



NGO information to the UN Committee on the Rights of the Child

For consideration of the fifth and sixth periodic reports of

**CZECHIA**

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Submitted by:

Validity Foundation – Mental Disability Advocacy Centre

Forum for Human Rights (FORUM)

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## I. OVERVIEW

1. This written submission provides an outline of issues of concern with regard to the Czechia's compliance with the provisions of the Convention on the Rights of the Child (hereinafter "the CRC"), with particular focus on the enjoyment of those rights by **children with intellectual and psychosocial disabilities**. The purpose of the submission is to assist the UN Committee on the Rights of the Child (hereinafter the "Committee") with its consideration of the Czechia's Fifth and Sixth Periodic Reports (hereinafter "Government Report") in the compilation of the Committee's Concluding Observations.
2. The submission has been written by Forum for Human Rights (FORUM) and is supported by Validity.
3. **FORUM** is an international human rights organisation active in the Central European region. It provides support to domestic and international human rights organisations in advocacy and litigation and also leads domestic and international litigation activities. FORUM has been supporting a number of cases pending before domestic judicial authorities and before the European Court of Human Rights. FORUM has authored and co-authored a number of reports and has provided information to UN and Council of Europe bodies on the situation in the Central European region, especially in Slovakia and the Czech Republic. For more information, please visit [www.forumhr.eu](http://www.forumhr.eu).
4. **Validity Foundation** – Mental Disability Advocacy Centre is an international human rights organisation which uses legal strategies to promote, protect and defend the human rights of adults and children with intellectual and psychosocial disabilities. Validity's vision is a world of equality where emotional, mental and learning differences are valued equally; where the inherent autonomy and dignity of each person is fully respected; and where human rights are realised for all persons without discrimination of any form. Validity holds participatory status at the Council of Europe, and special consultative status at ECOSOC. For more information, please visit [www.validity.ngo](http://www.validity.ngo).

## II. SPECIFIC COMMENTS

### (a) Institutionalisation of children with disabilities under 3 years of age

5. Despite convincing scientific evidence of the harm that institutional care can cause to very young children, Czechia **still institutionalises them**. Children under the age of 3 with specific needs or in a specific situation where alternative care is not available are regularly placed into early childhood medical care institutions ("*dětské domovy pro děti do 3 let věku*") or

“kojenecké ústavy”). This practice is based on Sections 43 and 44 of the Health Care Act no. 372/2011.<sup>1</sup>

		2010	2011	2012	2013	2014	2015	2016	2017	2018
Number of institutions		34	34	33	33	33	31	28	27	27
Number of places		1963	1783	1700	1638	1571	1470	1396	1309	1270
Number of admitted children		2077	2131	1932	1740	1606	1666	1559	1490	1474
Including	with special needs	358	710	720	698	714	694	681	708	721
	Roma	433	403	446	445	398	406	349	347	x <sup>2</sup>
	abused	55	78	66	59	57	80	74	48	55
ground for admission	health reasons	743	958	881	701	567	567	489	546	570
	health + social	380	440	345	425	487	531	520	361	420
	social	954	733	706	614	552	568	550	583	484

6. Available official data<sup>3</sup> show that since 2010, the number of places in these institutions has gradually decreased, from 1,963 places in 2010 to 1,470 in 2015. There has been a decrease in the number of institutionalised infants, from 2,077 in 2010 to 1,666 in 2015. At the same time, the number of institutionalised Romani children remained almost the same: 433 in 2010, compared to 406 in 2015. The same applies to children with disabilities: 710 in 2011 compared to 694 in 2015. Moreover, reasons for admission show that the vast majority of children are admitted either solely for health reasons (958 in 2011, decreasing to 567 in 2015) or for social reasons (954 in 2010 to 568 in 2015). The data also clearly shows that in 2014, there were 8,285 children in total raised in state

<sup>1</sup> The substantive ground for institutionalisation is found in Section 43 § 1 of the Health Care Act, which reads as follows: “Children homes for children below the age of 3 provide health care services and care to children usually until 3 years of age who cannot grow up in a family environment, who are especially ill-treated, neglected and abused and endangered in their development by the inappropriate social environment or to children with disabilities. The care means providing nutrition, accommodation, clothing and educational activity.”

<sup>2</sup> The Government stopped collecting data concerning Romani children (sic!).

