

# FORUM

Human Rights



## **NGO information to the United Nations Committee on the Elimination of Discrimination against Women**

**For consideration when compiling the List of Issues on the Sixth  
Periodic Report of the Czech Republic under the Convention on the  
Elimination of All Forms of Discrimination against Women**

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Submitted by the  
Mental Disability Advocacy Center (MDAC) & Forum for Human Rights  
(FORUM)

11 June 2015



## **I. OVERVIEW**

1. This written submission provides an outline of issues of concern with regard to the Czech Republic's compliance with the provisions of the Convention on the Elimination of All Forms of Discrimination against Women (hereinafter "the Convention"), with particular focus on the enjoyment of those rights by persons with disabilities. The purpose of the submission is to assist the Committee with its consideration of Czech Republic's Six Periodic Report (hereinafter "Government Report") in this initial stage of the compilation of the list of issues by the Country Report Task Force.
2. The submission has been written by the Mental Disability Advocacy Center (MDAC) and Forum for Human Rights (FORUM). MDAC is an international non-governmental human rights organisation headquartered in Budapest, Hungary advocating for rights of person with mental health and intellectual disabilities in the Central and Eastern Europe, including the Czech Republic. Its mission is to advance the human rights of children and adults with actual or perceived intellectual or psycho-social (mental health) disabilities. Focusing on Europe and central Asia, MDAC uses a combination of law and advocacy to promote equality and social inclusion. MDAC has participatory status with the Council of Europe.
3. FORUM is an international human rights organisation working in the Central European region. It provides support and leads domestic and international litigation and advocacy activities. FORUM has been supporting a number of cases pending before domestic judicial authorities and before the European Court of Human Rights, *inter alia* on violation of social rights, on the rights of women with disabilities, on the protection of vulnerable groups against torture and ill-treatment in different settings, etc. FORUM also recently co-authored alternative report to the European Committee of Social Rights on implementation of Article 17 European Social Charter by the Czech Republic and a report to the UN Committee the Rights of Persons with Disabilities in respect of the Czech Republic.

## **II. SPECIFIC COMENTS**

### **Discrimination against women with disabilities with respect to family rights**

4. The new Civil Code no. 89/2012 Coll., introduced guardianship reform and abolished plenary guardianship. However, restriction of legal capacity remained in the law, in breach of Article 12 of the UN Convention on the Rights of Persons with Disabilities (CRPD). The new Civil Code also introduced specific provisions which allow general courts to restrict a person's legal

capacity in specific matters, including family and reproductive rights. These restrictions are being used in practice especially against young women with intellectual disabilities and those with psycho-social (mental health) disabilities.

5. Concretely, the first significant concern relates to the right to marry. According to Article 673 of the Civil Code, a "*person cannot enter into marriage if his or her capacity has been restricted in this respect*". The court can restrict a woman's right to enter into marriage on the basis of her disability. Although the Government does not make any statistics available,<sup>1</sup> based on our direct experience, courts are frequently using this measure against young women with intellectual disabilities.
6. Secondly, according to Article 865 (2) of the Civil Code, "*the court deciding on restriction of legal capacity can decide also on parental responsibility*". Following this provision, when deciding on the restriction of legal capacity of a parent and usually mother, the court is under an obligation to decide on parental responsibility. The definition of parental responsibility is set out in Article 858 of the Civil Code covers the care of the child in its entirety, including health care, education, child contact, etc. In practice, restrictions of parental responsibility are made automatically when women with mental disabilities have their legal capacity restricted, and this is based on false and ungrounded assumptions that parents with mental disabilities are unfit to take care of a child. The practice is fundamentally discriminatory.
7. Recently, these provisions have been criticised by the UN Committee on the Rights of Persons with Disabilities ("CRPD Committee") in its Concluding Observations on the Czech Republic. The CRPD Committee expressed its concern that "*provisions of the new Civil Code and the Act on Social and Legal Protection of Children (Act No. 359/1999 Coll., on Social and Legal Protection of Children, as amended.), explicitly allow for restriction of legal capacity in family matters, especially the right to marriage, parental responsibility, and adoption*" and recommended to repeal these provisions.<sup>2</sup> In the light of above, the Government should take legislative steps to repeal these provisions are repealed from the new Civil Code.

