plan. The authorities should pay particular attention, in this process, to relevant international standards, notably those set out in the CRPD and the guidance provided by the CRPD committee. As part of this, investment in still-existing or new large-scale institutions and other projects based on institutionalisation, should be ended, and resources should be redirected to developing community-based support services. Instead of further placements in institutions, all efforts should be made to dismantle the culture of institutionalisation and build on existing good practices which respect the right of persons with disabilities to live in the community.<sup>75</sup> In this respect, the Commissioner stresses the need to ensure that big residential institutions are not merely replaced with small ones which replicate the previous model.

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<sup>75</sup> In this respect, see, for example, Commissioner for Human Rights, "[Reform of mental health services: an urgent need and a human rights imperative](#)", Human Rights Comment, 7 April 2021; Parliamentary Assembly of the Council of Europe (PACE), [Resolution 2431\(2022\)](#) on deinstitutionalisation of persons with disabilities, 26 April 2022.



106. The Commissioner encourages the authorities to address the adverse impact of the one-year budget cycle on the process of the transformation of institutional settings to community-based care and support, and to ensure that reliable long-term funding for such transformation processes is provided.
107. To foster independent living, the Commissioner urges the authorities to ensure that persons with disabilities have access to affordable disability support services sensitive to their specific circumstances, including gender and age, and to inclusive mainstream services, on an equal basis with others. Furthermore, to adequately cover disability-related expenses and facilitate full inclusion in the community, the authorities should ensure that persons with disabilities receive adequate individualised funding, the amount of which should be regularly revised and adapted to relevant changes, including those in cost and inflation.<sup>76</sup>
108. The Commissioner wishes to stress the need for systemic change in health care, ensuring that it is provided on the basis of free and informed consent. She also calls on the authorities to immediately end any coercive measures affecting the sexual and reproductive health and rights of persons with disabilities. As an urgent step, the authorities should ensure that persons with disabilities have effective access to justice to challenge any involuntary measures taken in regard of their placement or treatment.
109. The Commissioner calls on the Czech authorities to ensure that its legislation recognises the right of persons with disabilities to enjoy legal capacity on an equal basis with others in all aspects of life. In this respect, she urges the authorities to further amend the relevant legislation to repeal current provisions allowing substitute decision making and to take measures to provide access to the support that persons with disabilities may require in exercising their legal capacity. They should set up safeguards in this respect to ensure that the concerned persons' rights, will and preferences are respected.<sup>77</sup> The authorities should also intensify capacity-building among the judiciary, providing them with the appropriate tools to make adequate decisions in this matter, including with regard to any supported decision-making arrangements, in line with the Court's case law under Article 8 ECHR and Article 12 CRPD.
110. The ending of ill-treatment against persons with disabilities in institutions must be accorded the utmost priority. Oversight of institutions must be strengthened to identify at an early stage the risk of abuses, including any concerning the use of chemical and physical restraints, and to address them promptly and effectively. This should involve ensuring appropriate resources for state and independent bodies charged with such oversight.
111. Irrespective of any steps taken to address human rights violations in social care and medical facilities, the Commissioner calls on the authorities to recognise that deinstitutionalisation is key to structurally addressing the inherent risk of ill-treatment in institutional settings.
112. To ensure appropriate access to information for persons with hearing impairments, including in crisis situations, the authorities should ensure that requirements for the broadcasting of programmes with subtitles or sign language are enforced. The Commissioner encourages the authorities to take measures for such requirements to be progressively expanded. Adequate resources should be provided so that the public service broadcaster can maintain and expand its amount of programming adapted to people with hearing impairments.

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<sup>76</sup> See CRPD Committee, [Guidelines on deinstitutionalization, including in emergencies](#), CRPD/C/5, 9 September 2022, paragraphs 59-68.

<sup>77</sup> Also see, : CRPD Committee, [General Comment No. 1\(2014\)](#), Article 12: Equal recognition before the law, paragraph 26.

