



NGOs information to the UN Committee against Torture

For consideration when compiling the List of Issues Prior to Reporting (LOIPR) on

CZECHIA

Submitted by:

Forum for Human Rights (FORUM)

Validity Foundation – Mental Disability Advocacy Centre

Společnost pro podporu lidí s mentálním postižením v ČR – Inclusion Czech Republic

25 January 2021

OVERVIEW

1. The submission provides an outline of issues of concern with regard to Czechia's compliance with the provisions of the UN Convention against Torture (hereinafter "CAT"), with a particular focus on the enjoyment of those rights by persons with intellectual and psychosocial disabilities. The purpose of the submission is to assist the UN Committee against Torture (hereinafter the "Committee") with its consideration of the compilation of the list of issues prior to reporting.
2. The submission has been written by Forum for Human Rights (FORUM) and Validity Foundation and is supported by Společnost pro podporu lidí s mentálním postižením v ČR – Inclusion Czech Republic.
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 authored and co-authored a number of reports and information for UN and Council of Europe bodies on the situation in the Central European region, particularly in Slovakia and Czechia. For more information, please visit www.forumhr.eu.
4. Validity Foundation – Mental Disability Advocacy Centre is an international human rights organisation which uses the law to secure equality, inclusion, and justice for people with mental disabilities worldwide. Validity's vision is a world of equality where emotional, mental, and learning differences are valued equally; where the inherent autonomy and dignity of each person is fully respected; and where human rights are realised for all persons without discrimination of any form. Validity has participatory status at the Council of Europe, and observer status at ECOSOC. For more information, please visit www.validity.ngo.
5. Společnost pro podporu lidí s mentálním postižením v ČR, z. s. - Inclusion Czech Republic has been working for over fifty years for the rights of people with intellectual disabilities and their families. The organisation has over 7 000 members associated in 57 local associations in the fourteen regions of the Czech Republic. Inclusion Czech Republic provides expert opinions on changes and decisions made by authorities and institutions at all levels of public administration. The organisation points out discrimination and problems faced by people with intellectual disabilities and their families and pushes for changes that positively impact on their lives. It offers support for their mutual interaction, sharing of experiences and solutions to the challenges they face and strives for people with intellectual disabilities to be taken by the whole society as equal citizens and to have the opportunity to participate in all areas of life. For more information, please visit: <https://www.spmPCR.cz/>.

SPECIFIC COMMENTS

(a) Definition of torture and criminalisation of degrading treatment

1. Already in its Concluding Observations on the fourth and fifth periodic report of Czechia of 2012, the Committee expressed its concern that the new Criminal Code¹ merely established the crime of torture and other inhuman and cruel treatment but did not define torture in terms of the Convention, and, therefore, recommended that Czechia „amend its Criminal Code in order to adopt a definition of torture that covers all the elements contained in article 1 of the Convention.“² The Committee repeated this finding and recommendation also in its Concluding Observations on the sixth periodic report of Czechia of 2018 in which it urged Czechia „to adopt a definition of torture that covers all the elements contained in article 1 of the Convention“ and drew Czechia's attention to its general comment no. 2 stating „that serious discrepancies between the Convention's definition and that incorporated into domestic law create actual or potential loopholes for impunity.“³
2. The situation in Czechia has not changed. The crime of torture and other inhuman or cruel treatment, defined in section 149 of the Criminal Code, is still formulated in the same terms as at the moment of its adoption. First, the cited legal provision fails to provide for elements of torture as required under CAT, in particular it lacks specific purposes, including discrimination, that has a negative impact particularly on the protection of the rights of persons with disabilities. The UN Special Rapporteur on torture, Manfred Nowak⁴, as well as the UN Committee on the Rights of Persons with Disabilities both emphasized that persons with disabilities could “be disproportionately affected by violence, abuse and other cruel and degrading punishment, which can take the form of restraint or segregation as well as violent assault”.⁵ The UN Convention on the Rights of Persons with Disabilities is clear that these practices constitute disability-based discrimination.⁶
3. Second, section 149 of the Criminal Code fails to distinguish acts of torture from cruel, inhuman, or degrading treatment or punishment in terms of *mens rea*, and thus requires intention even for cases of inhuman or other cruel treatment. This substantively limits the provision's applicability in practice. And third, it fails to explicitly criminalise degrading treatment. This situation has or may have resulted in *de facto* impunity for acts of torture, or other forms of ill-treatment.