<sup>3</sup> Data collected by the Institute of Health Information and Statistics of the Czech Republic and provided to FORUM on the basis of a request for information under the Act on Free Access to Information. Official Government data are also available online at:

<https://www.uzis.cz/res/f/008303/nzis-rep-2019-k33-a410-detske-domovy-pro-deti-do-3-let-veku-a-detska-centra-2018.pdf>

institutions which meant a slight decrease compared to 2013.<sup>4</sup> In 2018, out of 1,474 children in total admitted to these institutions, 570 children were admitted on the basis of health reasons and 420 health and social reasons. The same pattern is obvious also in 2017 and 2016.

7. **It follows from the table above that Romani children and children with disabilities are grossly overrepresented.** Considering the data from the perspective of ethnicity and disability, Roma children consistently make up approximately 24% of all children placed in these early childhood care institutions for children under 3 years of age. Considering that approximately 1.4–2.8 %<sup>5</sup> of the population in the Czech Republic is Romani, this represents a significantly disproportionate number of institutionalised children. For children with disabilities, who consistently make up approximately 40% of the children in these institutions, the disproportionate representation appears to be even higher – children born with disabilities constitute approximately 4% of all children born in the Czech Republic.<sup>6</sup>
8. The data shows an ongoing practice of institutionalisation of very young children based on the law which allows for routine placement in early childhood care institutions. Strikingly, it concerns predominantly the most vulnerable children in the population, namely Romani children and children with disabilities. This has been proven by the data collected by the Government's official authority. The Czech Ombudsperson moreover discovered that as many as 72 % of children are being institutionalised for more than six months. This institutional care was characterised by the Ombudsperson by these troubling words: “children have anything but love”.<sup>7</sup>

### **Recommendations:**

- Adopt clear and comprehensive plan on deinstitutionalisation of early childhood care institutions;**
- Amend the law to prohibit the institutionalisation of young children;**
- Ensure available funding is not used on the refurbishment, renovation or construction of new institutional settings. Such funding should focus on the development of community-based services.**

### **(b) Segregation of children with disabilities in the system of alternative care**

<sup>4</sup> Report on state of human rights in the Czech Republic/Zpráva o stavu lidských práv v České republice v roce 2015, p. 62, available at: <https://www.vlada.cz/cz/ppov/rtp/dokumenty/zpravy-lidska-prava-cr/zprava-o-stavu-lidskych-prav-v-ceske-republice-v-roce-2015-147918/>.

<sup>5</sup> The unofficial data from: Minister for Human Rights, *The Roma Integration Concept 2010-2013*, available at: [http://ec.europa.eu/justice/discrimination/files/roma\\_czech\\_republic\\_strategy\\_en.pdf](http://ec.europa.eu/justice/discrimination/files/roma_czech_republic_strategy_en.pdf). See also European Commission, *An EU Framework for National Roma Integration Strategies up to 2020*, Annex: available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0173:FIN:EN:PDF>

<sup>6</sup> The statistics are available online in Czech:

<http://vozickar.com/statistici-pres-milion-lidi-v-ceske-republice-ma-zdravotni-postizeni/>.

<sup>7</sup> Public Defender of Rights Report on systematic visits of health care facilities, including institutions for children under three, fn. 7, p. 60.

9. Institutionalisation of children *per se* contradicts the rights to family life and social inclusion of children with disabilities whatever the type of institution. In General Comment No. 5, the UN Committee on the Rights of Persons with Disabilities unequivocally states that “[f]or children, the core of the right to be included in the community entails a right to grow up in a family” (para 37). Similarly, the CRC Committee recently urged another State party in the Central European Region “[t]o urgently phase out the institutionalization of children while redirecting funds towards families to promote and support care in a family environment” (CRC/C/HUN/CO/6, para 28(a)).
10. Children with disabilities in Czechia face in the system of alternative care in addition to their institutionalisation in early childhood medical care institutions another form of direct discrimination which is the existence of institutions where only children with disabilities may be placed. These institutions are social care homes for people with disabilities<sup>8</sup> who are designed, according to law, for both adults and children.
11. The legal possibility to place children with disabilities to social care homes has fatal consequences for these children. The most significant is the fact that children may be placed into these institutions on basis of a contract concluded between the child’s parents and the institution which is not subjected to any public control. The child thus may be institutionalised without any supervision of the child public protection system which must be made aware about the placement not earlier than after 6 months from the moment of the child’s admission<sup>9</sup>. Children with disabilities are therefore deprived of all traditional safeguards available to children without disabilities in case that the child’s family needs support in the area of care for the child, including the principle of reasonableness and subsidiarity, the priority of providing support to the family in order to avoid the need for alternative care and the priority of alternative family-based care to alternative residential care<sup>10</sup>.
12. Furthermore, the existence of parallel system of institutions for children with disabilities deprive these children of the benefits of requirements for the number of the staff and the maximum capacity of the institution that exist in the general system of residential alternative care. For instance, in institutions designed for children requiring emergency care there must be one carer for a maximum of 4 children, the maximum capacity of the institution is set forth at the number of 28 children.<sup>11</sup> The maximum capacity of long term institutions is 48 children<sup>12</sup> and the ministerial decree provides

<sup>8</sup> Operating according to the Act no. 108/2006, § 48.

