

# FORUM

Human Rights

**NGOs information to the United Nations Committee against Torture  
for consideration when compiling the List of Issues (LOI) on the 70<sup>th</sup> session  
in respect of**

**CZECHIA**

**for the Seventh Periodic Report  
under the United Nations Convention Against Torture**

**CHILDREN IN CONFLICT WITH LAW, CHILDREN DEPRIVED OF LIBERTY  
AND CHILDREN FACING POVERTY AND SOCIAL EXCLUSION**

Submitted by:

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 children in conflict with law, children deprived of liberty and children facing poverty and social exclusion. The purpose of the submission is to assist the UN Committee against Torture (hereinafter the "Committee") with its consideration of the compilation of the list of issues prior to reporting.
2. The submission covers the following issues:
  - 1) the access to a lawyer for children below the age of criminal responsibility from the very first contact with the Police in the position of a suspect;
  - 2) the right of criminally responsible juveniles to have legal assistance in the contact with the Police provided for free;
  - 3) the practice of protective care enabling to place children in conflict with the law, regardless of whether they are below or above the age of criminal responsibility, in closed regime institutions for an indeterminate period of time, limited only by the maximum age of the child;
  - 4) the practice of placements of children in closed regime institutions based on child protection measures;
  - 5) the use of solitary confinement against children; and
  - 6) failure to ensure secure tenancy of housing and effective protection against eviction to children belonging to ethnic minorities or facing poverty and social exclusion and their families.
3. The submission has been written by Forum for Human Rights (FORUM). 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 international bodies. FORUM authored and co-authored a number of reports and information for the UN and Council of Europe on the situation in the Central European region, particularly in Slovakia and Czechia. For more information, please visit [www.forumhr.eu](http://www.forumhr.eu).

## SPECIFIC COMMENTS

### 1. ACCESS TO LEGAL ASSISTANCE FOR CHILDREN SUSPECTS WHO ARE BELOW THE AGE OF CRIMINAL RESPONSIBILITY FROM THE VERY FIRST CONTACT WITH THE AUTHORITIES

4. In its last Concluding Observations, the Committee highlighted the role of early access to a lawyer as an important safeguard against ill-treatment for persons who are deprived of their liberty at police stations. The Committee criticised the Czech legislation, namely the Police Act (no. 273/2008), for failing to guarantee the availability of free legal aid from the very outset of deprivation of liberty. Based on this criticism, the Committee formulated a more general recommendation for Czechia to “take effective measures to guarantee, and monitor, that all the fundamental legal safeguards from the outset of their deprivation of liberty, in accordance with international standards, including, but not limited to, the right: (...) (c) to have prompt and confidential access to a qualified and independent lawyer, or to free legal aid, when needed; (...).”<sup>1</sup>
5. In this submission, we would like to focus specifically on access to free legal aid for children suspects below the age of criminal responsibility because the State’s failure to ensure effective and practical access to a lawyer for these children is not directly connected to the deficiency of the Police Act. The effective and practical access to a lawyer for these children is rather a matter of the Czech criminal law and is thus connected with the Criminal Procedure Code (no. 141/1961 Coll.) and the Juvenile Justice Act (no. 218/2003 Coll.).
6. The specific situation of children suspects below the age of criminal responsibility may be best described in comparison with the situation of criminally responsible juveniles. The latter are guaranteed the obligatory legal representation by a defence counsel from the very first moment the suspicion against them arises, even before they are officially charged. The police are entitled to interrogate them in the absence of the defence counsel only in a state of emergency under the condition that it is objectively impossible, regarding the circumstances, to ensure the defence lawyer’s presence in time.<sup>2</sup>
7. The situation of children suspects who are below the age of criminal responsibility is completely different. The Czech legislation provides for necessary legal protection only for the judicial stage of the proceedings. The pre-trial stage is thus performed in a sort of “**legal vacuum**” and the Police proceed according to the general rules of the Criminal Procedure Code (no. 141/1961 Coll.). More concretely, they follow rules regulating the stage before the charges are brought, that does not grant children suspects below the age of criminal responsibility any special status. Their access to a lawyer is thus governed by the same legal provisions as for anyone else who is to be interrogated by the police in criminal proceedings, for instance as a witness. Right under this regime are limited to have a lawyer present under the condition that the interrogated person: i) explicitly demands the lawyer’s presence, and ii) bears the lawyer’s costs.<sup>3</sup> Contrary

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<sup>1</sup> CAT/C/CZE/CO/6, paras. 10 and 11 (c).

<sup>2</sup> Act no. 218/2003 Coll., the Juvenile Justice Act, section 43 (1) (a).