In any action on the above issues, the Commissioner calls on all relevant authorities to ensure the full participation of persons with disabilities in deliberations and decision making. Efforts should be strengthened to combat discrimination, to tackle disability-related stigma, and to fight stereotypes about persons with psychosocial and intellectual disabilities.

## 4. OTHER ISSUES RAISED

113. While the Commissioner's visit focused primarily on the issues raised in chapters 2 and 3 (the situation of Roma and the situation of persons with disabilities), two other issues were briefly discussed with various interlocutors: violence against women and domestic violence (4.1) and the situation of LGBTI people (4.2).

### 4.1. VIOLENCE AGAINST WOMEN AND DOMESTIC VIOLENCE

#### 4.1.1. RATIFICATION OF THE ISTANBUL CONVENTION

114. Violence against women in all its forms, which is often a result of systemic inequality and discrimination against women, has devastating effects on families and society at large. In chapter 1, the Commissioner already noted that, despite the Czech Republic being a party to the majority of Council of Europe human rights instruments, it has not ratified the Convention on Preventing and Combating Violence Against Women and Domestic Violence (the Istanbul Convention). The Commissioner finds that this is regrettable as the Istanbul Convention is the most comprehensive treaty to prevent and combat violence against women and domestic violence. It provides an important framework for the protection of, and assistance to, victims, as well as for the accountability of perpetrators. It also promotes gender equality and challenges gender stereotypes.
115. Discussions about the ratification of the Istanbul Convention by the Czech Republic have been ongoing for many years. Unfortunately, these discussions have often been marked by misinformation about the Convention, which may have contributed to the several unsuccessful attempts to move the ratification forward in the past. In this respect, the Commissioner welcomes the decision by the Czech government to send a formal proposal for ratification to the Czech Parliament on 21 June 2023. She now firmly hopes that parliamentarians will take this opportunity to fully guarantee the protection of women's rights by agreeing to ratification, whilst avoiding the politicisation and the spreading of misinformation about the Convention.

#### 4.1.2. THE DEFINITION OF RAPE

116. Additionally, tackling sexual violence as a specific form of violence against women remains a pressing issue, especially in view of persistent gender stereotypes that may contribute to sexual violence. There have been consistent calls from Czech civil society to introduce a consent-based definition of rape in legislation. The current definition of rape in the Czech Criminal Code remains based on the use or threat of violence, rather than on the absence of consent. As the Commissioner has noted elsewhere, criminalising non-consensual sexual acts is a key step in combating sexual offences, significantly strengthens efforts to combat violence against women, guides a change in approach by the judiciary, and ensures greater accountability for such offences.<sup>78</sup> It is also a tool for helping achieve a wider

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<sup>78</sup> Commissioner for Human Rights, [Memorandum](#) on combating racism and violence against women in Portugal, 24 March 2021, paragraph 75.

change of mentalities in society as regards important notions such as integrity and consent. From this perspective, the Commissioner welcomes the [reports](#) that the Ministry of Justice has drafted a bill that would regard all non-consensual sexual intercourse as rape, although it has not yet been submitted to Parliament.

#### 4.1.3. CONCLUSIONS AND RECOMMENDATIONS

117. The Commissioner calls on members of the Czech Parliament to act in the interest of women's rights and support the ratification of the Istanbul Convention.
118. The government should actively counter any false narratives about the content and role of the Istanbul Convention, and parliamentarians should refrain from spreading misinformation on this topic.
119. The Commissioner urges the authorities to move forward with their intention to amend the definition of rape and ensure that it is entirely based on the absence of the free consent of the victim. They should also invest further efforts to tackle gender stereotypes that may contribute to violence against women and domestic violence, including sexual violence.