### **Suggested questions to the Czech Government:**

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<sup>1</sup> "Likewise, States parties have an international responsibility to create and continuously improve statistical databases and the analysis of all forms of discrimination against women in general and against women belonging to specific vulnerable groups in particular." CEDAW Committee General Recommendation 28, para. 10.

<sup>2</sup> Concluding observations on the initial report of the Czech Republic, 17 April 2015, para. 45 and 46.

**When will the Government repeal Articles 673 and 865(2) of the Civil Code no. 89/2012 Coll. to ensure that women with disabilities can exercise their right to marry, parental rights and right to adopt on an equal basis with others?**

**What plans do the Government have to collect data about the family and reproductive rights of women with disabilities, disaggregated by sex, age and impairment type?**

### **Institutionalisation of elderly women with disabilities**

8. The Czech Government committed itself to deinstitutionalisation and the transformation of residential social care services in 2007 when it adopted the 'The Concept of support of transformation in residential social care services to different kinds of services provided in the natural community and supporting the social inclusion of the user to society' ("DEI policy"). However, despite of the progressive ideals of the concept,<sup>3</sup> no significant change has happened so far regarding the transformation and deinstitutionalisation of services for elderly people with disabilities. On the contrary, elderly people are not listed among recipients of the DEI policy and local municipalities are now building new institutions or renovating large institutions instead of transforming them into community-based services. This situation disproportionately affects elderly women.
9. In the Czech Republic, social services are provided under Social Services Act no. 108/2006 Coll. The law regulates specific forms of social services designed for specific groups, including homes for elderly people (Article 49) and homes with special regime (Article 50). Elderly people are usually placed and institutionalised in these two types of institutions. In December 2013, there were 48,162 persons living in such settings. According to 2011 research, of this number (in 2011 it was almost 46,000 persons), almost three quarters were elderly women. In total, 2.8% of the population of persons older than 65 years is living in institutions (3.4% of women and 1.9% of men). The ratio of women living in homes for elderly people is very high, almost 3/4 (74%), and in homes with special régime slightly 2/3 (68%).<sup>4</sup> Thus, elderly women are disproportionately institutionalised.

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<sup>3</sup> The aim of the project is, among others, to foster the human rights of the users of the social care services and to provide living conditions and a daily-routine for people with disabilities that is identical to that of other people.

<sup>4</sup> Wija, P. Jaká je kapacita a struktura dlouhodobé péče v České republice? [What is the capacity and structure of a long term care in the Czech Republic?], *Geriatric a gerontologie* 2013, 2, no. 3, p. 122-127. Available in Czech at: <http://www.cello-iloc.cz/wp-content/uploads/2013/11/dlouhodobá-pece.pdf>

10. Besides the absence of a DEI policy on the transformation of large institutions for elderly people, there is also a very worrying recent trend to modernise and build completely new homes for elderly people. The most recent initiatives use European Union Structural and Investment Funds ("ESI Funds") to refurbish and redevelop segregating institutions including: South Moravia Region – Home for elderly people in Brno, modernisation and extension of its capacity (approximately 1,420,000 EUR); Central Moravian Region – construction of new institutions for elderly people in Vsetín (approximately 2,420,272 EUR), in Luhačovice (approximately 2,139,037 EUR) and in Valašské Meziříčí (2,380,000 EUR). It is obvious that local municipalities are investing large sums using ESI Funds to construct new institutions for elderly people instead of supporting community-based services and alternatives to institutions. Recently, the high levels of institutionalisation of elderly people has been criticised by the CRPD Committee in its Concluding Observations on the Czech Republic, whereby the Committee noted *"with concern the lack of plans to provide support services in local communities for older persons with disabilities"* and urged the Czech Republic *"to step up the process of deinstitutionalization and to allocate sufficient resources for development of support services in local communities that would enable all persons with disabilities, regardless of their ... age, to choose freely with whom, where and under which living arrangements they will live."* Taking into account statistics, demography and policy in the Czech Republic, there is a real concern for many elderly women with disabilities that institutionalisation will be the default option for the rest of their lives.

**Suggested question to the Czech Government:**

**Explain how and when will the Government include institutions for elderly people into their deinstitutionalisation plans?**

**What steps is the Government planning to take to ensure that elderly women can choose with whom, where and under which living arrangement they will live. What steps are being taken to ensure that they are not forced to live for the rest of their lives in homes for elderly people or homes with special regime?**