

## **NGO information for the Universal Periodical Review**

**For consideration when compiling the report on the Czech  
Republic during its 28<sup>th</sup> session**

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Submitted by:

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## INTRODUCTION

This report was prepared by the Mental Disability Advocacy Center (MDAC) and Forum for Human Rights (Forum) for the Universal Periodic Review of the Czech Republic in 2017 and focuses specifically on the human rights issues persons with disabilities face due to the legal and institutional framework or the application of those on the ground. Four major topics were highlighted in this report: a); the legal protection of persons with disabilities and discrimination; b). torture and other forms of ill-treatment; c). the guardianship system and specific restrictions of legal capacity and d). the right to live independently and the deinstitutionalisation process.

The Mental Disability Advocacy Centre (MDAC) is an international human rights organisation which uses the law to secure equality, inclusion and justice for people with mental disabilities worldwide. MDAC'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. MDAC has participatory status at the Council of Europe, and observer status at ECOSOC. For more information, please visit [www.mdac.org](http://www.mdac.org).

FORUM is an international human rights organisation working in the Central European region. It provides support to domestic and international human rights organisations in advocacy and litigation. Forum leads domestic and international litigation activities and has been supporting number of cases pending before domestic judicial authorities and before the European Court of Human Rights. FORUM authored and co-authored number of reports and information with the UN and Council of Europe bodies on situation in the Central European region, especially Slovakia and the Czech Republic.

## I. LEGAL PROTECTION OF PERSONS WITH DISABILITIES

### *A. General issues of concern*

1. In 2009 the Czech Republic ratified the UN Convention on the Rights of Persons with Disabilities („UN CRPD“). **The Optional Protocol enabling individual communications has not been ratified yet.**
2. Although the government has made steps to implement an independent monitoring mechanism under Article 33 CRPD by introducing an amendment to the Act no. 349/1999 on the Public Defender of Rights, **the amendment is not likely to be adopted by the Parliament, at least not until the new elections** which will take place during the fall of 2017.

### *B. Protection against discrimination*

3. Persons with disabilities are discriminated in all areas of life, including access to education, employment, other public services and, as detailed below, through legislation on legal capacity and institutionalization. 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.<sup>1</sup> It has been recommended by various authorities,<sup>2</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.**
4. 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 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 UN CRPD.
5. The narrowly conceived definition of reasonable accommodation does not match the understanding of this concept according under Article 5 UN CRPD. However, in the Czech Republic, failure to properly define the concept in the law makes it a virtually unusable before judicial authorities and in legal practice.

#### **RECOMMENDATIONS:**

- Ratify Optional Protocol to the UN CRPD;**
- Adopt the possibility to file anti-discrimination actions in public interest into the Czech legislation;**
- Revise anti-discrimination legislation to match the concept of reasonable accommodation and undue burden as defined by the UN CRPD.**

## **II. TORTURE AND OTHER FORMS OF ILL-TREATMENT**

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<sup>1</sup> Public Defender of Rights. Victims of discrimination and barriers to access to justice. 2016. Online:

#### A. General issues of concern

6. The Czech Republic has failed to properly implement some of the obligations it has under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). It still doesn't have in its domestic criminal law adequate provisions that criminalize torture and other forms of ill-treatment which would ensure the effective investigation, prosecution and punishment, where appropriate, of perpetrators of torture and other forms of ill-treatment.
7. The wording in the existing definition of the crime provided for under Article 149 Act no. 40/2009 (Criminal Code) mixes up different forms of ill-treatment (torture, inhuman and degrading treatment and punishment) and fails to provide definition of elements of torture, as required under CAT, including discrimination. In addition, it fails to distinguish acts of torture from other forms of ill-treatment on the grounds of *mens rea*. Thus, intent is required even for cases of degrading treatment, which substantively limits the provision's applicability in the practice. This situation has resulted in de facto impunity for acts of torture, cruel, inhuman and degrading treatment. There is, to date, no case of charges or indictment under this provision.