<sup>3</sup> Act no. 141/1961 Coll., Criminal Procedure Code, section 158 (5).

to criminally responsible children, children below the age of criminal responsibility have no right to access to a lawyer guaranteed by law. They are therefore left completely unprotected and the police can interrogate them in the “witness regime” without presence of a lawyer.

8. The described discrepancy is often justified in the national discourse by the fact that children suspects below the age of criminal responsibility cannot be held criminally liable, and, therefore, do not need such procedural protection as criminally responsible juveniles. Nevertheless, this argument is rather formal, and it does not mean that these children do not bear any public liability at all. Under Czech law, these children are still subjected to the juvenile justice system and their acts are dealt with in court proceedings.<sup>4</sup> Also, the measures that may be imposed on children below the age of criminal responsibility overlap significantly with those that may be imposed on criminally responsible children (see scheme no. 1), including measures of deprivation of liberty for an indefinite time (so-called protective care in closed regime institutions and institutional protective treatment in psychiatric facilities). Thus, viewed from the substantive perspective, the main difference between children suspects below the age of criminal responsibility and criminally responsible juveniles does not seem to be the irresponsibility of the former.

**Scheme no. 1: Juvenile justice measures applicable to children below 15 and juveniles**

| Measures   | Children below 15   | Juveniles        |   |
|--|---|------------------|---|
| Diver<br>sions                                     | Discontinuation of criminal prosecution   | X                | √ |
|  | Approval of settlement  | X                | √ |
|  | Withdrawal of criminal prosecution  | X                | √ |
| Educa<br>tional                                    | Refrainment from imposing a measure   | √                | √ |
|  | Supervision of probation officer  | √                | √ |
|  | Probation Program   | X                | √ |
|  | Educational duties  | √                | √ |
|  | Educational restrictions  | √                | √ |
|  | Admonition with warning   | √                | √ |
|  | Placing in a therapeutic, psychological, or another suitable educational program in the centre of educational care* | √                | X |
|  | Protectiv<br>e  | Protective care* | √ |
| Protective treatment, ambulatory or institutional* |   | √                | √ |
| Security detention*                                |   | X                | √ |
| Confiscation of a thing                            |   | X                | √ |
| Punitiv<br>e                                       | Community service activities  | X                | √ |
|  | Financial measures  | X                | √ |
|  | Financial measures with conditional suspension of sentence  | X                | √ |
|  | Confiscation of a thing   | X                | √ |
|  | Prohibition to undertake activities   | X                | √ |
|  | Banishment  | X                | √ |
|  | House confinement   | X                | √ |
|  | Ban from sport, cultural and other social events  | X                | √ |
|  | Imprisonment conditionally suspended  | X                | √ |
|  | Imprisonment conditionally suspended under supervision  | X                | √ |
| Unconditional imprisonment*                        | X   | √                |   |

\* Measures that result or may result in detention of the child

<sup>4</sup> Act no. 218/2003 Coll., Title III.

9. The court proceedings against children below the age of criminal responsibility are classified under the national law as civil and not criminal. This has serious negative procedural consequences for the child since it enables the juvenile court to: i) use all the thinkable evidence, including the record of the child's interrogation before the police even though in the criminal proceedings such evidence could not be used before the court,<sup>5</sup> and ii) find the child responsible even though her responsibility is not proved beyond reasonable doubt but only on the balance of probabilities. These aspects of the proceedings against children below the age of criminal responsibility give the police interrogation of the child a particular significance and, at the same time, further deepen the child's vulnerability, since the temptation to obtain from the child her full confession that would be then sufficient for the court proceedings may be very strong. Early access to a lawyer, from the very first contact with the police, should serve as an important safeguard against ill-treatment and abuse of power.<sup>6</sup>
10. The paradox of the Czech legislation concerning the minimum age of criminal responsibility is that instead of exempting children from the duty to bear the legal consequences of their acts, it rather exempts the public authorities from their obligation to provide the child with appropriate procedural safeguards. The issue of the obligatory access to a lawyer from the very first contact with the police is an eloquent example of this paradoxical situation.
11. We are of the opinion that the precarious situation of children below the age of criminal responsibility described above would not be remedied by an amendment to the Police Act. Interrogation of children suspects does not be necessarily carried out in the regime of deprivation of liberty as defined by section 24 and et seq. of the Police Act. Children suspects below the age of criminal responsibility would need a specific and explicit provision that would provide them with the obligatory legal representation by defence counsel just in the same way as the Juvenile Justice Act guarantees this safeguard to juvenile suspects. That is why the issue of access to free legal aid in the contact with the police for children below the age of criminal responsibility should be addressed specifically and separately.