<sup>9</sup> § 6 (f) of the Act no. 359/1999.

<sup>10</sup> § 9a of the Act no. 359/1999.

<sup>11</sup> § 42 (3) and (4) of the Act no. 359/1999.

<sup>12</sup> § 4 of the Act no. 109/2002.

for that as a rule there should be 3 carers for a maximum of 8 children<sup>13</sup>. No such regulation, however, exists for social care homes.

13. Moreover, there is no legal provision requiring the separation of children from adults in social care homes. Children therefore not rarely must live together with adults with disabilities what, in the end, heightens the risk of their abuse or exploitation in the institution.
14. In the end, since social care homes are designed according to the law for both, children and adults, there is no safeguard to protect the child with disability in extreme cases from lifelong institutionalisation at one place.
15. The existence of parallel system of alternative care institutions for children with disabilities shows that the general system of alternative residential care is either not accessible for children with disabilities or fails to provide these children with reasonable accommodations. Children with disabilities must therefore face double segregation – they are separated from other institutionalised children in need of alternative care. Since in 2018 there were 448 children in social care homes<sup>14</sup> compared to 6 475 children institutionalised in the general alternative care system<sup>15</sup>, we may argue that it should not require much effort to include these children into the general system and to end their parallel institutionalisation.

## **Recommendations**

- **Adopt necessary legislative amendments to end institutionalisation of children with disabilities in all settings including in social care homes – homes for people with disabilities.**
- **Prioritise support for families and the system of family-based alternative care for all children and prioritise the provision of in-home and community-based services.**

## **(c) Deprivation of liberty of children with psychosocial disabilities in alternative care institutions**

16. Another form of segregation of children with disabilities in the system of alternative care takes form of establishing different types of institutions where children are placed by a court order. The law sets forth special type of institutions for children with “serious behavioural problems” or “temporary or permanent mental disorder” due to which the child needs educational-medical care. These institutions – children’s homes with school for children up to 15 and closed educational facilities for adolescents from 15 to 18 –

<sup>13</sup> § 2 (3) of the ministerial decree no. 438/2006.

<sup>14</sup> Data by the Ministry of Labour and Social Affairs (MoLSA). Available at: [https://www.mpsv.cz/documents/20142/975025/Statisticka\\_rocenka\\_z\\_oblasti\\_prace\\_a\\_socialnich\\_veci\\_2018+%282%29.pdf/d16a5977-62d8-0ce2-bfd4-15d6118a9700](https://www.mpsv.cz/documents/20142/975025/Statisticka_rocenka_z_oblasti_prace_a_socialnich_veci_2018+%282%29.pdf/d16a5977-62d8-0ce2-bfd4-15d6118a9700).

<sup>15</sup> 504 children in emergency facilities and 5971 in long term institutional facilities. Data by the Ministry of Labour and Social Affairs: <https://www.mpsv.cz/web/cz/statistiky-1>, and the Ministry of Education, Youth and Sports: <http://toiler.uiv.cz/rocenka/rocenka.asp>.

operate as closed regime institutions and serve also for placement of children in conflict with the law by the juvenile justice system. The law requires to separate both categories of children, but this regulation is hardly respected in practice.<sup>16</sup>

17. By being placed in the closed regime institution children are denied the principle that alternative care should not impose such constraints on the child's liberty and conduct that are not necessary to ensure the child's effective protection from abduction, trafficking, sale and all other forms of exploitation.<sup>17</sup> Children in closed regime institutions are subjected to intensive control, strict daily regime and severe restrictions on their personal liberty. They attend mostly the school within the institution or established by the institution and the intern regulations of the institution give them only limited possibility to leave the institution. Their alternative care in fact results in their detention, contrary to their right guaranteed by Article 20 of the CRC.<sup>18</sup>

18. Unfortunately, Czechia plans no reform leading to elimination of these institutions. On the contrary, the Ministry of Education, Youth and Sports presented in 2019 a plan to further "specialize" these institutions according the type of disability and to strengthen their availability.<sup>19</sup>

### **Recommendation**

- **Adopt necessary legislative measures to eliminate closed regime institutions (children's homes, closed educational institutions for adolescents and diagnostic institutions) as alternative care institutions.**

#### **(d) Inclusive education and children with disabilities**

19. In 2016, the Ministry of Education introduced an amendment to the School Act with the aim of facilitating the process of integration and inclusion of all children into mainstream education. The amendment was accompanied by the adoption of decree no. 27/2016 which provided for more detailed and practical measures on the path to integration and inclusion. Despite this positive development, in 2018 the Ministry of Education introduced a highly controversial amendment to the decree which brings back the idea of segregation and seclusion.