¹ Act no. 40/2009 Coll., effective since 1/1/2010.

² CAT/C/CZE/CO/4-5, para. 7.

³ CAT/C/CZE/CO/6, paras. 8-9.

⁴ A/63/175.

⁵ CRPD/C/GC/6, para. 56. See also A/63/175, paras. 38-41.

⁶ See especially Articles 2, 5, 14, 15, 16 and 19. See also CRPD/C/GC/6, paras. 18 (c), 25, 30, 38, 57, 58 and 73 (c).

4. Furthermore, the legal provision covers only acts committed “in connection with the execution of public authority”, and, therefore, fails to cover acts committed by private persons.
5. In 2016 and 2017, the Government's Committee Against Torture introduced a proposal to: i) explicitly criminalise degrading treatment; ii) criminalise acts committed by gross negligence; iii) punish acts of ill-treatment of lower intensity as administrative offences; iv) criminalise acts committed not only by public authorities but also by determined private persons, namely health care facilities, social care facilities, and similar facilities; v) include prohibited discriminatory grounds in the form of disability or gender among circumstances justifying the imposition of higher sanction; vi) enact exclusion of the crime of torture from the limitation period; and finally vii) formulate a new provision criminalising torture separately from inhuman or other cruel or degrading treatment that would fully correspond to article 1 CAT.⁷
6. This proposal was only partially adopted in October 2019 by the Government's Human Rights Council. The Council approved the motion only in its part requiring administrative punishment for acts of ill-treatment of lower intensity and returned the rest of the proposal, concerning all other proposals in the field of criminal law, back to the Government's Committee against Torture for further elaboration. Since then, these proposals have not been discussed again, either by the Government's Committee against Torture or the Government's Human Rights Council. The Government currently does not plan any amendment to the Criminal Code.⁸

Proposed questions:

Does the State plan to amend the national criminal law to:

- **separate the crime of torture from the crime of other inhuman, cruel or degrading treatment?**
- **appropriately define the elements of torture to comply with Article 1 (1) CAT and to cover all purposes, including discrimination?**
- **explicitly criminalise degrading treatment?**
- **expressly ensure that also private persons, particularly private educational, health and social care facilities, may be held liable for the acts of ill-treatment?**

⁷ The minutes of the relevant sessions of the Government's Committee against Torture are available in Czech at: <https://www.vlada.cz/cz/ppov/rfp/vybory/proti-muceni-a-nelidskemu-zachazeni/ze-zasedani-vyboru/zasedani-vyboru-16--11--2016-151631/> and <https://www.vlada.cz/cz/ppov/rfp/vybory/proti-muceni-a-nelidskemu-zachazeni/ze-zasedani-vyboru/zasedani-vyboru-dne-28--brezna-2017-155184/>.

⁸ The Legislative Work Plan for 2021 does not include any amendment to the Criminal Code at all. The Plan is available in Czech at: <https://www.vlada.cz/cz/ppov/lrv/dokumenty/plan-legislativnich-praci-vlady-na-rok-2021-185898/> [accessed 18/1/2021].

If yes, in what timeframe does the State plan to adopt the necessary amendments?