**Proposed questions:**

**Do the Government plan to amend their criminal law or juvenile justice law to guarantee children suspects below the age of criminal responsibility the same standard of access to legal assistance as it is guaranteed to juveniles, i.e. from the very first contact with the Police or public prosecutor in the position of a suspect?**

**If yes, when will be the amendment adopted?**

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<sup>5</sup> In criminal proceedings the record of the Police interrogation made before the charges were brought may be read at trial before the court only with the consent of the accused as well as the public prosecutor. Such a consent is not, nevertheless, required in civil proceedings against children below the age of criminal responsibility. – See Act no. 141/1961 Coll., the Criminal Procedure Code, section 211 (6).

<sup>6</sup> See, *inter alia*, Report on the Visit of the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment to the Maldives, (CAT/OP/MDV/1, 26 February 2009), at § 62.

## 2. FREE LEGAL AID FOR JUVENILES IN THE CONTACT WITH THE POLICE

12. It is to be noted, in addition to the above-mentioned information, that neither the access to legal assistance for juveniles is free of problems. When highlighting the role of early access to a lawyer from the very outset of deprivation of liberty, the Committee emphasized that if needed, the legal assistance has to be provided for free.<sup>7</sup> The necessity of free legal aid should be understood not only strictly individually, but also as a reference to vulnerability given by the person's belonging to a vulnerable group. And children should be definitely considered as a group when the necessity requirement is fulfilled *per se*. The UN Committee on the Rights of the Child supports this argument when it recommends in its general comment no. 24 (2019) "that States provide effective legal representation, free of charge, for all children, who are facing criminal charges before judicial, administrative or other public authorities."<sup>8</sup>
13. For criminally responsible juveniles, the legal assistance in the juvenile justice system, including the Police interrogation, is free of charge, however, only until the juvenile is found guilty of the criminal offence. If found guilty, the juvenile will be then ordered to pay all costs of the criminal proceedings, including the costs of the legal assistance, unless she has been granted the legal defence for free or at reduced costs by a specific decision of the juvenile court.<sup>9</sup> However, the decision on granting the juvenile the legal defence for free or at reduced costs has to be adopted during the criminal proceedings and not after the conviction.<sup>10</sup> Even if such requests are made duly and in time, criminal courts are not keen to grant them in practice.<sup>11</sup>
14. The Czech juvenile justice law is not, therefore, eligible to guarantee the juvenile that she will not have to pay the costs of the legal assistance that is provided to her from the very first contact with the juvenile justice system, including the Police interrogation. Notably children from marginalised communities or with underprivileged background, whose parents cannot afford to pay legal costs for them, may enter adulthood with substantial debts from allegedly "free" legal representation in the criminal proceedings.

### Proposed questions:

**Do the government plan to amend its criminal law or juvenile justice law to ensure that juveniles do not have to pay the costs for their legal defence even if convicted of a criminal offence?**

**If yes, when will be the amendment adopted?**

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<sup>7</sup> CAT/C/CZE/CO/6, para. 11 (c).

<sup>8</sup> CRC/C/GC/24, para. 51.

<sup>9</sup> Criminal Procedure Code (no. 141/1961), section 155.

<sup>10</sup> *Ibid.*, section 33 (2).

<sup>11</sup> Such case was recently dealt with by the Czech Constitutional Court concerning a juvenile of Roma origin – judgment of 1/9/2020, no. II. ÚS 1411/20. Available in Czech at: <http://nalus.usoud.cz/Search/ResultDetail.aspx?id=113370&pos=1&cnt=1&typ=result> [accessed 25/1/2021].

