



**ombudsman**

Public Defender of Rights

## **Statement of the Public Defender of Rights**

**on the list of issues prior to submission of the seventh periodic report**

**on the Czech Republic due in 2022**

**on measures implemented to perform its obligations under the Convention against**

**Torture and other Cruel, Inhuman or Degrading Treatment or Punishment**

## Table of Contents

Introduction.....	3
I. Safeguards against torture and other forms of ill-treatment.....	4
Independent control over the conditions of restriction of personal freedom in facilities for the detention of foreigners, reception centres for asylum seekers and forensic treatment.....	4
Training in the detection of ill-treatment.....	5
II. Psychiatric care .....	5
Increase in the number of patients in the institutional forensic (psychiatric) treatment .	5
Legal safeguards to treatment without consent .....	6
III. Prisons.....	6
Health care in prisons .....	6
Medical confidentiality .....	6
Disciplinary punishments.....	7
Investigation of ill-treatment in prisons.....	7
Overcrowding of prisons and penal policies .....	8
IV. Facilities for children.....	8
Young children in institutional care.....	8
V. Police cells.....	9
Right to free legal aid in first hours of limitation of personal liberty in the police cell.....	9
The access to outdoor exercise in case of police detention longer than 24 hours .....	9
VI. Foreigners .....	10
No access of NPM to persons deprived of their liberty during forced returns.....	10
The obligation of foreigners to pay for their detention .....	10
Stateless persons.....	11
Insufficient mechanism of identification of vulnerable persons placed in detention facilities.....	12
VII. Equal treatment and protection against discrimination.....	12
Involuntary sterilization.....	12
Education of Roma children .....	13

## Introduction

The Public Defender of Rights of the Czech Republic (hereinafter also referred to as the Defender) is the Ombudsman Institution in the Czech Republic which has been entrusted by several additional mandates.<sup>1</sup> The Defender also performs the duties of the National Preventive Mechanism (NPM) according to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter referred to as OPCAT or Optional Protocol), the Equality Body according the EU legislation, the monitoring body according to the Convention on the Rights of Persons with Disabilities, the body for the protection of rights of EU citizens and their family members, and the body monitoring forced returns of third-country nationals according to the EU legislation. The Defender, however, does not perform the mandate of the National Human Rights Institution in the Czech Republic.

Based on the above mentioned NPM mandate, the Defender presents to the Committee against Torture the statement on the list of issues prior to submission of the seventh periodic report on the Czech Republic due in 2022 which is to be discussed on the Committee's 70th session.

The purpose of this statement is to draw the Committee's attention to the topics the Defender and his Deputy consider as the most important issues in relation to the fulfilment of the obligations of the Czech Republic according to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

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<sup>1</sup> Section 1 of the Act 349/1999 Coll. of 8th December 1999 on the Public Defender of Rights. Available at: <https://www.ochrance.cz/en/law-on-the-public-defender-of-rights/>

## **I. Safeguards against torture and other forms of ill-treatment**

### **Independent control over the conditions of restriction of personal freedom in facilities for the detention of foreigners, reception centres for asylum seekers and forensic treatment**

In accordance with Articles 13 and 3 of the Convention, the state is obliged to establish effective and independent control in places where a person is deprived of his or her freedom. This control should be carried out by an independent public authority, which must have legal instruments at its disposal to solve possible breaches of the law, including the power to issue a binding decision.<sup>2</sup> From 2006, the Public Defender of Rights carries out the control over the conditions in such facilities from the position of NPM in the sense of the OPCAT. However, the Defender does have enforceable legal tools at his disposal to rectify the violations of rights.

Another institution conducting such control is the Public Prosecutor's Office. However, the Public Prosecutor's Office is not authorised to carry out the control of all facilities where persons are deprived of their liberty. Act No. 283/1993 Coll., on the Public Prosecutor's Office requires an authorization by a special law to carry out the supervision of each specific type of a facility.