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

7. Already in 2012, the Committee expressed its concern about the use of netted cage-beds in Czech psychiatric institutions and recommended that Czechia take all necessary measures to amend the Health Care Act⁹ to prohibit the use of this restraint.¹⁰ In its Concluding Observations of 2018, the Committee repeated this conclusion.¹¹
8. Despite express and continuing recommendations, the use of netted cage-beds is still legal in Czech psychiatric institutions. Netted cage-beds are listed under section 39 of the Health Care Act¹² as one of the allowed restraints. Although the number of netted cage-beds as well as the number of their uses have been decreasing recently, netted cage-beds remain present in 14 psychiatric institutions while they are actively used in 11.¹³ The practices in two of these facilities go even against the general trend of the decrease in the number of netted cage-beds and the number of their uses and has marked the increase in the use of this restraint.¹⁴
9. According to the applicable norms of international law, all persons with disabilities have the right to be free from specific coercive practices during hospitalisation.¹⁵ This right is translated into an obligation of the state to ensure that persons with disabilities are not subjected to the use of restraints, especially netted-cage beds, and such coercive practices should be abolished and banned. **Czech legislation, unfortunately, does not comply with this international standard.**

Proposed question:

When does the State plan to repeal the provision of the Health Care Act which allows for the use of netted cage-beds in psychiatric facilities?

⁹ Act no. 372/2011 Coll.

¹⁰ CAT/C/CZE/CO/4-5, para. 21 (c).

¹¹ CAT/C/CZE/CO/6, paras. 32 and 33 (c).

¹² Act no. 372/2011 Coll.

¹³ The Government's Observations on the merits of the collective complaint Validity Foundation – Mental Disability Advocacy Centre v. the Czech Republic (complaint no. 188/2019), para. 107. The Government's Observations are available at:

<https://rm.coe.int/cc188casedoc3-en-government-s-submissions-on-the-merits/1680a06fbc> [accessed 18/1/2021].

¹⁴ Ibid., para. 110.

¹⁵ A/72/55, para. 12.

(c) Effective monitoring of the legality of detention and its conditions in psychiatric facilities

10. Monitoring of places where persons are deprived of their liberty is a significant measure of prevention of torture and other forms of ill-treatment.¹⁶ In Czechia, regular monitoring is ensured by the office of public prosecution. This regular monitoring is supplemented by the monitoring carried out by the Office of the Public Defender of Rights as the national preventive mechanism, though this type of monitoring is not regular.
11. The main concern is that the monitoring competence of public prosecution does not cover all places of detention. Concretely, psychiatric facilities remain outside its scope, both in relation to persons detained on the basis of civil law commitment (involuntary hospitalisation), as well as in relation to those who have been detained in a psychiatric facility as a consequence of a criminal sanction (protective in-patient treatment). Although the empowering provision contained in the Act on Public Prosecution¹⁷ is formulated in quite broad terms, explicitly covering the criminal form of detention in psychiatric facilities, as well as “other places, where personal freedom is restricted by legal power”,¹⁸ a complementary empowering provision is needed in the specific legislation governing the execution of the particular type of detention. That means that for having the legal competence to monitor psychiatric detention, public prosecution would need specific empowering provisions in the Health Care Act¹⁹ with respect to civil detention (involuntary hospitalisation) and Specific Health Care Act²⁰ with respect to criminal detention (protective in-patient treatment). These are not in place.
12. The lack of monitoring power of the public prosecution over psychiatric facilities, namely over their closed wards, where persons are detained without their consent on the basis of either a civil measure or a criminal sanction, has been a matter of concern for national experts for a long time. The Government's Committee against Torture prepared and on 20/10/2016 approved a motion on enlarging monitoring powers of the public prosecution to cover, *inter alia*, detention in psychiatric facilities, in detention facilities for foreigners, and one type of facilities for children (in addition to those already covered). The motion also contained proposals to amend the individual complaint procedure to ensure its adversarial nature, promptness, as well as active participation of the complainant.²¹ The motion was then approved by the Government's Human Rights Council

¹⁶ CAT/C/GC/2, para. 13.

¹⁷ Act no. 283/1993 Coll.

¹⁸ *Ibid.*, § 4 (1) (b)

¹⁹ Act no. 372/2011 Coll.

²⁰ Act no. 373/2011 Coll.