#### B. Use of cage-beds and other forms of restraints against persons with disabilities

8. One example of a practice that can constitute torture or cruel, inhuman or degrading treatment is the use of restraints and cage beds in health care and social care settings for people with disabilities. Despite international pressure from many UN bodies<sup>3</sup> and the European Committee for the Prevention of Torture ('CPT')<sup>4</sup>, such practices remain prevalent. According to MDAC's report "Cage beds and coercion in Czech psychiatric institutions,"<sup>5</sup> many people with disabilities are subjected to torture or ill treatment including placement in netted cage beds, belts, medication or seclusion, and are often subjected to multiple concurrent restrictive practices. Such cases have been observed also in recent monitoring visits conducted by MDAC at the end of 2016 and beginning of 2017.
9. Legislation regarding the use of restraints is vague, leaving many people subjected to restraint and violence for prolonged periods of time. Moreover, there is no central authority in charge with collecting comprehensive information

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<sup>3</sup> See, for example, Concluding observations of UN Committee against Torture regarding the report of the Czech Republic, 13 July 2012, CAT/C/CZE/CO/4-5, para. 21; and Concluding observations of UN Human Rights Committee regarding the report of the Czech Republic, 21 August 2013, para. 14.

<sup>4</sup> European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, Report to the Czech Government on the visit to the Czech Republic by the CPT from 7 to 16 September 2010, 18 February 2014, CPT/Inf(2014) 3, paras 110 – 117.

<sup>5</sup> Mental Disability Advocacy Center, Cage beds and coercion in Czech psychiatric institutions, (2014: MDAC, Budapest), available online at: <http://www.mdac.org/en/content/cage-beds-and-coercion-czech-psychiatric-institutions>.

on the use of restraints on people with disabilities across different settings. Therefore, there is no comprehensive data on the use of restrictive or coercive practices throughout the country.

10. Where allegations of ill-treatment in health care or social care settings are brought forward, legal and practical barriers prevent victims from accessing justice. One of such barriers is the inadequacy of the definition of the crime of torture and other cruel, inhuman and degrading treatment in the Criminal Code; in addition, the law doesn't shift the burden of proof for torture or other forms of ill-treatment in cases involving requests for compensation. This situation leads to failure to provide any redress to victims of ill-treatment. For example, this happened in the cases of two women who died in cage beds in 2006<sup>6</sup> and 2012<sup>7</sup>. Both of these cases were dismissed and there were no consequences for the health care institutions where it happened or for their staff.

### RECOMMENDATIONS:

- Immediately abolish the use of net/cage beds, seclusion rooms, physical and chemical restraints and other non-consensual practices in psychiatric hospitals and social care institutions.**
- Establish adequate measures and mechanisms to prevent these abusive practices, including monitoring, data collection and amendment of legislation.**
- The definition of torture and other forms of ill-treatment in Criminal Code should be amended to include all elements of torture, cruel, inhuman treatment or punishment, as defined in international human rights law.**
- All acts of ill-treatment should be properly investigated, prosecuted, the perpetrators, where appropriate should be punished and victims should be given adequate redress.**

### III. GUARDIANSHIP

11. The new Civil Code, in force since 2014, has reformed to a certain extent the guardianship system. It abolished plenary guardianship and it incorporated some elements of supported decision-making. However, it still allows for partial guardianship, a practice which is in violation of Article 12 of the CRPD. Article 12 recognizes that persons with disabilities have the right to recognition everywhere as persons before the law and should enjoy legal capacity on an equal basis with others in all aspects of life (paras. 1 and 2). The CRPD also requires states to ensure that the will and preferences of the person are always

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<sup>6</sup> See (in Czech): <http://zpravy.aktualne.cz/domaci/zemrela-v-kecovem-luzku-ustav-rika-ne-omluve-za-smrt/r~i:article:664778/>

<sup>7</sup> See (in Czech): [http://www.lidovky.cz/pacientka-psihiatrie-se-obesila-v-sitovem-luzku-f7f-/zpravy-domov.aspx?c=A120125\\_074526\\_In\\_domov\\_rka](http://www.lidovky.cz/pacientka-psihiatrie-se-obesila-v-sitovem-luzku-f7f-/zpravy-domov.aspx?c=A120125_074526_In_domov_rka)

respected and measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity are taken (paras. 3 and 4).

12. Even though the law does not allow for deprivation of legal capacity, specific provisions provide for a possibility to restrict someone's legal capacity in specific matters, including the right to marry, parental rights, the right to vote, entering into labour contracts, requests for social benefits, informed consent in health care issues, testamentary wills. In particular, Czech elections code<sup>8</sup> provide expressly for a possibility to restrict someone's right to vote and to stand for elections on the grounds of his or her disability, Article 673 of the Civil Code allows for restriction of legal capacity in the right to marriage, and Article 23 § 3, e), 2 of the Health-Care Act provides for a possibility to restrict one's capacity to give informed consent.
13. In addition, the Guardianship Act foreseen by the Civil Code has not yet come into force. The first draft of the law published by the Ministry of Justice contained only regulations concerning administrative rules for public guardians. It did not include any of the measures civil society has been advocating for, such as clear rules for guardians, control and evaluation mechanism, methodological support or training.