Based on such authorization, the Public Prosecutor's Office is currently entitled to supervise prisons, secure preventive detention, and institutions of institutional and protective education. Contrarily, it cannot carry out any supervision in the detention facilities for foreigners, reception centres and psychiatric hospitals where forensic treatment takes place, because special laws (Act No. 325/1999 Coll. Asylum Act, Act No. 326/1999 Coll. Foreigners' Residence Act and Act No. 373/2011 Coll. Specific Healthcare Services Act) do not contain any authorisation of the Public Prosecutor's Office to carry out such supervision.

In order to claim the enforceable protection of their rights, detained foreigners, foreigners in reception centres and persons in forensic treatment can turn to the court. This procedure, however, is often very lengthy, costly, and difficult due to the restriction of these persons freedom. The complaints mechanism is also lengthy, and its enforcement is often inefficient. Furthermore, authorities handling complaints are often the same authorities who administer the facilities and therefore it does not ensure the independence of such control.

Therefore, the Czech NPM recommends that the Act on Asylum, the Foreigners' Residence Act, and the Act on Specific Healthcare Services be amended and include a special authorization of Public Prosecutor's Office to carry out independent supervision of the compliance with the legal regulations in the facilities for the detention of foreigners, reception centres for asylum seekers and forensic treatment.

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<sup>2</sup> This conclusion is inferred from the case-law of the European Court of Human Rights. *Anayev and Others v. Russia*, Complaints Nos 42525/07 and 60800/08, decision of 10 January 2012, § 214-216.

## Training in the detection of ill-treatment

A state is obliged not only to refrain from torture and ill-treatment but also to establish an effective investigation of such treatment. According to the Istanbul Protocol adopted in 1999, one of the requirements for an effective investigation is specific training for healthcare professionals and other professionals working with persons deprived of their freedom. They should take specific courses to identify ill-treatment, without causing secondary victimization of the victim of ill-treatment.

In the Czech Republic, health checks of detainees are considered part of the routine health checks, and paramedics do not undergo any special training to detect the signs of ill-treatment. E.g., medical reports contain only a description of the injury, without a further opinion of a doctor from which suspicion of ill-treatment could be inferred.<sup>3</sup> The NPM is not aware of any systematic training for other non-medical staff in the facilities where persons deprived of their liberty are placed. The Committee against Torture criticized the Czech Republic for the lack of systematic training in the detection of the signs of ill-treatment for all professionals working with persons deprived of their freedom.<sup>4</sup>

## II. Psychiatric care

### Increase in the number of patients in the institutional forensic (psychiatric) treatment

In the Czech Republic, there is an increasing number of patients restricted in their personal freedom in an institutional forensic (psychiatric) treatment. Each year, this number increases by 10 %.<sup>5</sup> One of the causes of the described situation can be seen in the courts' decision-making. Courts issue judgements ordering an institutional forensic treatment more often and approach to the transformation of the treatment into an outpatient form less often. There is also an increasing number of changes from forensic treatment to secure preventive detention, which is a stricter preventive measure carried out in a more secure and restrictive facility administrated by the Prison Service of the Czech Republic, on grounds of a judicial decision.<sup>6</sup> The capacity of secure preventive detention is almost exhausted, and its increase is being considered. The growth of institutional forensic treatment needs to be

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<sup>3</sup> See Czech NPM report from 6 November 2017, file no. 41/2017/NZ available at: <https://eso.ochrance.cz/Nalezene/Edit/5550>

<sup>4</sup> United Nations, Committee against Torture Concluding observations on the sixth periodic report of Czechia, CAT/C/CZE/CO/6. 6 June 2018.