20. The amendment of ministerial decree no. 27/2016 removed a provision encompassing a principle to educate children with disabilities predominantly in mainstream schools. This amendment was subjected to

<sup>16</sup> As shows a submission by the Government Council for Human Rights of 29/10/2019. Available in Czech at: <https://www.vlada.cz/cz/ppov/rlp/cinnost-rady/zasedani-rady/jednani-rady-dne-29--rijna-2019-178895/>.

<sup>17</sup> UN Guidelines on Alternative Care, Guideline 93.

<sup>18</sup> CRC/C/GC/21, para. 44.

<sup>19</sup> Long term intention of development of the educational structures 2019-2023 prepared by the Ministry of Education, Youth and Sports in 2019. Available in Czech at: <http://www.msmt.cz/ministerstvo-zverejnilo-dlouhodoby-zamer-vzdelavani-a>.

critique by the Public Defender of Rights as “a step back in the view of measures that Czech Republic has adopted since 2016 when The UN Committee on the Rights of Persons with Disabilities published Concluding observations on the Czech Republic” and that “repeal of this provision could send a negative sign of diversion from learning together.” The Public Defender also noted that although the principle concerned could be implicitly deduced from the Education Act provisions, its role in the ministerial decree was not insignificant as it could be viewed as an important safeguard against incorrect placing children in special schools and classes.<sup>20</sup>

### **Recommendations:**

- Ensure accessible inclusive education system in practice and through legislation and repeal any adopted retrogressive measures;**
- Secure sufficient material, financial and human resources as well expert support in order to enable basic and secondary schools to ensure inclusive education in practice for all children, pupils and students with disabilities.**

### **(e) Effective legal protection**

21. Children with disabilities are discriminated in all areas of life, including access to education, community-based services, other public services. In the meantime, the system of and protection against discrimination which should ensure their rights are respected remains highly inefficient. The 2016 data of the Public Defender of Rights shows that only 10 % of alleged victims of discrimination have reported it and only 4 % of these cases were brought to a court. It has been recommended by various authorities,<sup>21</sup> as well as in the 2012 Universal Periodic Review Conclusions, that the Czech Republic should strengthen the protection of victims of discrimination by, *inter alia*, adopting the possibility to file an *actio popularis* by NGOs or the Ombudsperson. Unfortunately, the Government has not implemented these recommendations.
22. Further, the Antidiscrimination Act no. 198/2009 fails to properly define the concept of reasonable accommodation. As emphasized in Article 2 of the CRPD, denial of reasonable accommodation constitutes a form of discrimination, where the burden of proof before courts is reversed. The existing definition of this term is, in the Czech legislation, too narrow and not in compliance with the UN CRPD. No guidance as to what constitutes reasonable accommodation is provided and the Czech Law or jurisprudence does not specify, whether the victim is to carry the burden of

<sup>20</sup> Public Defender of Rights. Comments on the draft Decree amending Decree No. 27/2016 Coll., On the education of children with special educational needs and talented children, as amended by Decree No. 416/2017 Coll., para 2. Available in Czech at: <https://eso.ochrance.cz/Nalezene/Edit/6466>.

proof on the „reasonableness“. At the same time, denial of reasonable accommodation is considered to be a type of indirect discrimination under the Czech Law, i.e. an application of a neutral criteria with negative impact on the person with disability, not a denial of individualized accommodation, as construed by the international human rights law. The narrowly conceived definition of reasonable accommodation does not match the understanding of this concept. However, in Czechia, failure to properly define the concept in the law makes it a virtually unusable before judicial authorities and in legal practice, affecting children with disabilities, typically in cases concerning their right to education.

### **Recommendations**

**Amend the Anti-discrimination law and introduce a possibility to file an *actio popularis*.**

**Amend the Anti-discrimination law and introduce proper definition of reasonable accommodation, in line with applicable international human rights standards.**

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