

# *Council of Europe contribution for the 28<sup>th</sup> UPR session (6-17 November 2017) regarding Czech Republic*

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## **Prevention of torture (CPT)**

*The 'European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment' organises country visits in order to visit places of detention to assess how persons deprived of their liberty are treated. After each visit, the CPT sends a detailed report to the State concerned. This report includes the CPT's findings, and its recommendations, comments and requests for information.*

[Executive summary of the report](#) on the April 2014 periodic visit to that country.

## **Council of Europe Commissioner for Human Rights**

*The Commissioner for Human Rights is an independent and impartial non-judicial institution established by Council of Europe to promote awareness of and respect for human rights in the 47 Council of Europe member States.*

On 21 February 2013, the Commissioner published the [report](#) of his visit to the Czech Republic, held from 12-15 November 2012. The visit dealt with Roma integration as well the situation of people with disabilities.

The Commissioner urged the authorities to adopt a more human-rights compliant approach in dealing with Roma, in particular as concerns access to quality education, decent housing and freedom from discrimination. During his visit the Commissioner visited an elementary school in Kladno, an example of the "practical schools" in which Roma children are over-represented and for which the Czech state spends more than double the expenditure of mainstream schools. He regretted that five years after the D.H. judgment by the Grand Chamber of the European Court of Human Rights many Roma children are still taught as children with mild disabilities, and underlined the urgent need to take rapid action to fully execute this judgment and redress the violations found therein.

The Commissioner expressed his concern at the institutionalised anti-Gypsyism evidenced in the Czech Republic. He welcomed the authorities' efforts to counter hate speech and urged them to consistently enforce penalties in cases of incitement to discrimination, hatred and violence against Roma. In this context the Commissioner invited the government to actively support and lead the three-year national campaign against racism and xenophobia set to be launched in 2013. He also urged the authorities to remove the pig farm built in the 1970s on the former concentration camp of Lety, where many Roma were killed during World War II, and to consider measures to honour those who died there.

The Commissioner noted with concern that Roma continue to be the main victims of racially motivated violence. He underlined that measures taken so far to counter this phenomenon must continue, but have to be combined with systematic prosecution of the authors of these crimes and an unequivocal political message condemning such acts. The Commissioner welcomed the efforts of the Ministry of Interior to implement trust-building measures and to enhance the participation of minorities, including Roma, in the police forces. He was also pleased to note that the Czech Republic planned to accede to the Additional Protocol to the Council of Europe Convention on Cybercrime concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems.

During his visit the Commissioner also visited the psychiatric hospital of Bohnice, the largest such institution in the country accommodating some 1 300 patients, and held discussions with experts on the human rights of persons with intellectual and psychosocial disabilities. He underlined the need to overhaul and transform psychiatric care, particularly by promoting de-institutionalisation, fully

protecting persons with disabilities from involuntary hospitalisation through effective judicial review, and preventing and eliminating the ill-treatment of persons deprived of their liberty.

The Commissioner was concerned that around 60 000 persons with intellectual and psychosocial disabilities live secluded in institutions, and that more than 30 000 are totally or partially deprived of legal capacity and placed under guardianship. He welcomed the fact that the new Civil Code that will enter into force in January 2014 will repeal the full deprivation of legal capacity and each individual situation will be reviewed. The Commissioner stressed that this task will require sustained efforts to properly train and inform all legal and other professionals who will be called upon to apply the new law and give effect to the standards contained in the UN Convention on the Rights of Persons with Disabilities. He urged the authorities to ensure that the implementation of the new legislation will not be delayed and to stop full deprivation of capacity even before the entry into force of the new Civil Code.

Lastly, the Commissioner urged the authorities to end the school segregation of children with disabilities and to ensure that these children benefit from adequate individual support, in an inclusive education system.

On 18 March 2014, the Commissioner published a [letter](#) sent on 28 February to the Prime Minister of the Czech Republic, Mr Bohuslav Sobotka, in which he expressed concern about the continuing trend of anti-Roma violence in the country.

Whilst welcoming the measures taken by the Ministry of the Interior to protect citizens from violence, the Commissioner considered that the increased frequency of these events and the consistent targeting of Roma call for a more comprehensive response by the authorities. The Commissioner urged the Czech authorities to give effect to the Council of Europe standards and those contained in the 1966 International Convention on the Elimination of All Forms of Racial Discrimination, especially Article 4 concerning the effective sanctioning of racist organisations and of activities promoting and inciting racial discrimination.