<sup>5</sup> PÁV, Marek, Jiří ŠVARC. Stávající stav a doporučení k dalšímu rozvoji sítě ochranného léčení. Analýza realizovaná v rámci projektu Deinstitutionalizace (Current state and recommendations regarding further development of the network of institutional forensic treatment. Analysis conducted during the project „Deinstitutionalisation“). Prague: Ministry of Health, 2018. Available at: [https://www.google.cz/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwjwm5SvrKjuAhWCAXAIHXN7ACgQFjABegQIBBAC&url=http%3A%2F%2Fstaryweb.mzcr.cz%2FODBornik%2FSoubor.ashx%3FsouborID%3D40103%26typ%3Dapplication%2Fpdf%26nazev%3D11\\_Priloha%252011\\_stav%2520a%2520ozvoj%2520site%2520OL.pdf&usq=AOvVaw3FV4vX5-WI-jhMTbVrUcu4](https://www.google.cz/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwjwm5SvrKjuAhWCAXAIHXN7ACgQFjABegQIBBAC&url=http%3A%2F%2Fstaryweb.mzcr.cz%2FODBornik%2FSoubor.ashx%3FsouborID%3D40103%26typ%3Dapplication%2Fpdf%26nazev%3D11_Priloha%252011_stav%2520a%2520ozvoj%2520site%2520OL.pdf&usq=AOvVaw3FV4vX5-WI-jhMTbVrUcu4)

<sup>6</sup> In certain cases, this applies to the perpetrators of less dangerous crimes who do not cooperate during the institutional forensic treatment.

tackled by the implementation of such methods which will enable the patients to return safely to everyday life, as opposed to the transfers of patients to the secure preventive detention and the subsequent expansion of the capacities of such facilities.

### **Legal safeguards to treatment without consent**

Patients with a mental disability who are treated in the Czech Republic without their consent do not have sufficient legal safeguards available to review an interference with their physical and mental integrity. It is not clear what should be done by patients who are convinced that the legal conditions for treatment without consent have not been met in their case and who seek to have their treatment reviewed by an independent institution such as a court.

It should be established under what conditions can patients in an institutional forensic (psychiatric) treatment be treated without their consent. It is not clear whether the treatment without consent can only be used in situations of serious risk to a patient's health<sup>7</sup> or whether the imposition of forensic treatment entitles psychiatric hospitals to carry out treatment without a patient's consent which does not primarily aim to reduce the risk to the patient's health, but rather to reduce the patient's dangerousness and thus enable his or her return to the society.

## **III. Prisons**

### **Health care in prisons**

Health care in Czech prisons faces long-term problems, especially in terms of the provision of available and good care, which is partially related to the lack of physicians willing to work in prisons and the lack of a strategy in prison health care (currently, prison physicians are employed by the Prison Service). So far, prison health care services have not been integrated with the civilian health care system, which has been recommended in the White Book on Development of the Czech Prisons until 2015 prepared by Prison Service. The integration has also been recommended by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) or the Moscow Declaration of the World Health Organisation (WHO).

### **Medical confidentiality**

The Health Care Services Act<sup>8</sup> stipulates that an officer of the Prison Service may be present within sight during the provision of health care to prisoners. He or she may be present within sight only in cases of risk to the life, health or safety of the medical worker or another specialist worker, or property. This provision is controversial as it assumes that, as a rule, a physician-patient meeting will have a witness (the prison guard within sight). Such legal

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<sup>7</sup> In compliance with Article 7 of the Convention on Human Rights and Biomedicine.

<sup>8</sup> Section 46 (1)(g) of the Health Care Services Act (372/2011 Col.).

regulation is unsatisfactory, not only with respect to medical confidentiality but also in view of prevention of ill-treatment (see below). Paragraph 51 of CPT Standards stipulates that all medical examinations of prisoners (whether on arrival or at a later stage) should be conducted out of the hearing and – unless the doctor concerned requests otherwise – out of the sight of prison officers.<sup>9</sup> CPT Standards thus stipulate a higher degree of confidentiality in contact with physicians than Czech legal regulations.

