



NGOs information to the United Nations Committee against Torture

The Sixth Periodic Report of the Czech Republic under the United Nations Convention Against Torture

Submitted by:

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Forum for Human Rights (FORUM)

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OVERVIEW

1. The submission provides an outline of issues of concern with regard to Czechia's compliance with the provisions of the UN Convention against Torture (hereinafter "CAT"), with a particular focus on the enjoyment of those rights by persons with intellectual and psychosocial disabilities. The purpose of the submission is to assist the UN Committee against Torture (hereinafter the "Committee") in its review of Czechia's sixth periodic report under CAT.
2. The submission has been written by the Validity Foundation and Forum for Human Rights (FORUM).
3. Validity is an international human rights organisation which uses the law to secure equality, inclusion and justice for people with mental disabilities worldwide. Validity's vision is a world of equality where emotional, mental and learning differences are valued equally; where the inherent autonomy and dignity of each person is fully respected; and where human rights are realised for all persons without discrimination of any form. Validity has participatory status at the Council of Europe, and observer status at ECOSOC. For more information, please visit www.validity.ngo.
4. FORUM is an international human rights organisation active in the Central European region. It provides support to domestic and international human rights organisations in advocacy and litigation and also leads domestic and international litigation activities. FORUM has been supporting a number of cases pending before domestic judicial authorities and before the European Court of Human Rights. FORUM authored and co-authored a number of reports and information for UN and Council of Europe bodies on the situation in the Central European region, particularly in Slovakia and Czechia. For more information, please visit www.forumhr.eu.

SPECIFIC COMMENTS

(a) Definition of torture

5. Czechia has failed to criminalise acts of torture, as required by Article 4 of CAT. The State Party still does not have adequate provisions that criminalise torture and other cruel, inhuman or degrading treatment or punishment (hereinafter "CIDT") in its criminal law in a manner which would ensure the effective investigation, prosecution and punishment, where appropriate, of perpetrators of torture and CIDT.

6. The wording in the existing definition of the crime provided for under Article 149 Act no. 40/2009 (Criminal Code) conflates different forms of ill-treatment and cruel, inhuman or degrading treatment or punishment, and fails to provide for elements of torture as required under CAT. In particular, the law does not define specific purposes, including discrimination. In addition, it fails to distinguish acts of torture from cruel, inhuman or degrading treatment or punishment on in terms of *mens rea*. Thus, an intent is required even for cases of degrading treatment, which substantively limits the provision's applicability in practice. This situation has resulted in *de facto* impunity for acts of torture, cruel, inhuman and degrading treatment or punishment.

Proposed recommendation:

Ensure that the definition of the crime of torture is fully in compliance with the definition of torture under Article 1(1) CAT, and that it covers all purposes, including discrimination.

Ensure that acts of cruel, inhuman or degrading treatment or punishment are defined in the Criminal Code with adequate precision, including the *mens rea* component.

(b) Use of cage-beds and other forms of restraints against persons with disabilities

7. In Czechia, the use of netted cage beds and other mechanical restraints is still allowed as a form of lawful restraint in psychiatric institutions. Netted cage-beds are listed under section 13 of the Health Care Act no. 372/2011 as one of the allowed restraints.¹ According to data gathered by FORUM during the beginning of year 2017, there were, at minimum, 51 netted cage-beds in use in Czech psychiatric hospitals and psychiatric wards of general hospitals.²
8. According to the applicable norms of international law, all persons with disabilities have the right to be free from specific coercive practices during hospitalisation. This right is translated into an obligation of the state to en-

¹ The other allowed mechanical restrictions includes: a) restriction of the patient in his or her movement by belts or straps, e) protective jacket or vest restricting movement of upper patient's limbs, f) psychopharmacs or other healing substances administered parenterally which are suitable for restriction of free movement of the patient during providing health care if it does not concern treatment upon request of the patient or continuous treatment of the psychiatric disorder.

² Data were collected on the basis of the Freedom of Information Act. The Government does not provide for the collection of data which would enable tracing comprehensive statistics about the number of use of restraints in psychiatric settings.

sure that persons with disabilities are not be subjected to the use of restraints, especially netted cage-beds, and such coercive practices should be subject to an **absolute ban**.

9. In addition, we are concerned that cage-beds are also being used in social care institutions for children with mental disabilities. During a monitoring visit to one such institution in 2017, the only mobile child on a ward for children with various impairments was placed in a netted cage-bed to restrict their movement.³
10. Net beds have been addressed by the Committee in several concluding observations. In 2012 the Committee very concretely recommended to amend the Health Care Act **“to include the prohibition of the use of net-beds since their effects are similar to those of cage-beds”**.⁴ The Government, regrettably, has taken no steps to implement these recommendations.

Proposed recommendation:

Repeal the provision of the Health Care Act which allows for the use of netted cage-beds in psychiatric facilities. Ensure a complete ban on the practice of placing children with disabilities in netted cage-beds.

Take steps to ban all practices in health care settings which amount to torture and ill-treatment, including the use of physical, chemical and mechanical restraint techniques, multiple restraints, and segregation.