²¹ The motion of the Government's Committee against Torture is available in Czech at: <https://www.vlada.cz/cz/ppov/rfp/vybory/proti-muceni-a-nelidskemu-zachazeni/ze-zasedani-vyboru/zasedani-vyboru-20--10--2016-151627/> [accessed 19/1/2021].

at its session on 22/11/2016.²² Unfortunately, none of the proposals has been implemented yet and in 2019 the government also refused the initiative of a group of deputies who had submitted a draft amendment to the Specific Health Care Act with the objective of endowing the public prosecution with power to monitor at least those psychiatric facilities or their closed wards where persons are placed on the basis of a criminal sanction (protective in-patient treatment) as explicitly foreseen by the Public Prosecution Act.²³

13. Persons who are detained in psychiatric facilities are thus still deprived of regular and independent monitoring of the legality of their detention and the conditions of their detention.

Proposed questions:

When does the State plan to ensure that the public prosecution is empowered to monitor the legality of conditions of detention in psychiatric institutions, regardless of whether the person is detained on basis of a civil or criminal measure?

What measures will the State plan to adopt to ensure that all persons who are deprived of their liberty, including persons detained in psychiatric facilities, have practical and effective access to an individual complaint procedure, that guarantees impartiality, adversarial nature, promptness, and active participation of the complainant? When will be these measures adopted?

How does the State propose to ensure effective protection for persons with intellectual and/or psychosocial disabilities from acts of torture or other forms of cruel, inhuman or degrading treatment in both private and public settings, including psychiatric hospitals? What forms of monitoring and control exist to identify and hold accountable perpetrators?

(d) Institutionalisation of children at a young age

14. As early as 2006 the practice of institutionalisation of young children was described in the UN Study on Violence against Children as a form of violence against children²⁴ and this position has been then confirmed by

²² The approval of the Government's Human Rights Council is available in Czech at: <https://www.vlada.cz/cz/ppov/rlp/cinnost-rady/zasedani-rady/jednani-rady-dne-22--listopadu-2016-155104/> [accessed 19/1/2021].

²³ Information on the discussions on the draft amendment in the Chamber of Deputies, including the information of the government's disagreement, are available in Czech at: <https://www.psp.cz/sqw/historie.sqw?o=8&T=521> [accessed 19/1/2021].

²⁴ Pinheiro, Paulo Sérgio. World Report on Violence against Children – Secretary General's Study on Violence against Children [online]. Available at: https://violenceagainstchildren.un.org/sites/violenceagainstchildren.un.org/files/document_files/world_report_on_violence_against_children.pdf, p. 189.

other relevant international documents, including the report of the UN Special Rapporteur on Torture, Juan E. Méndez, who described institutionalisation of young children as “one of the most egregious forms of abuse in health and social care settings” that “is unique to children”.²⁵

15. Unfortunately, Czechia still fails to deinstitutionalise care for young children.²⁶ There are several facilities in which young children may be institutionalised, while one of them is designed specifically in the legislation for young children. These institutions are formally called children's homes for children up to 3 years of age (informally children's centres) and are regulated by the Health Care Act, but only in vague terms.²⁷ Children may be institutionalised merely based on a contract concluded by their parents and for an indeterminate period that is limited only by the age of compulsory school attendance (in Czechia 6 or 7 years old). This legislation, together with insufficient support of young children and their families in their natural environment or in the form of alternative family care, results in the total number of 876 children in 2018²⁸ who are institutionalised in Czechia at a young age. Children the most affected by this legislation and practice belong among the most vulnerable – Romani children and children with disabilities.²⁹
16. The Government has been aware of this problem for a long time. Already in January 2012, the Government adopted a National Strategy to Protect Children's Rights 2012-2018 in which it committed itself to adopt new legislation transforming the whole system of institutional care and enacting a minimum age limit below which a child could not be institutionalised by

²⁵ A/HRC/28/68, para. 56.