### Disciplinary punishments

The legal limit for the duration of solitary confinement as a form of disciplinary punishment is 14 days, which is more than the limit set out by international law. Recurrent disciplinary punishments can prolong the effective duration of solitary confinement even above the statutory maximum. The CPT has further repeatedly pointed out that the range of possible disciplinary punishment of prisoners should not include a total prohibition of contact with family if the misconduct committed did not relate to such a contact. Solitary confinement can be imposed also on juvenile inmates which is in breach of rule 45 of Nelson Mandela rules. Already in 2015, the Government promised to the CPT to prepare a draft amendment to the Service of Imprisonment Act<sup>10</sup> which would comprehensively incorporate disciplinary proceedings, it would reduce the time of solitary confinement and presence in an enclosed ward, and it would transfer decision-making on the most serious disciplinary misconduct to criminal proceedings. The promise has yet to be fulfilled.

### Investigation of ill-treatment in prisons

The prohibition of torture and other forms of ill-treatment is always weakened when the perpetrators are not held accountable for their acts. If a credible complaint is received or there are injuries indicating ill-treatment, an effective investigation must be conducted. The systematic visits of the NPM indicated that the medical reports on examination and treatment lack the parameters required for an investigation of ill-treatment. In extreme cases, the examination is limited to several questions asked in the presence of a prison officer. This is caused by low awareness of the principles governing the documentation of ill-treatment. Also, the statutory confidentiality requirement under the Healthcare Services Act does not permit a physician, without the patient's consent, to submit findings on signs of ill-treatment to authorities competent to investigate. It is necessary to provide methodological guidance to physicians and to initiate a professional debate so that physicians accept their role in combatting ill-treatment with understanding and without putting the physician-patient relationship in jeopardy. It is also necessary to modify the Healthcare Services Act so that reporting on findings of signs of ill-treatment does not represent a violation of the physician's confidentiality.

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<sup>9</sup> EUROPEAN COMMITTEE FOR THE PREVENTION OF TORTURE AND INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (CPT). CPT Standards [online]. CPT/Inf/E (2002) 1 – Rev. 2004 [retrieved on 17 January 2021]. Available at: <http://www.cpt.coe.int/lang/cze/cze-standards.pdf>

<sup>10</sup> Act No. 169/1999 Coll., Service of Imprisonment Act.

## Overcrowding of prisons and penal policies

The Czech Republic has still a relatively high prison population rate. The Czech Republic has approximately twice as many imprisoned persons per 100 thousand inhabitants as the countries of Western Europe (such as Germany, France, Italy). According to the CPT, the problem would be resolved by changing the State's penal policy, with imprisonment being an extreme measure pursuing the objective of rehabilitation of offenders and the protection of the society; greater use should be made of alternative measures.<sup>11</sup> In this respect, the Committee of Ministers of the Council of Europe issued a recommendation calling on the Member States to address the problem of overcrowding and, when reviewing their legislation, to adopt systematic measures aimed especially at preventing prison overcrowding.<sup>12</sup> In this sense, it is reasonable to review the existing penal policy and promote elements of a restorative approach in the judicial system. The penal policy has also not substantially changed and neither did the treatment of convicts during their imprisonment and after their release to reduce recidivism. The COVID-19 illness has made the situation even worse. Although certain changes were made to the penal policy (e.g., an increase in the amount set as a minimum for material damage which has to be caused to qualify as a crime, or the broadening of the possibilities of closing a so-called agreement on guilt and punishment), we are still waiting for a more systematic change of the rather strict state system of sentencing. Instead of a decrease of the length of prison sentences, with respect to some crimes the length of the prison sentences set out in the Penal Code was in fact raised. Greater use should also be made of alternative punishments (e.g., monetary penalties).