(c) Institutionalisation of young children and infants under the age of 3

11. In Czechia, children under the age of 3 with specific needs or in a specific situation where alternative care is not available are regularly placed into early childhood medical care institutions (“*dětské domovy pro děti do 3 let věku*” or “*kojenecké ústavy*”). This practice is based on Sections 43 and 44 of the Health Care Act no. 372/2011, and discriminatorily affects Romani children and children with disabilities.

³ Dr Sarah Woodin, *The CHARM Toolkit Piloted – Findings from Monitoring Visits (Bulgaria, Czech Republic, Hungary and United Kingdom)*, (Budapest: Mental Disability Advocacy Centre, 2017), p. 33. Available online at http://mdac.org/sites/mdac.info/files/final_report_en.pdf.

⁴ Committee against Torture, Concluding Observations of the Committee: Czech Republic, 13 July 2012, para. 21(c), CAT/C/CZE/CO/4-5 available here: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT/C/CZE/CO/4-5&Lang=En.

12. Available official data⁵ shows that since 2010, the number of places in these institutions has gradually decreased, from 1,963 places in 2010 to 1,470 in 2015. There has been a decrease in the number of institutionalised infants, from 2,077 in 2010 to 1,666 in 2015. At the same time, the number of institutionalised Romani children remained almost the same: 433 in 2010, compared to 406 in 2015. The same applies to children with disabilities: 710 in 2011 compared to 694 in 2015. Moreover, reasons for admission show that the vast majority of children are admitted either solely for health reasons (958 in 2011, decreasing to 567 in 2015) or for social reasons (954 in 2010 to 568 in 2015). The remainder of the children are admitted on the grounds of health and social reasons combined.

		2010	2011	2012	2013	2014	2015
Number of institutions		34	34	33	33	33	31
Number of places		1963	1783	1700	1638	1571	1470
Number of admitted children		2077	2131	1932	1740	1606	1666
Including	with special needs	358	710	720	698	714	694
	Roma	433	403	446	445	398	406
	abused	55	78	66	59	57	80
ground for admission	health reasons	743	958	881	701	567	567
	health + social	380	440	345	425	487	531
	social	954	733	706	614	552	568

⁵ Data collected by the Institute of Health Information and Statistics of the Czech Republic and provided to FORUM on the basis of a request for information under the Act on Free Access to Information.

12. The UN Special Rapporteur on Torture and the UN Committee on the Rights of the Child ("CRC Committee") have indicated that institutional early childhood care amounts to violence against children owing to their specific vulnerabilities and because institutionalisation exposes children to enhanced risk of torture and other forms of ill-treatment. They have also directly linked the State's obligation in this respect to the prohibition of ill-treatment.⁶
13. Similarly, the UN Special Rapporteur on the Right to Health urged states to **"expedite the process of eliminating institutional care for children under 3 years of age"** and further called for "recognition of the detrimental effects of institutional care on the health and development of **all** young children and for the adoption of a common understanding that institutional care should not be accepted for children under 5 years of age".⁷
14. In a similar fashion, the UN Special Rapporteur on Torture has said that "one of the most egregious forms of abuse in health and social care settings is unique to children." He linked the absence of satisfaction of basic emotional needs in early child care institutions with ill-treatment and noted that, "this fundamental need for connection is consistently not met in many institutions, leading to self-abuse, including children banging their head against walls or poking their eyes. In reaction, care-givers use physical restraints as a long-term solution, or hold the children in cages or their beds, practices that have been linked to muscular atrophy and skeletal deformity".⁸
15. The Czech authorities are well-aware of the human rights implications of the existing system. The 2012 National Strategy to Protect Children's Rights recognised that alternative care for children under 3 years of age should be provided *exclusively* in a family environment and obliged the Ministry of Social Affairs and the Ministry of Justice to introduce a legal ban on the in-

⁶ Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan Ernesto Mendez, A/HRC/28/68, 5 March 2015, para. 69, available at: <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session28/Pages/ListReports.aspx>; UN Committee on the Rights of the Child, General Comment no. 13 on the right to freedom from all forms of violence, CRC/C/GC/13, 18 April 2011, para. 3(i).

⁷ Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, A/70/213, 30 July 2015, para. 73. Available online at: http://www.un.org/en/ga/search/view_doc.asp?symbol=A/70/213.

⁸ Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan Ernesto Mendez, fn. 5, para. 56.

stitutionalisation of children of specific age by 2016.⁹ On 15 December 2015, the Government's Council for Human Rights, an advisory body to the Government, adopted a resolution calling on the Government to implement systemic changes in order to substantially restrict the possibility of placing children under the age of seven into institutional care.¹⁰ At their session held on 23 November 2016, the Government discussed this resolution and requested, by their own Resolution no. 1033, that the Ministry of Social Affairs and the Ministry of Health prepare the required changes.¹¹

16. In December 2016 and later in March 2017, the Ministry of Social Affairs introduced to the Government an Action Plan to fulfil the National Child Protection Strategy for 2016-2020. The Action Plan proposed a ban on the institutionalisation of children under the age of 3. The introductory part contains a remark that neither of the other Ministries cooperated. At their session of 22 March 2017, the Minister of Social Affairs withdrew the proposal as several members of the Government disagreed with it.¹² The Ministry of Health, responsible for early childhood care institutions, openly disagreed with a ban on the institutionalisation of children of a specific age. Eventually, the document was introduced to the Government on 21 August 2017, however it was not adopted and the Ministry of Health voted against the reform.