As a first step, the authorities could consider banning demonstrations in the vicinity of Roma neighbourhoods where there are indications that the participants intend to march towards these neighbourhoods with the aim of targeting Roma communities.

The Commissioner also considered that widespread discrimination and violence against Roma require overarching efforts to promote tolerance and anti-discriminatory attitudes throughout the majority population and stressed the essential role played by political and opinion leaders in promoting respect for human rights and social cohesion. Referring to his earlier recommendations made in the report following his visit to the Czech Republic in November 2012, the Commissioner called on the Czech authorities to clearly reassert their condemnation of racist manifestations and to take measures to prevent the recurrence of hate crimes against members of minority groups.

On 22 October 2015, the Commissioner published a [letter](#) (sent 6 October) on compensation for women subjected to involuntary sterilisation. Commissioner Muižnieks was informed that in early 2015 the Czech authorities had prepared a bill allowing a review of individual claims of involuntarily sterilised women to receive compensation. The Commissioner believes that this piece of legislation, if adopted, has the potential, even belatedly, to provide adequate redress to the Roma women who were victims of forced sterilisations.

In his letter the Commissioner expressed his concern about the Czech government's decision not to proceed with the adoption of the law allowing the granting of compensation to the Roma women who were victims of forced sterilisations.

The Commissioner noted that involuntary sterilisation of Roma women without their full and informed consent has been a persistent problem in the Czech Republic. In his 2011 report, the Commissioner's predecessor, while welcoming the expression of regret by the Czech authorities for this unlawful practice, deplored the lack of an effective domestic mechanism to enable victims to seek and obtain compensation for the harm they had suffered. In his letter the Commissioner underlined that according to the case-law of the Court, such practices violate the human freedom and dignity of the victims, thus constituting serious human rights violations and therefore governments are obliged to establish accessible and effective mechanisms to obtain reparations.

On 4 November 2016, the Commissioner published a [letter](#) addressed to Mr Bohuslav Sobotka, Prime Minister of the Czech Republic, focusing on the human rights of Roma and persons with disabilities.

In his letter the Commissioner reiterated his recommendation to establish an extra-judicial mechanism for compensating Roma women who were victims of forced sterilisations and stressed the need to improve Roma's access to inclusive education and to adequate housing. He also called on the government to redouble its efforts to combat and eradicate anti-Gypsyism. In this context, he urged the authorities to remove the pig farm from the site of the former Nazi concentration camp in Lety, in order to provide a dignified memorial for the Roma murdered there.

Lastly, whilst welcoming the latest changes of the Civil Code concerning legal capacity, the Commissioner called on the Czech Republic to take resolute action in favour of the deinstitutionalisation of persons with disabilities, including children, in order to enable them to live independently and be integrated in their communities

### ***Fight against racism and intolerance (ECRI)***

*The European Commission against Racism and Intolerance (ECRI) is a human rights body of the Council of Europe, composed of independent experts, which monitors problems of racism, xenophobia, antisemitism, intolerance and discrimination on grounds such as "race", national/ethnic origin, colour, citizenship, religion and language. It prepares reports and issues recommendations to member States, in which its findings, along with recommendations are published. These reports are drawn up after a contact visit to the country in question and a confidential dialogue with the national authorities. The country monitoring takes place in five-year cycles. As part of the fourth round of ECRI's monitoring work, a new process of interim follow-up has been introduced with respect to a small number of specific recommendations made in each of ECRI's country reports.*

ECRI adopted its [fifth report on the Czech Republic](#) on 16 June 2015.

## Protection of minorities

### *Framework Convention for the Protection of National Minorities*

The monitoring procedure for this convention requires each state party to submit a report within one year following the entry into force of the Framework Convention and additional reports every five subsequent years. State reports are examined by the [Advisory Committee](#), a body composed of 18 independent experts responsible for adopting country-specific opinions. These opinions, on which States Parties have an opportunity to comment, are meant to advise the Committee of Ministers in the preparation of its resolutions, containing conclusions and recommendations to the State concerned.