## IV. Facilities for children

### Young children in institutional care

For a long time, the Czech Republic has been criticised for placing young children in institutional care. There is a lack of preventive services, especially field and outpatient services, which would enable children to stay in their original families, if possible. Support services for families whose children have been taken away and which would help to return the child to their family quickly (social activation services) are even less available. Early detection services for families at risk<sup>13</sup> and foster care recruitment as an option for alternative childcare are missing altogether. In 2015, the Government Council for Human Rights made efforts to close "children centres" (children homes for children under the age

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<sup>11</sup> Excerpt from the seventh General Report [CPT/Inf (97) 10], par. 14. In: EUROPEAN COMMITTEE FOR THE PREVENTION OF TORTURE AND INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (CPT). CPT Standards [online]. CPT/Inf/E (2002) 1 – Rev. 2004 [retrieved on 17 January 2021]. Available at: <http://www.cpt.coe.int/lang/cze/cze-standards.pdf>

<sup>12</sup> Council of Europe Committee of Ministers. Recommendation to Member States No. R (99) 22 concerning prison overcrowding and prison population inflation.

<sup>13</sup> EUROCHILD: New opportunities for investing in children; 2019 Eurochild report on the European Semester. Available at: [https://eurochild.org/uploads/2020/12/2019\\_Eurochild\\_report\\_on\\_European\\_Semester.pdf](https://eurochild.org/uploads/2020/12/2019_Eurochild_report_on_European_Semester.pdf)

of 3) and to set age limits for placing young children in institutional care. However, no law has been adopted so far.

In 2020, the European Committee of Social Rights adopted a decision<sup>14</sup>, in which it concluded that the current system of institutional care and operation of children centres as provided for by the Czech Health Care Act constitutes a violation of Article 17 of the 1961 Charter as the system does not ensure appropriate protection and care for children under the age of 3. According to the Committee, the Czech Republic should take measures to enable young children to benefit from adequate family care and it should progressively de-institutionalise the existing system of early childhood care.

## **V. Police cells**

### **Right to free legal aid in first hours of limitation of personal liberty in the police cell**

In the Czech Republic, outside of the criminal proceedings, there is no guaranteed right to free legal aid from the very outset of the restriction of personal freedom by the Police. According to the Police Act<sup>15</sup>, persons whose freedom is being restricted have the right to obtain legal aid at their own expense.

In the criminal proceedings, persons can use the right for free legal aid after the criminal charges have been formally brought against them. For example, a detained suspect has the right to choose a lawyer, but at their own expense as they have no right to free legal aid.

However, the Police can press charges even several hours after it had already deprived someone of liberty.

After visits in 2014 and 2018, the CPT recommended the Czech authorities to put in place a fully-fledged and properly funded system of free legal aid for all detained criminal suspects who are not able to afford a lawyer. Such a system should be applicable from the very outset of one's deprivation of liberty, irrespective of whether the person concerned is already formally facing criminal charges. The Government of the Czech Republic agreed to guarantee the right to free legal assistance for all persons restricted in their liberty even outside of criminal proceedings. Nevertheless, this commitment was not fulfilled. In the Czech Republic, a law guaranteeing such free legal aid still does not exist.

### **The access to outdoor exercise in case of police detention longer than 24 hours**

Persons held in police detention longer than 24 hours should have the possibility to access outdoor exercise in the open air, at least one hour per day. The outdoor exercise should be possible in spaces of adequate size and with the necessary equipment (such as a shelter against inclement weather and tools for resting).

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<sup>14</sup> European Roma Rights Centre (ERRC) and Mental Disability Advocacy Centre (MDAC) v. Czech Republic Complaint No. 157/2017. Available at: <http://hudoc.esc.coe.int/fre/?i=cc-157-2017-dmerits-en>

<sup>15</sup> Act No. 273/2008 Coll., Police Act.

In the Czech Republic, there is no guaranteed right to outdoor exercise in the open air for persons held in police cells. During the systematic visit, it was observed in cases of limitation of liberty longer than 24 hours that persons held in police detention facilities were not offered any outdoor exercise.

Repeatedly, the CPT recommended the Czech Republic to provide access to outdoor exercise to all persons held in police cells according to the international standards.

## **VI. Foreigners**

### **No access of NPM to persons deprived of their liberty during forced returns**

The Public Defender of Rights (hereinafter referred to as PDR) is responsible for the monitoring of forced returns on grounds of the NPM mandate and also on grounds of Art. 8/6 of the so-called Return Directive.