17. In Czechia, the practice of institutionalisation of young children is based on the existing legal framework which expressly permits it despite the profoundly negative effects on the child's development, and the lack of alternatives to institutionalisation. This systemic violation of children rights concerns a significant number of the most vulnerable children in society –

⁹ The strategy stipulated one of the key activities as "taking measures in the system of care of vulnerable children in order to define in legislation the age limit below which children cannot be placed in institutional care (3 years of age and subsequently 7 years of age)." See National Strategy to Protect Children's Rights, 2012, pp. 21-22. The Strategy was adopted by the Government in January 2012 and is available in English at: <http://www.mpsv.cz/files/clanky/13456/strategy.pdf>

¹⁰ Relevant documents are available in Czech at:

<https://www.vlada.cz/cz/ppov/rfp/cinnost-rady/zasedani-rady/zasedani-rady-dne-15-prosince-2015-142203/>.

¹¹ The Government's resolution no. 1033 of 23 November 2016. Available (in Czech) at:

<https://apps.odok.cz/attachment/-/down/RClAAG6B3ZDR> .

¹² The minutes are available in Czech at:

<https://apps.odok.cz/djv-agenda?date=2017-03-22>

children of Roma origin and children with disabilities, as shown above – and raises serious issues of violence against children and their ill-treatment.

Proposed recommendation:

Repeal provisions allowing for the institutionalisation of children under the age of 3 and ensure that all children in need of care are provided appropriate care in a family environment.

(d) Use of electrical discharge weapons against persons with psychosocial disabilities

18. Validity and FORUM have reported the excessive use of electrical discharge weapons (hereinafter “the Taser”, or “the EDW”) against a person with a psychosocial disability by Czech police with fatal consequences. On 5 November 2015, around 9:30 p.m., Mr Pavel Zlamal was admitted to the Olomouc psychiatric hospital in an agitated state. After the admission, he was administered calming medication. According to the doctor, he was not aggressive. Around 4 a.m. Mr Zlamal became restless and nervous and subsequently started walking around the room and halls. He was accompanied only by an orderly attendant when we went to smoke to calm himself. A conflict broke out when the attendant informed the client he could not smoke in the hallways. The doctor was called after the conflict started and helped the attendant, who was severely beaten by the client, to escape. At the time, the client broke an unsecured hydrant in the hall and started tearing out electric cables which were taped to the walls. The doctor called the police to help pacify the client. Four policemen (with the help of two attendants) launched an intervention, whereby they immobilised the client on the floor of the hallway using mattresses. After his immobilisation, lying faced down with four policemen on him, he was repeatedly shot - in total four times - with the taser. Subsequently, another injection with tranquilliser was applied. Almost immediately after the intervention, Mr Zlamal’s heart stopped and he died.

19. The experience of well-established European monitoring body, the European Committee for the Prevention of Torture (“CPT”) shows that the use of electronic discharge weapons against persons with mental disabilities remains controversial. The CPT recommended that in relation to particularly vulnerable persons (e.g. the elderly, pregnant women, young children, persons with a pre-existing heart condition), the use of electronic dis-

charge weapons should, in any event, be avoided.¹³ Moreover, the CPT has expressed strong reservations about the use of electric discharge weapons in prison (and a fortiori closed psychiatric) settings. Only very exceptional circumstances (e.g. a hostage-taking situation) might justify the resort to EDW in such a secure setting, and this subject to the strict condition that the weapons concerned are used only by specially trained staff.¹⁴

20. The situation of Mr Zlamal did not warrant the use of EDW, it was not necessary, and the police could have had recourse to less restrictive interventions. He was in a room alone and did not pose any danger to others. Moreover, the sole use of EDW would have presented a very serious health risk in his situation, bearing in mind that Mr Zlamal had a heart condition due to long-lasting use of psychiatric medication, that he was heavily medicated after admission to the hospital, tired but agitated. In this obvious condition, he had been shot four times by the EDW and immediately injected with a tranquilliser, lying face down on a floor after being physically pacified. Moreover, the police officers were not properly trained as there is no appropriate training provided which would adequately reflect the possible risks posed by the device to vulnerable persons. These circumstances raise especially two issues, first, the use of EDWs in places such as psychiatric hospitals, which should be banned, and secondly, an obligation to ensure those police officers are properly trained.

Proposed recommendations:

Ban the use of electric discharge weapons in psychiatric hospitals.

Ensure that police officers equipped with EDWs are properly trained in their use, including in situations which concern persons with disabilities.

¹³ CPT/Inf/E (2002) 1 - Rev. 2015, p. 108, para. 79. Available online at: <http://agent.echr.am/resources/echr/pdf/ba2e032f91eb6673220a419b698fd89c.pdf>

¹⁴ *Ibid.*, para. 71.

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