#### 4.2. THE SITUATION OF LGBTI PEOPLE

120. While the Czech Republic has made progress on the protection of the rights of LGBTI people, societal attitudes remain a point of concern. The Czech Republic is ranked 33<sup>rd</sup> out of 49 European countries in [ILGA Europe's Rainbow Index 2023](#). Many LGBTI people still face significant discrimination in law and within their everyday lived experiences. According to a 2019 [survey](#) by the Public Defender of Rights, more than a third of LGBTI people had experienced discrimination in the previous five years (three times higher than the general population). Broadly similar figures of experienced discrimination were [reported](#) by the EU Fundamental Rights Agency in 2020. So-called [anti-gender groups](#) have considerable influence on public and political debate in the country. Several elected officials continue to use their platforms to promote and escalate anti-LGBTI rhetoric.
121. The Commissioner understands from civil society groups that the killing of two LGBTI people in the neighbouring Slovak Republic in October 2022 has made many in the Czech LGBTI community very fearful. She welcomes the "[Together Against Hate](#)" initiative of 23 organisations calling for action to improve the protection of the rights of LGBTI people.

##### 4.2.1. LEGAL GENDER RECOGNITION

122. The Czech Republic has a procedure set out in law that allows transgender (trans) people to change their legal gender. According to the Civil Code, legal gender recognition is dependent on a surgical intervention, accompanied by the cessation of reproductive functions and the alteration of sexual organs, which must subsequently be certified by a health care provider.<sup>79</sup> Legal gender recognition entails an automatic termination of the marriage or registered partnership of the person involved.<sup>80</sup>
123. By insisting on a surgical intervention, the legal gender recognition procedure clearly violates the Czech Republic's human rights obligations. The European Court of Human Rights has already found in multiple cases that requiring compulsory medical treatment and surgery for legal gender recognition

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<sup>79</sup> Civil Code, section 29(1).

<sup>80</sup> Civil Code, section 29(2).

violates Article 8 ECHR.<sup>81</sup> In 2018, the European Committee on Social Rights, in a case concerning the Czech Republic, also [decided](#) that the legal requirement of sterilisation breaches the right to protection of health under Article 11 of the European Social Charter.

124. Attempts to challenge the legitimacy of the requirement of a surgical intervention through national courts have so far failed.<sup>82</sup> However, the Commissioner welcomes that, shortly after her discussions with the authorities, the Ministry of Justice announced it would put forward a proposal to reform legal gender recognition procedures that would eliminate the requirement of a surgical intervention.
125. The Commissioner further notes that the approach to legal gender recognition in the Czech Republic is still far removed from international human rights best practice, which indicates that states should ensure “quick, transparent and accessible procedures, based on self-determination”,<sup>83</sup> and that they should not require applicants to fulfil abusive requirements, including medical diagnosis and divorce.<sup>84</sup> Legal gender recognition in the Czech Republic is still based on a pathologised approach, despite the World Health Assembly having removed trans issues from the list of mental illnesses in the World Health Organisation’s [International Classification of Diseases](#) in 2019.

#### 4.2.2. LEGAL PROTECTION OF SAME-SEX COUPLES

126. In the Czech Republic, same-sex couples can legally enter into registered partnerships under the Act on Registered Partnerships. These partnerships do not constitute marriage, which is defined as a union between a man and a woman in law.<sup>85</sup> Registered partnerships have limited rights compared to marriage. For instance, there is no common ownership of property and no right to a survivor pension in the case of a partner’s death. People in registered partnerships can adopt; however, only one partner can be the adoptive parent.<sup>86</sup>
127. There has been an active civil society campaign for marriage equality. On 29 June 2023, the Chamber of Deputies held a debate on a proposal to enable same-sex couples to enter into civil marriages. This proposal was accepted at first reading and it will be subject to further consideration by the Chamber. On the same day, however, a proposal to enshrine in the Constitution the definition of marriage as a union between a man and a woman also passed its first reading in the Chamber. Some interventions by elected representatives fuelled prejudice against LGBTI people.
128. According to the case law of the European Court of Human Rights, states have a positive obligation to provide a legal framework which affords same-sex couples adequate recognition and protection.<sup>87</sup> The Court has found that “same-sex couples sharing their lives had the same needs in terms of mutual support and assistance as different-sex couples.”<sup>88</sup> The Commissioner has furthermore called for

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<sup>81</sup> See, in particular [A.P., Garçon and Nicot v France](#), application nos. 79885/12, 52471/13 and 52596/13, judgment of 6 April 2017.