### 3. PROTECTIVE CARE [ochranná výchova] OF CHILDREN IN CONFLICT WITH THE LAW

15. Protective care [ochranná výchova] of children in conflict with the law is a specific measure that may be imposed on the child by the juvenile court as a reaction to the child's responsibility for a criminal offence. As mentioned above, protective care may be imposed on both – children below the age of criminal responsibility<sup>12</sup> and criminally responsible juveniles.<sup>13</sup> It is served in institutions with closed regime, meaning that children are not allowed to leave and cannot be visited by any other person other than their relatives, close persons and representatives of public authorities. As a result, children are effectively isolated from the outside world and this measure can be described as custodial.
16. Even though ordered by the juvenile court in reaction to the unlawful act committed by the child, the measure of protective care should not formally serve to punish the child but to provide her with protection. As such, it is not accompanied by appropriate legal safeguards. It is not imposed on the child for a determined period of time, but it lasts “as long as its objective requires so”.<sup>14</sup> The only limit of its duration is thus the age of the child since the protective care ends, in principle when the child reaches majority.<sup>15</sup> Protective care is therefore a custodial measure with undetermined duration. Sir Nigel Rodley as the UN Special Rapporteur on torture emphasized specifically on the detention of children in care institutions that the indeterminate confinement, particularly in institutions that severely restricted children's freedom of movement, could in itself constitute cruel or inhuman treatment.<sup>16</sup>
17. Furthermore, there are no specific limitations regarding the conditions under which the protective care may be imposed on the child. With the only exception of “obligatory protective care” that must be imposed on children below the age of criminal responsibility who have committed a criminal offence punishable with an exceptional punishment<sup>17</sup>, both groups of children may be ordered protective care although they have not committed a serious unlawful act and do not represent a danger for their environment. Protective care may but thus imposed on a child also a response to minor offences, such as thefts. In the judicial practice, it is often the child's family environment and not the committed offence that plays a crucial role in the juvenile court's decision whether to order protective care or not. Concerning children below the age of criminal responsibility the Supreme Court held that since the legal condition to order protective care is the nature of the offence and not its seriousness, the offence committed by the child does not need to reach a high level of seriousness.<sup>18</sup> According to the Supreme Court, legal conditions to order protective treatment will be fulfilled particularly in those cases when the committed offence manifests stronger personality disorder of the child and is a consequence of the neglect in the child's upbringing or inappropriateness of the living environment of the

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<sup>12</sup> Juvenile Justice Act (no. 218/2003), section 93 (2) and (3).

<sup>13</sup> *Ibid.*, section 22.

<sup>14</sup> *Ibid.*, sections 22 (2) and 93 (8).

<sup>15</sup> *Ibid.*

<sup>16</sup> A/55/290, para. 55.

<sup>17</sup> Act no. 218/2003 Coll., the Juvenile Justice Act, section 93 (2).

<sup>18</sup> The judgment of the Supreme Court of the Czech Republic of 30/4/2008, no. 8 Tdo 514/2008.

child.<sup>19</sup> The same applies to criminally responsible juveniles since the law defines conditions to order protective care practically in the same terms as for children below the age of criminal responsibility. Even in this case, the nature of the offence and the family environment of the child is more important than the seriousness of the offence and especially the child's dangerousness.

18. The protective care thus constitutes a measure that enables to deprive children of their personal liberty under much more vague legal conditions than are the conditions to impose imprisonment. It thus serves to circumvent both, the conditions for the imprisonment of the juvenile, as well as the limited length of the imprisonment prescribed by the law.<sup>20</sup> Concerning children below the age of criminal responsibility, the measure of protective care enables to deprive them of their personal liberty in direct relation to their unlawful act and in proceedings that do not meet the traditional criminal procedure standards (see above).
19. Due to the described ambiguity, the measure of protective care fails to provide juveniles and children below the age of criminal responsibility with basic substantive and concerning children below the age of criminal responsibility also procedural safeguards which are not only safeguards against illegitimate or disproportionate deprivation of liberty but also safeguards against ill-treatment. The measure thus represents in the Czech national law a historical relict that is not compliant with the international law of human rights, including the right to practical and effective protection against ill-treatment. It should be, therefore, repealed as soon as possible.

**Proposed questions:**

**Do the Government plan to repeal the measure of protective care?**

**If yes, when do the Government plan to adopt the necessary amendment to the law?**

**4. DETENTION OF CHILDREN IN THE CHILD PROTECTION SYSTEM**

20. Very close to the problem of the measure of protective care is the use of the child protection system to discipline the child. Under the Czech law, children may end up in closed regime institutions not only on the basis of the above-described protective care ordered by the juvenile court, but also on basis of the child protection measures, ordered by the civil (guardianship/family) court, namely interim measures, educational measures or institutional upbringing. The situation of these children is even more precarious since the child protection measures are not necessarily adopted in reaction to unlawful act committed by the child that reaches the intensity of a criminal offence. Nevertheless, although the child has not committed a criminal offence, she may still end up in a closed regime institution for "behavioural difficulties". The term of "behavioural difficulties" is not defined in the national law, its interpretation depends rather on the current opinions of the society of what type of the child's behaviour is unacceptable and should be treated in the form of the child's forced confinement to an institution and her subordination to the institutional regime.

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<sup>19</sup> Ibid.

<sup>20</sup> The length of imprisonment is obligatorily shortened for juveniles.

21. According to the official statistics, “behavioural difficulties” are the third common reason for the removal of the child from her family. Contrary to maltreatment and abuse which together constitute only approximately 5.5 % of all removals,<sup>21</sup> “behavioural difficulties” constitute nearly one quarter (see tables no. 1 and 2). Children placed in closed regime institutions (diagnostic institutions, children’s homes with school and closed educational institutions) represent more than one-third of all institutionalised children (see table no. 3).