[ACFC 4th Opinion](#) adopted on 16 November 2015

(no CM Resolution available yet)

### *European Charter for Regional or Minority Languages*

The [Charter's monitoring procedure](#) is based on state reports, as each State Party is required to present its first report within the year following the entry into force of the Charter with respect to the Party concerned. The subsequent reports are presented at three-yearly intervals. A committee of independent experts examines the state's periodical report and addresses an evaluation report to the Committee of Ministers, including proposals

The Czech Republic submitted its 3<sup>rd</sup> periodical [report](#) on 22 September 2014. The Committee of Experts adopted their [evaluation report](#) on the Czech Republic on 17 June 2015 and the corresponding Committee of Ministers' [recommendations](#) were adopted on 1 December 2015.

The 4<sup>th</sup> periodical report is due on 1 March 2017.

## Action against trafficking in human beings (GRETA)

The Council of Europe Convention on Action against Trafficking in Human Beings was adopted by the Committee of Ministers of the Council of Europe on 3 May 2005, following a series of other initiatives by the Council of Europe in the field of combating trafficking in human beings. The Convention entered into force on 1 February 2008, following its 10th ratification. While building on existing international instruments, the Convention goes beyond the minimum standards agreed upon in them and strengthens the protection afforded to victims.

The Convention has a comprehensive scope of application, encompassing all forms of trafficking (whether national or transnational, linked or not linked to organised crime) and taking in all persons who are victims of trafficking (women, men or children). The forms of exploitation covered by the Convention are, at a minimum, sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude and the removal of organs.

The main added value of the Convention is its human rights perspective and focus on victim protection. Its Preamble defines trafficking in human beings as a violation of human rights and an offence to the dignity and integrity of the human being. The Convention provides for a series of rights for victims of trafficking, in particular the right to be identified as a victim, to be protected and assisted, to be given a recovery and reflection period of at least 30 days, to be granted a renewable residence permit, and to receive compensation for the damages suffered.

Another important added value of the Convention is the monitoring system set up to supervise the implementation of the obligations contained in it, which consists of two pillars: the Group of Experts on Action against Trafficking in Human Beings (GRETA) and the Committee of the Parties.

The Convention is not restricted to Council of Europe member states; non-members states and the European Union also have the possibility of becoming Party to the Convention.

CZE have signed our Convention, but not yet ratified it, so no report or recommendations to date. GRETA strongly urges the Czech Authorities to proceed with ratification of the Convention at the earliest possible date.

### **Preventing and combating violence against women and domestic violence**

The Council of Europe Convention on preventing and Combating violence against women and domestic violence ([Istanbul Convention](#), CETS No. 210) provides for two types of monitoring procedures: a country-by-country evaluation procedure and a special inquiry procedure in exceptional cases where action is required to prevent a serious, massive or persistent pattern of any acts of violence covered by the Convention. [GREVIO](#), the Group of Experts on Action against violence against women and domestic violence, is the independent body responsible for monitoring the implementation of CETS No. 210. GREVIO launched its first evaluation procedure in spring 2016, after adopting a questionnaire on legislative and other measures giving effect to the Istanbul Convention.

The Czech Republic signed the Istanbul Convention on 2 May of 2016 with a [reservation](#): in accordance with Article 78, paragraph 2, of the Convention, the Czech Republic reserves the right not to apply the provisions laid down in Article 44, paragraph 1.e, of the Convention (Articles concerned : 44, 78). The Czech Republic is currently in the process of adapting its legislation to the requirements of the Istanbul Convention in order to prepare for its ratification. The Czech Republic is invited to pursue its efforts towards ratification to become a state party to the Istanbul Convention in the near future, ideally during the [upcoming Czech Chairmanship of the Council of Europe \(May – November 2017\)](#)

### **Fight against corruption (GRECO)**

The 'Group of States against Corruption' ([GRECO](#)) monitors all its 49 members through a peer review evaluation procedure within thematic evaluation rounds. The evaluation reports contain recommendations aimed at furthering the necessary legislative, institutional and practical reforms. Subsequently, the implementation of those recommendations is examined in the framework of a "compliance procedure", assessing whether they have been implemented satisfactorily, partly or have not been implemented 18 months after the adoption of the evaluation report.

*Fourth Evaluation Round: "Corruption prevention in respect of members of parliament, judges and prosecutors".*

On 2 November 2016, GRECO published its [Fourth Round Evaluation Report](#) on the Czech Republic. The Czech Republic will submit a report on the measures taken to implement GRECO's recommendations by 31 January 2018.