²⁶ The European Committee of Social Rights recently found the Czech system enabling institutionalisation of young children in violation of the child's right to social and economic protection guaranteed under Article 17 of the European Social Charter. See *European Roma Rights Centre (ERRC) and Mental Disability Advocacy Centre (MDAC) v. Czech Republic*, decision on the merits of 17/6/2020, collective complaint no. 157/2017.

²⁷ Act no. 372/2011 Coll., §§ 43-44.

²⁸ Data for 31/12/2018. Data got from the official statistics of the Institute of Health Information and Statistics of the Czech Republic: Brief Overview of Children's Homes for Children up to 3 and Children's Centres for 2007-2018. NZIS Report no. K/33 (08/2019). Available in Czech 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> [accessed 18/1/2021].

²⁹ According to the official statistics of the Institute of Health Information and Statistics of the Czech Republic, 326 out of the total of 876 children were admitted to the facility due to health reasons and 318 due to health-social reasons. – *ibid.*

Data on ethnicity has stopped to be gathered since 2017. According to the data collected up to that time, Romani children constituted more than one fifth of the total number of admitted children in the monitored year. For instance in 2016 there were 349 Romani children among the total number of 1 559 children admitted to children's homes for children up to 3 years of age. See the Health Yearbook of the Czech Republic 2016, prepared by the Institute of Health Information and Statistics of the Czech Republic. Available in Czech at: <https://www.uzis.cz/sites/default/files/knihovna/zdroccz2016.pdf>, p. 116.

2016.³⁰ Nevertheless, the Government failed to fulfil this commitment. In 2016 the Government was not able to approve the second action plan to fulfil the National Strategy for the years 2016-2020. In August 2017 the Government did not approve non-legislative material submitted by the Ministry of Labour and Social Affairs that summarized the necessary legislative amendments to enable actual deinstitutionalisation and the enactment of the minimum age limit.

17. In its new National Strategy to Protect Children's Rights 2021-2029, adopted in December 2020,³¹ the Government has repeated the objective of the minimum age limit below which a child cannot be placed in institutional care. Nevertheless, the recent steps taken by the Government raise serious issues whether this objective covers all children, including the most vulnerable ones. In August 2020, the Government introduced a draft amendment to the Health Care Act in which they proposed to transform children's homes for children up to 3 years of age into "centres of complex health care for children" that would still enable to institutionalise children with disabilities, regardless of their age.³² The government thus proposes to narrow the target group of the existing children's homes for children up to 3 only to children belonging to these two groups, and within this target group enlarge the age limit until 18. If adopted, the draft amendment would create specific institutions that would allow to continue in the practice of institutionalising young children with chronic illnesses or disabilities.

Proposed questions:

What measures does the State plan to adopt to repeal provisions allowing for the institutionalisation of young children and ensure that all children in need of care are provided appropriate care preferably in their natural environment, and if not possible in a family environment? When will be these measures adopted?

How will the State ensure that children with disabilities are fully included in the government's deinstitutionalisation efforts and plans and ensure that new institutions for these children will not be established, either in law or in practice

³⁰ See Objective 10 of the National Strategy to Protect Children's Rights 2012-2018. The National Strategy is available in English at: <https://www.mpsv.cz/documents/625317/625903/strategy.pdf/16525ab3-48d2-cae2-a057-f1ab8be379c2> [accessed 18/1/2021].

³¹ The National Strategy is available in Czech at: https://www.mpsv.cz/documents/20142/225508/NARODNI+STRATEGIE+OCHRANY+PRAV+DETI+2021_2029_FINAL.pdf/4d20b44e-a8c5-6882-d46f-a8d0fb7695d5 [accessed 18/1/2021].

³² The draft amendment is available in Czech at: https://apps.odok.cz/veklep-detail?p_p_id=material_WAR_odokkpl&p_p_lifecycle=0&p_p_state=normal&p_p_mode=view&p_p_col_id=column-1&p_p_col_count=3&material_WAR_odokkpl_pid=KORNBSGJHXZU&tab=detail [accessed 18/1/2021].

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