**Table no. 1: Reasons for removals of children in the Czech Republic from their families (2016 - 2019)**

|      | Child maltreatment | Child abuse | Neglect of the child's upbringing | Upbringing difficulties in the child's behaviour | Other obstacles in the care of the child on the part of the parents | Total        |
|------|--------------------|-------------|-----------------------------------|--|---|--------------|
| 2016 | 158                | 42          | 1 665                             | 937  | 1 010   | <b>3 812</b> |
| 2017 | 141                | 24          | 1 640                             | 871  | 1 070   | <b>3 746</b> |
| 2018 | 122                | 43          | 1 541                             | 862  | 1 071   | <b>3 639</b> |
| 2019 | 167                | 29          | 1 608                             | 843  | 932   | <b>3 579</b> |

Source: Ministry of Labour and Social Affairs

**Table no. 2: The total number of removed children and the proportion of those who were removed due to “upbringing difficulties in the child’s behaviour” compared to the cases of child maltreatment and abuse**

|      | Total number of removals | The proportion of cases of child maltreatment and child abuse in the total number of removals (%) | The proportion of cases of „upbringing difficulties in the child’s behaviour“ (%) |
|------|--------------------------|---|---|
| 2016 | <b>3 812</b>             | 5,2   | 24,6  |
| 2017 | <b>3 746</b>             | 4,4   | 23,3  |
| 2018 | <b>3 639</b>             | 4,5   | 23,7  |
| 2019 | <b>3 579</b>             | 5,5   | 23,6  |

Source: Ministry of Labour and Social Affairs

**Table no. 3: The number of children in closed regime institutions (diagnostic institutions, children homes with school, closed educational institutions) 2016-2019**

|      | Children homes (open institutions) | Diagnostic institutions | Children homes with school | Closed educational institutions | Total number in educational institutions | Total number of children in closed regime institutions | %           |
|------|------------------------------------|-------------------------|----------------------------|---------------------------------|--|--|-------------|
| 2015 | 3751                               | 376                     | 728                        | 983                             | <b>5838</b>                              | <b>2087</b>  | <b>38,8</b> |
| 2016 | 3785                               | 390                     | 720                        | 1009                            | <b>5904</b>                              | <b>2119</b>  | <b>35,9</b> |
| 2017 | 3846                               | 369                     | 682                        | 941                             | <b>5838</b>                              | <b>1992</b>  | <b>34,1</b> |
| 2018 | 3831                               | 377                     | 749                        | 926                             | <b>5883</b>                              | <b>2052</b>  | <b>34,9</b> |
| 2019 | 3866                               | 378                     | 796                        | 950                             | <b>5990</b>                              | <b>2124</b>  | <b>35,5</b> |

Source: Ministry of Education, Youth, and Sports

<sup>21</sup> Data for 2019. Source: Ministry of Labour and Social Affairs.

22. Contrary to the protective care ordered by the criminal court, child protection measures are, in principal, limited in their duration. However, all the cited child protection measures may be prolonged or replaced one by another. Therefore, in practice, the situation of the child placed in the closed regime institution upon a child protection measure does not really differ from the situation of the child under protective care.
23. It is true, that the law differentiates between the two groups,<sup>22</sup> especially as regards the rights connected to walks and visits, but the regime both groups of children are subjected to is practically the same. Children under child protection measures are not allowed to leave the institution at their will and their day is strictly organised by the institution. The protection a child receives in this type of institutions is confused with her subordination to intensive discipline and re-education. The child's situation can thus hardly comply with the UN Guidelines on Alternative Care, requiring that measures aimed at protecting children in care do not "involve unreasonable constraints on their liberty and conduct in comparison with children of similar age in their community" and apply only to the extent strictly necessary to ensure effective protection of children against abduction, trafficking, sale and all other forms of exploitation".<sup>23</sup>
24. Besides, the placement in closed regime institutions deprives children of equal opportunities in education. The vast majority of children attend school within the facility, which is particularly so for adolescents who are placed in closed educational institutions. Closed educational institutions are designed for adolescents over 15, with the defined exceptions when a younger child may be placed therein, i.e. for children in the age of secondary education. These children are thus usually dependent on the educational programmes available within the facility. These programmes are, as a rule, those of lower secondary vocational education (so-called "E category"), designed predominantly, according to the Ministry of Education, Youth and Sports, for children with special educational needs. "The programmes prepare for the performance of simple work in manual occupations and services".<sup>24</sup>
25. The failure to ensure children placed in closed regime facilities effective access to quality and inclusive education on an equal basis with others is only one example of isolation and segregation children are subjected to in these facilities. This approach is absolutely intolerable as a measure of child protection (in fact it would be hardly acceptable even in the context of a criminal sanction). We argue that this approach to child protection, based on coercion, discipline, and re-education, that corresponds to what the Interamerican Commission of Human Rights called the "irregular situation" paradigm or the doctrine of tutelary protection,<sup>25</sup> constitutes ill-treatment, at least in those cases when it results in the deprivation of liberty of the child, *per se*.