<sup>82</sup> In March 2022, the Constitutional Court of the Czech Republic [rejected](#) the complaint of a trans person seeking legal gender recognition without undergoing sterilisation surgery.

<sup>83</sup> Parliamentary Assembly of the Council of Europe (PACE), [Resolution 2048\(2015\)](#) on discrimination against transgender people in Europe, 22 April 2015, paragraph 6.1.2.

<sup>84</sup> See, for example, UN Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity (IE SOGI), [Report on Gender Identity](#), 2018.

<sup>85</sup> Civil Code, section 655.

<sup>86</sup> Stonewall, [Global Workplace Briefings 2019: The Czech Republic](#).

<sup>87</sup> See, in particular, [Fedotova and Others v. Russia](#), applications nos. 40792/10, 30538/14 and 43439/14, judgment of the Grand Chamber of 17 January 2023.

<sup>88</sup> *Ibid.*, paragraph 159, referring to [Vallianatos and Others v. Greece](#), applications nos. 29381/09 and 32684/09, judgment of the Grand Chamber of 7 November 2013, paragraphs 81 and 90.

member states to ensure that this legal recognition provides effective and comprehensive protection for same-sex couples, by covering all aspects of life in a committed, stable relationship.<sup>89</sup>

129. The Commissioner recognises that so far, the European Court of Human Rights has not found an obligation under the ECHR for member states to allow civil marriage for same-sex couples. In [Schalk and Kopf v. Austria](#), the Court however said that civil marriage can no longer be considered as reserved to a man and a woman. The judgment further stated that it was within the member states' margin of appreciation to regulate access to civil marriage, but that this may change if a consensus were to emerge among Council of Europe member states. The Commissioner recalls her position that, in order to truly ensure equal rights and equal treatment between same-sex couples and different-sex couples, member states should consider opening the different types of legal recognition arrangements available in a country equally to all couples – including civil marriage.<sup>90</sup> At the time of writing, 19 Council of Europe member states make civil marriage available to same-sex couples, either as the only type of legal recognition available to same-sex couples, or alongside registered partnerships available to all couples.

#### 4.2.3. CONCLUSIONS AND RECOMMENDATIONS

130. The Commissioner welcomes the initial steps to eliminate the requirement of a surgical intervention to cease the reproductive functions and alter the sexual organs of the person involved as a requirement for legal gender recognition, since this clearly violates the Czech Republic's human rights obligations. Urgent follow-up to this is crucial, so that this abusive practice is promptly ended. The Commissioner also encourages the government to introduce a procedure for legal gender recognition that is quick, transparent and accessible, and that is based on self-determination, in line with international human rights best practice.
131. The Commissioner urges the adoption of a form of legal recognition that provides comprehensive protection for same-sex couples, covering all aspects of life in a committed, stable relationship. In this respect, she hopes that members of the Parliament of the Czech Republic will support the proposal to introduce equal marriage for all.
132. The Commissioner further reiterates that there can be no space for hate speech against LGBTI people in national parliaments. Given their influence in public debate, she recalls that those in leadership positions should avoid engaging in, endorsing or disseminating hate speech against LGBTI people, and that they should instead promote a culture of human rights.<sup>91</sup>

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<sup>89</sup> See, for example, the Commissioner's [third-party intervention](#) with the European Court of Human Rights in the case of *Fedotova and Others v. Russia*.

<sup>90</sup> *Ibid.* Also see Commissioner for Human Rights, "[Access to registered same-sex partnerships: it's a question of equality](#)", Human Rights Comment, 21 February 2017.

<sup>91</sup> In line with [Recommendation CM/Rec\(2022\)16](#) of the Committee of Ministers of the Council of Europe on combating hate speech.