OPCAT guarantees the NPM unimpeded access to all places of detention. Means of transport for the transfer of returnees is one of the categories falling within the scope of application of Article 4 of the Optional Protocol.

However, in the course of the return procedure, the NPM staff is never permitted to join the returnees in the police escort vehicles. In practice, this means that a considerable and crucial part of the return procedure is not monitored at all. The NPM cannot access the returnees even when means of restraint or force are used and, similarly, it cannot observe the return procedure of vulnerable groups of people.

Even though there is a lot of negotiation regarding the topic, an agreement has not been reached so far. Therefore, the mission of the NPM is rather ineffective and the returnees are deprived of the safeguards guaranteed by both international and European human rights law.

### **The obligation of foreigners to pay for their detention**

During the sixth periodic report of Czechia in 2018, one of the concluding observations of the Committee against Torture was that the Czech Republic should review and possibly abolish the policy of obliging detained foreigners awaiting deportation to pay for their detention.<sup>16</sup> However, this practice has not changed since. Foreigners in detention centres have to pay 242 CZK (approx. 10 EUR) per day for food and accommodation. The same applies to asylum seekers in the reception centres and to the foreigners detained in order to be transferred to another EU Member State according to the Regulation (EU) No. 604/2013 of the European Parliament and of the Council (hereinafter referred

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<sup>16</sup> United Nations, Committee against Torture: Concluding observations on the sixth periodic report of Czechia. 2018-06-06, CAT/C/CZE/CO/6, paragraph 21. Available at:

<http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPrICAqhKb7yhsp%2B9eLcLzGpNwjAAHOrzLSfPca0GmlnmekYoXk%2BD1609gbqT8xkslcaJWXsrG9RnPiqa%2Bo8XC6FSIS5Iufe%2FFn9yAQ7eWp3z6VzDIEquMz>

to as “Dublin III regulation“). In relation to the latter group, the obligation has been contested before the Court for breaching Article 30 of Dublin III regulation. The case is currently to be decided by the Supreme Administrative Court, to which the former PDR submitted an *amicus curiae* observation in order to provide opinion on the matter.

In general, it must be pointed out that there is a stark difference among the amounts paid by detained foreigners, persons in pre-trial detention and prisoners. Foreigners have to pay 7.260 CZK (approx. 280 EUR) for 30 days, persons in pre-trial detention have to pay 1.350 CZK (approx. 52 EUR) for 30 days, and (working) convicted prisoners have to pay a maximum of 1.500 CZK (approx. 58 EUR) per month (the amount depends on the salary or other type of income). It must be emphasized that the detention of foreigners is supposed to be an administrative type of detention. It is not a tool of criminal law, such as the prison sentence. The obligation of foreigners to pay for their involuntary stay in detention should be reviewed. Back in 2015, the UN High Commissioner for Human Rights Zeid Ra’ad Al Hussein voiced a similar opinion in this matter.<sup>17</sup>

### Stateless persons

According to the concluding observation of Committee against Torture on the sixth periodic report of Czechia in 2018, the State party should have introduced a definition of statelessness into its domestic legislation. It should have also established a dedicated statelessness determination procedure, provide stateless persons with identification documents, and create a central database of stateless persons in its territory. However, according to the numerous inquiries of the Public Defender of Rights and despite the attempts to reach some remedial measures,<sup>18</sup> there are still systemic problems related to the determination procedure, legal status of applicants for determination of statelessness and legal status of persons being recognised as stateless.