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<sup>22</sup> Act no. 109/2002 Coll. on the exercise of the institutional care and protective care.

<sup>23</sup> A/RES/64/142, paras. 92 and 93.

<sup>24</sup> Cited according to the website of the Ministry of Education, Youth and Sports, available in Czech at: <http://www.nuv.cz/t/stredni-vzdelavani> [accessed 22/1/2021].

<sup>25</sup> See, *inter alia*, Interamerican Commission of Human Rights. Fulfillment of Children's Rights, 2017, p. 28, para. 39. The report is available at: <https://www.oas.org/en/iachr/reports/pdfs/FulfillmentRights-Children.pdf> [accessed 22/1/2021].

26. The UN Special Rapporteur on the Right to Health, Dainius Pūras, on the right to health characterised places of detention of whatever kind as places where violence and humiliation are common and usually prevail adversely affecting the development of healthy relationships.<sup>26</sup> Specifically with respect to children, the UN Special Rapporteur emphasised that “children’s creativity, communication, sleeping, waking, playing, learning, resting, socializing, and relationships are compulsively controlled in detention and transgressions punished, while those administering the punishment enjoy impunity.” The permanent and very intensive control and subordination leads to daily deprivations that are often complemented by behavioural interventions in order to “treat” and “reform”. Such “treatment” approaches further entrench the idea of a troubled child “in need of repair”, ignoring that changes are needed to address right-to health determinants, such as inequalities, poverty, violence, and discrimination, especially among groups in vulnerable situations. This, in turn, leads to children living in forced confinement and fuels their struggles. (...) Coping mechanisms employed by stressed and desperate children, which include assaults against themselves and others, are perceived by society and judicial and welfare systems as acts that are self-harming, anti-social and/or violent. The harm inflicted by institutions themselves too often goes unacknowledged. There can be no hesitation in concluding that the act of detaining children is a form of violence. (...).<sup>27</sup>

#### **Proposed questions:**

**What measures do the Government plan to adopt to stop placements of children in closed regime facilities for “behavioural difficulties”?**

**Do the Government have any plan to eliminate closed regime facilities in which children may be placed not only on basis of protective care as a juvenile justice measure but also upon a child protection measure?**

**If yes, in what timeframe will the planned reforms adopted?**

#### **5. SOLITARY CONFINEMENT OF CHILDREN**

27. Czech legislation still enables the use of solitary confinement against children in different contexts. Solitary confinement exists under the Czech legislation as a disciplinary measure in criminal custody<sup>28</sup> and prison,<sup>29</sup> as a restraint measure in security detention facilities,<sup>30</sup> psychiatric hospitals,<sup>31</sup> and closed regime institutions (diagnostic institutions, children’s homes with school and closed educational institutions).<sup>32</sup> In all these settings the measure may be imposed also on a child, regardless his/her age.

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<sup>26</sup> A/HRC/38/36, paras. 32-33.

<sup>27</sup> Ibid., paras. 67-69,

<sup>28</sup> Act no. 293/1993 Coll., on the execution of criminal custody, sections 22 (2) (e) and 26 (4).

<sup>29</sup> Act no. 169/1999 Coll., on the execution of the punishment of imprisonment, sections 46 (3) (h) and 64 (1) (g).

<sup>30</sup> Act no. 129/2008 Coll., on the execution of security detention, sections 35 and 36 (2) (b).

<sup>31</sup> Act no. 372/2011 Coll., Health Care Act, section 39 (1) (d).

<sup>32</sup> Act no. 109/2002 Coll., on the execution of institutional care or protective care in educational facilities and preventive-upbringing care in educational facilities, section 22.