GRECO specifically calls on the Czech authorities to further increase the transparency of the legislative process. In the absence of any lobbying regulations, it recommends introducing rules for

members of parliament on how to interact with third parties seeking to influence the legislative process and that such interactions be made more transparent. Moreover, the rules on parliamentarians' asset declarations need to be further amended. At the same time, GRECO calls for more effective supervision and enforcement of the rules in practice.

GRECO concludes that there is a clear need to amend the regulation on the recruitment and career advancement of judges, in particular to ensure that decisions are based on pre-established objective criteria, notably merit. It also recommends making more transparent the selection procedures for the appointment of the Supreme Public Prosecutor and other chief public prosecutors, and that their recall be only possible in the context of disciplinary proceedings.

GRECO also recommends the adoption of codes of conduct by Parliament, the judiciary and the prosecution service which provide guidance on conflicts of interest and related matters and which are complemented by practical measures such as dedicated training, counseling and awareness-raising.

### ***Execution of judgments and decisions of the European Court of Human Rights***

At 31 December 2016, there were 6 (9 at 31.12.2015) cases against Czech Republic pending before the Committee of Ministers for supervision of their execution. 6 of these cases were "leading cases" (7 at 31.12.2015), i.e. raising a new structural /general problem and requiring the adoption of general measures, the other cases being "repetitive cases" (including a number of friendly settlements) concerning issues already raised before the European Court of Human Rights.

In 2016, the CM was seized by 2 new cases (3 in 2015) against Czech Republic of which 0 leading cases (2 in 2015) and the sums awarded in 2016 as just satisfaction amounted to € 13.800 (€ 39.745 at 31.12.2015).

In 2016, 1 case (8 in 2015) was closed by the adoption of a Final Resolution, of which 1 leading (5 in 2015).

#### ***Main cases /groups of cases pending before the Committee of Ministers for supervision of execution under the enhanced and standard procedures***

##### **Detention conditions – psychiatric institutions**

***Bures case*** Application No. 37679/08, judgment final on 18/01/2013, standard supervision

**Unjustified use of restraining equipment in psychiatric hospitals (sobering-up centres).**

##### **Protection of private and family life**

***Delta Pekarny AS case*** Application No. 97/11, final judgment on 02/01/2015, standard supervision

**Competition authorities competence to order searches of companies not surrounded by adequate safeguards**, including absence of prior judicial authorisation and lack of sufficient guarantees against arbitrariness of the search measures in the framework of ex post facto judicial review.

***Hanzelkovi case*** Application No. 43643/10, final judgment on 11/03/2015, standard supervision

**Disproportionate restrictions as regards the discharge of mothers and their new-borns from maternity wards after low risk pregnancies.**

## Protection of property

*R & L, S.R.O. group of cases* Application No. 37926/05, judgment final on 11/06/2015, standard supervision

**Impossibility for landlords, between 2002 and 2006, to raise rents above the maximum amounts set by the State under a rent control scheme**, despite the fact that the applicable legislation had been declared unconstitutional in 2002 by the Constitutional Court and was not replaced with a Constitution compliant legislation until 2006.

## Discrimination

### *Right to education, Roma*

*D.H. group of cases* Application No. 57325/00, judgment final on 13/11/2007, enhanced supervision

**Right to education:** discrimination against Roma children: assignment of Roma children to special schools (designed for children with special needs, including those suffering from a mental or social handicap) on account of their Roma origin (Article 14 in conjunction with Article 2 of Protocol No. 1).

## *Social and Economic Rights (ECSR)*

*The European Committee of Social Rights (ECSR) monitors compliance with the [European Social Charter](#) under two procedures: the national periodic reporting system and the collective complaints procedure. Following a decision taken by the Committee of Ministers in 2006, the provisions of the Charter have been divided into four thematic groups. States present a report on the provisions relating to one of the four thematic groups on an annual basis. Consequently each provision of the Charter is reported on once every four years.*

The Czech Republic and the [European Social Charter](#)

## *Venice Commission*

The [European Commission for Democracy through Law](#) (Venice Commission) is the Council of Europe's advisory body on constitutional matters. It provides States and international organisations working with it (EU, OSCE/ODIHR) with legal advice in the form of opinions.

For more information: <http://www.venice.coe.int/webforms/documents/?country=10&year=all>