Firstly, there were (and still persist) significant delays in the determination procedure. Although the length of the determination procedure should not standardly exceed six months, in some cases the procedure took more than two years.<sup>19</sup> Secondly, the legal status of applicants for determination of statelessness remains problematic. According to the Act No. 325/1999 Coll. Asylum Act (as interpreted by the Supreme Administrative Court<sup>20</sup>) the applicants should have by analogy the same legal status and rights as asylum seekers. However, in practice, they are not provided with proper identification documents, they have no access to the public health insurance system, they have problems with obtaining a work

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<sup>17</sup> United Nations, Office of the United Nations High Commissioner for Human Rights: Zeid urges Czech Republic to stop detention of migrants and refugees. 2015-10-22. Available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16632&LangID=E>

<sup>18</sup> For example, File No. 2235/2018/VOP, 2959/2018/VOP, 6925/2019/VOP, 7081/2019/VOP, 491/2019/VOP/LJ, SZD 32/2020 or SZD 33/2020.

<sup>19</sup> For example, file No. 2235/2018/VOP.

<sup>20</sup> For example, decision of the Supreme Administrative Court of 12 March 2019, No. 4 Azs 365/2018.

permit, and they have no access to the accommodation facilities. This results in their extremely vulnerable position despite the ongoing determination procedure. Finally, the legal status of a person recognised as stateless remains also problematic. Recognised stateless persons are entitled only to the temporary visa for tolerated stay. Even though the length of the validity of a visa might be extended, it leaves recognised stateless person in a very uncertain position, for example without proper access to the social security system, without possibility to travel abroad or without proper identification documents.

### **Insufficient mechanism of identification of vulnerable persons placed in detention facilities**

The PDR has received complaints suggesting that there is no sufficient mechanism of identification of vulnerable persons, especially victims of human trafficking, in detention facilities.<sup>21</sup> The Act on Residence of Foreign Nationals does not stipulate any requirement for the police to assess the vulnerability of the foreign national when deciding on his or her detention. This obligation stems only from international obligations of the Czech Republic. Usually, the Regional Police Directorate issues a decision on detention of foreign nationals. When the detention decision is issued the police consider whether the removal of the foreign national is objectively possible, i.e., whether there are flights to the country of origin of the foreign national and whether the relevant embassy is willing to issue the travel document to the foreign national. There is no assessment in the decision on detention whether the physical or mental health of the foreign national allow his or her detention. This is problematic especially when the length of the detention is being extended because the Regional Police Directorate (who issued the original decision on detention and who also decides on the extension of the detention) is no longer in contact with the foreign national. Social workers or other employees who are present in the detention facilities might be aware of the vulnerability of the detained foreign national, however, there is no screening mechanism requiring them to inform the police (who could terminate the detention) about the vulnerability of the foreign national.

## **VII. Equal treatment and protection against discrimination**

### **Involuntary sterilization**

Contrary to the recommendations of the Public Defender of Rights<sup>22</sup> and international institutions, no special mechanism for compensation of involuntary sterilisation has been adopted so far.

In 2019, a group of Czech legislators proposed a bill to compensate victims of forced sterilisation. Based on this proposal a one-time compensation payment in the amount of

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<sup>21</sup> For example, file No. 775/2020/VOP.

<sup>22</sup> Final statement of the Public Defender of Rights in the matter of sterilisations is available at: [https://www.ochrance.cz/fileadmin/user\\_upload/ENGLISH/Sterilisation.pdf](https://www.ochrance.cz/fileadmin/user_upload/ENGLISH/Sterilisation.pdf)

CZK 300 000 (EUR 11 468) could be awarded to each victim of forced sterilisation. The Czech government adopted a neutral position with respect to this bill and in October 2019, the proposal of the bill was sent to all members of the Chamber of Deputies. Since then, the proposal has been waiting for its first reading.<sup>23</sup> However, due to the pandemic situation and related state of emergency no further steps have been taken.

If the Chamber of Deputies does not start with the discussion of the proposal as soon as possible, the bill will probably not be adopted in this election term, as the new elections to the Chamber of Deputies will take place in October 2021. All the efforts would then have to start all over again.