28. The regime between the use of solitary confinement as a disciplinary sanction and a restraint measures differs to the extent that the disciplinary sanction should be the result of formal, albeit simple, proceedings of an adversarial nature in which the child's responsibility, including *mens rea*, has been adequately proved.<sup>33</sup> Furthermore, it is imposed for a predeterminate period of time. Solitary confinement as a restraint measure is adopted in a case of emergency, under rather vague substantive conditions,<sup>34</sup> and for a not predeterminate period of time. The use of solitary confinement as a restraint measure is limited by the maximum duration provided for by law only for closed regime institutions for children (6 hours continuously, 48 hours in a month at the maximum).
29. The UN Special Rapporteur on torture, Juan E. Méndez, expressed on several occasions that solitary confinement must never be used for the purpose of punishment,<sup>35</sup> "either as part of a judicially imposed sentence or a disciplinary measure"<sup>36</sup> and that it "should be imposed, if at all, in very exceptional circumstances, as a last resort, for as short time as possible and with established safeguards in place after obtaining the authorization of the competent authority subject to independent review."<sup>37</sup> Nevertheless, concerning children, neither the rule of very exceptionality may apply since "the imposition of solitary confinement, of any duration, on children constitutes cruel, inhuman or degrading treatment or punishment or even torture."<sup>38</sup>
30. The UN Special Rapporteur on the right to health, Dainius Pūras,<sup>39</sup> and particularly the UN Committee on the Rights of Persons with Disabilities then extended the criminal justice discourse of the use of solitary confinement to the health care and social care discourse. The CRPD Committee lists solitary confinement among restraint measures that contradict Article 15 of the UN Convention on the Rights of Persons with Disabilities guaranteeing freedom from torture or cruel, inhuman, or degrading treatment or punishment.<sup>40</sup>
31. The conclusions drawn by the UN Special Rapporteur on torture are thus much more far-reaching and should not be interpreted narrowly to cover only the juvenile justice system. Such an approach corresponds also to the General comment of the UN Committee on the Rights of the Child no. 13 in which the CRC Committee explicitly designated the use of solitary confinement, without any limitation to a specific context, as a form of mental violence against the child.<sup>41</sup> Nevertheless, the Czech legislation fails to provide children with effective protection in this regard.

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<sup>33</sup> Act no. 293/1993 Coll., on the execution of criminal custody, sections 22 (1) and 23 (2); and Act no. 169/1999 Coll., on the execution of the punishment of imprisonment, sections 46 (1) and 41 (7).

<sup>34</sup> For instance, in a closed regime institution, the placement in solitary confinement, so-called „separate room“, may take place if it is „in the interest of calming down an aggressive child and stabilizing her mental state“. – See Act no. 109/2002 Coll., on the execution of institutional care or protective care in educational facilities and preventive-upbringing care in educational facilities, section 22 (1).

<sup>35</sup> A/66/268, para. 72.

<sup>36</sup> A/68/295, para. 61.

<sup>37</sup> Ibid. para. 60.

<sup>38</sup> A/28/68, para. 44.

<sup>39</sup> A/HRC/38/36, paras. 32 and 39.

<sup>40</sup> A/72/55, para. 38.

<sup>41</sup> CRC/C/GC/13, para. 21 (f).

## Proposed questions:

**Do the Government plan to repeal the provisions that allow placing children in solitary confinement in different types of facilities, including criminal, health care, and educational care ones?**

**If yes, when do the Government plan to adopt the amendment?**

## **6. FAILURE TO ENSURE SECURE TENANCY OF HOUSING AND EFFECTIVE PROTECTION AGAINST EVICTION**

32. The last topic to cover in this submission concerns the systemic failure of Czechia to provide persons in a vulnerable situation with effective enjoyment of their right to adequate housing due to which many persons, including families with children, have to face precarious living conditions and permanent risk of homelessness. We would like to focus specifically on the extremely harmful legislation and practice of the so-called “housing benefit-free zones”.
33. Housing benefit free zones were introduced in the Czech law by the amendment to the Material Needs Support Act (no. 111/2006) in the mid-2017<sup>42</sup> as a legal measure that empowers municipal offices to decide that in a certain zone of its territory or its territory as a whole the new coming inhabitants will not have the right to claim housing benefits. Since its adoption, the amendment has a particularly negative impact on Roma people as well as people facing poverty and social exclusion since for these people it is very hard to find rental housing on the commercial market due to discrimination.<sup>43</sup> They are thus dependant on living in hostels which charge them disproportionately high fees that are impossible to pay without the housing benefit provided by the State. These hostels and their practices are often called “business with poverty” as the housing benefit goes directly to the owner of the hostel. The rental prices in these hostels or excluded localities is sometimes as much as three times higher than is the market price in the given locality.
34. The adoption of the amendment introducing housing benefit free zones was justified, inter alia, by the need to fight “the business with poverty”.<sup>44</sup> The logic should be, at least as the amendment was presented, to designate the most excluded localities of the territory, so-called “localities with an increased incidence of socially undesirable phenomena”, as zones where the newcomers will not have the right to claim housing benefit and thus prevent poor people dependent on housing benefits to move to the problematic locality. Nevertheless, the amendment is conceived strictly repressively. It does not accompany the loss of the entitlement to housing benefit with any supportive and positive measure that would provide persons living in precarious conditions in hostels with an adequate alternative to satisfy their housing needs.

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<sup>42</sup> Amendment no. 98/2017 Coll.