#### **RECOMMENDATIONS:**

- Abolish all legal provisions that restrict fundamental human rights of people with disabilities including:**
- All elections acts providing for an impediment to the right to vote based on restriction of legal capacity. Article 673 of the Civil Code and Article 23 § 3, e), 2 of the Health-Care Act which prohibit people from freely entering marriages and subjecting them to forced treatment.**
- Develop a concrete, time-bound plan on how to fully implement Article 12 of the CRPD, including the full abolition of substitute decision making measures and their replacement with supported decision-making models.**

#### **IV. INDEPENDENT LIVING AND DEINSTITUTIONALISATION**

14. Despite the fact that the Act no. 108/2006 on Social Services requires to ensure the autonomy, independence and inclusion of person with disabilities into

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<sup>8</sup> Article 2 (b) and Article of the Parliamentary Code on Elections no. 247/1995, Article 4 (2)(b) of the Code on Elections to the Regional Parliaments no. 130/2002, Article 4 (2)(b) of the Code on Elections to the Communal Parliaments no. 491/2001 and Article 5 (2)(b) of the European Elections Code no. 62/2003.

society, social care services are mostly provided in segregated institutional settings.

15. The Government has been already urged *to step up the process of deinstitutionalisation and to allocate sufficient resources for development of support services in local communities for persons with disabilities*.<sup>9</sup> Moreover, concern has been expressed as to the *lack of plans to provide support services in local communities for older persons with disabilities*.<sup>10</sup>
16. However, so far the Government has failed to take any concrete and targeted steps to ensure the right to living independently and being included in the community, as required by Article 19 of the CRPD. While there are some good local projects and initiatives, the difference of access to adequate services in the community remains massive in different geographical regions of the Czech Republic. It is also worth mentioning that the available services are usually targeted at people with lower support need.
17. There is also no strategy of social care for elderly persons, as the government considers them to fall outside the ambit of deinstitutionalisation. In fact, the National Action Plan for Support of Positive Ageing for years 2013-2017 does not even mention any process of deinstitutionalisation<sup>11</sup> and the Government takes the position that fiscal interests of the state, which might be affected by adopting such measures, have priority before ensuring respect for human rights.
18. In addition, the material conditions in residential social care facilities remain problematic. As the institutions are often under-financed, the lack of trained personnel often leads to disproportionate use of restriction of personal liberty and privacy. From this point of view the most problematic aspect is the use of restraints, especially the caged beds in psychiatric hospitals, whereby patients are drugged, tied to beds and kept in solitary confinement with minimal contact with the staff. This ill-treatment, already described in part II.B of this submission, was already criticized by the UN Committee against Torture, the UN Human Rights Committee<sup>12</sup> and the CPT.<sup>13</sup>

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<sup>9</sup> *Ibid.*, para. 38.

<sup>10</sup> CRPD Committee, Concluding Observations: Czech Republic, CRPD/C/CZE/CO/1, 15 May 2015, para. 39.

<sup>11</sup> The action plan is available at:

[http://www.mpsv.cz/files/clanky/14540/III\\_vlada\\_Akcni\\_plan\\_staruti\\_.pdf](http://www.mpsv.cz/files/clanky/14540/III_vlada_Akcni_plan_staruti_.pdf)

<sup>12</sup> See above footnote no. 3; Concluding observations of UN Committee against Torture regarding the report of the Czech Republic, 13 July 2012, CAT/C/CZE/CO/4-5, para. 21; and Concluding observations of UN Human Rights Committee regarding the report of the Czech Republic, 21 August 2013, para. 14.

<sup>13</sup> See above footnote no. 4; European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, Report to the Czech Government on the visit to the Czech Republic by the CPT from 7 to 16 September 2010, 18 February 2014, CPT/Inf(2014) 3, paras 110 – 117.

## RECOMMENDATIONS:

- **Ensure sufficient network of accessible community-based services alternative to institutions in every region for all persons with disabilities, including elderly people, regardless of level of support they might need.**
- **Adopt s comprehensive policy on transition from institutional to community-based care of all persons with disabilities, including elderly people, with the view to the close all segregated institutional settings and develop sufficient and educate community-based services.**

Thank you for your attention to this submission.

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