For this reason, also the Commissioner for Human Rights at the Council of Europe intervened and called on all members of the Chamber of Deputies to ensure quick establishment of the mechanism for compensation.<sup>24</sup> Also the Defender's Deputy Monika Šimůnková asked members of the Chamber of Deputies to discuss and support the proposal.<sup>25</sup>

### Education of Roma children

There is a persistent inequality in the Czech education system regarding Roma and non-Roma children. The first issue is a disproportional placement of Roma children in educational programmes for children with mild mental disability. The second issue is the segregation of schools – Roma children are frequently placed into schools primarily attended by Roma pupils.

In 2007, the European Court of Human Rights (ECtHR) decided that frequent education of Roma children in programmes for children with mild mental disability is discriminatory.<sup>26</sup> The Czech Republic has been trying to remedy the situation. But the Roma children are still 12 times more likely to be educated according to the reduced curricula than non-Roma

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<sup>23</sup> The first reading is part of Czech legislation process in which general debate in Parliament (Chamber of Deputies) takes place. After the first reading there are three possibilities – the proposal of the law is rejected, the proposal is returned to submitting or the proposal is referred to committees for further process. The state of the legislative process of this proposal and the proposal itself are available at: <https://public.psp.cz/en/sqw/historie.sqw?t=603&o=8>

<sup>24</sup> See the Letter of the Commissioner for Human Rights at the Council of Europe at: <https://rm.coe.int/letter-to-mr-radek-vondracek-speaker-of-the-chamber-of-deputies-of-the/16809fba2e>

<sup>25</sup> Press Release in Czech is available at: <https://www.ochrance.cz/aktualne/tiskove-zpravy-2020/zastupkyne-ombudsmana-zada-poslance-aby-podporili-zakon-o-odskodneni-nezakonne-steriliz/>

<sup>26</sup> ECtHR, D.H. and Others v. Czech Republic, 13 November 2007, Application No. 57325/00, available at: <http://hudoc.echr.coe.int/eng?i=001-83256>

children. The judgment of the ECtHR has yet to be implemented.<sup>27</sup> The Public Defender of Rights repeatedly criticised the situation.<sup>28</sup>

Another issue is the ethnical segregation of schools. Estimates of the numbers of Roma children in primary education suggest that pupils are sometimes educated in a segregated environment. As of the school year 2019/2020, there were 69 primary schools (out of around 4,000 primary schools in total) where Roma children made up over 50 % of the pupils. In sixteen schools, the share of Roma children even exceeded 90 %.<sup>29</sup> The situation persists even though segregation in education carries several adverse social, pedagogical, and economic implications.<sup>30</sup> The approximately 8,700 children are thus currently denied the same educational opportunities as their peers who go to non-segregated schools. The causes of the segregation are various – e.g., segregated neighbourhoods, interference by the municipality, parents' opposition to inclusive education.

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<sup>27</sup> See the latest decision of the Committee of Ministers of the Council of Europe, 3 December 2020, Ref. No. CM/Del/Dec(2020)1390/H46-8, available at: [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectID=0900001680a090bf](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680a090bf)

<sup>28</sup> See the latest opinion of the Public Defender of Rights, 14 May 2019, File No. 49/2019/DIS/VB, available at: [https://ochrance.cz/fileadmin/user\\_upload/ESO/49-2019-DIS-VB\\_Opinion\\_discrimination\\_under\\_21b.pdf](https://ochrance.cz/fileadmin/user_upload/ESO/49-2019-DIS-VB_Opinion_discrimination_under_21b.pdf)

<sup>29</sup> Ministry of Education, Youth and Sports, Report on qualified estimates of the numbers of Roma pupils in primary schools in the school year of 2019/2020, April 2020 (revised September 2020), not publicly available.

<sup>30</sup> See the summary of the research conducted by the Public Defender of Rights, 2018, available at: [https://www.ochrance.cz/fileadmin/user\\_upload/DISKRIMINACE/Vyzkum/Inclusive\\_Education\\_of\\_Roma\\_and\\_non-Roma\\_Children\\_EN.pdf](https://www.ochrance.cz/fileadmin/user_upload/DISKRIMINACE/Vyzkum/Inclusive_Education_of_Roma_and_non-Roma_Children_EN.pdf)