<sup>43</sup> As found out by the Office of the Public Defender of Rights in its Handbook for Educators in Social Work on Discrimination and Equal Treatment, issued in September 2020, p. 18. The Handbook is available in Czech at: [https://www.ochrance.cz/fileadmin/user\\_upload/DISKRIMINACE/aktuality/Prirucka-pro-vzdelavatele-v-socialni-praci.pdf](https://www.ochrance.cz/fileadmin/user_upload/DISKRIMINACE/aktuality/Prirucka-pro-vzdelavatele-v-socialni-praci.pdf) [accessed 22/1/2021].

<sup>44</sup> The explanatory note to the amendment. The explanatory note is available in Czech at: <https://www.psp.cz/sqw/text/tiskt.sqw?o=7&ct=783&ct1=0> [accessed 22/1/2021].

35. Furthermore, since the loss of the entitlement to housing benefit concerns any new rental contract concluded after the declaration of the housing benefit free zone by the municipality, it directly affects persons who have been already living in the place and who had rental contract renewed. Typically, in hostels, the owners conclude only short-term contracts, e.g. for no longer than three or six months. It is thus common that after the expiration of the contract, the person loses her entitlement to housing benefit, even though she stays in the same place, when the municipality declares a housing benefit free zone in the meantime. Often, this person or family cannot afford renting the place without the housing benefit and has to move out, often to another part of the town or municipality. It is extremely difficult for these persons to find affordable housing as there a desperate shortage of affordable flats all over the country. In addition, as renting hostels to poor families was no longer a profitable to the businessman with poverty, many such hostels closed and left hundreds of families on the street. Housing benefit free zones have thus become a tool of the expulsion of people who are not welcome by the majority from the municipality. Municipalities use this measure in this way rendering poor persons, including families with children, immediately endangered by homelessness.<sup>45</sup>
36. The Human Rights Committee expressed in its Concluding Observations on Czechia of 2019 its concern “that municipalities are increasingly declaring or planning to declare housing benefit-free zones, reportedly aimed at putting pressure on Roma to move into segregated areas or remain in them” and noted, “that a legal action against the housing benefit-free zones is pending before the Constitutional Court”.<sup>46</sup> It is worth noting that a legal action was submitted to the Constitutional Court by a group of senators in 2017 that proposes to abolish the amendment for its conflict with human rights. The Constitutional Court has not issued the decision on the action yet.<sup>47</sup>
37. The situation of poor persons, who are mainly of Roma origin, becomes more and more precarious and even unsolvable as the number of housing benefit free zones grows. The amendment threw these people on the path of the nomads between the municipalities where they, however, cannot settle. It is obvious that the vulnerability of these people is only significantly deepened, and that the position of these people can be hardly considered dignified. Regarding the importance of adequate housing, underlined for instance by the UN Special Rapporteur on the right to adequate housing, Leilani Farha, in her report on the right to adequate housing and right to life,<sup>48</sup> it is not too exaggerated to conclude that the amendment made poor persons,

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<sup>45</sup> For instance, the municipal office of Ústí nad Labem, which is known for a high number of socially excluded localities and high representation of Roma, immediately after the adoption of the amendment informed all its local municipalities and ask them to submit the proposal for housing benefit free zone. See the video record with deputy mayor Jiří Madar of 6/8/2017, available at: <https://www.youtube.com/watch?v=eUt7-r5-dDM> [accessed 22/1/2021].

<sup>46</sup> CCPR/C/CZE/CO/4, para. 14.

<sup>47</sup> The constitutional action is available in Czech at: [https://www.usoud.cz/projednavane-plenarni-veci?tx\\_odroom%5Bdetail%5D=2536&cHash=31f1e5665889ed3c9296724c52669fcb](https://www.usoud.cz/projednavane-plenarni-veci?tx_odroom%5Bdetail%5D=2536&cHash=31f1e5665889ed3c9296724c52669fcb) [accessed 22/1/2021].

<sup>48</sup> A/71/310.

majority of them are Roma, a new sort of “homo sacer”<sup>49</sup> – a person who is banned and may be killed by anybody.

**Proposed questions:**

**Do the Government plan to repeal the legislation allowing municipalities to create the housing benefit-free zones?**

**What other measures do the Government plan to adopt to ensure that adequate housing is available and accessible to all persons on an equal basis?**

**What measures do the Government plan to adopt to support persons who face social exclusion and poverty?**

**What is the timeframe of all the Government’s plans in the field of the right to adequate housing?**

Thank you for your attention.

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<sup>49</sup> See AGAMBEN, G. *Homo Sacer. Sovereign Power and Bare Life*. translated by Daniel Heller-Roazen. Stanford: Stanford University Press, 1998. 228 p.