

**Comments of the Czech Republic**  
**to the report by**  
**Council of Europe Commissioner for Human Rights**  
**Dunja Mijatović**  
**following her visit to the Czech Republic**  
**from 20 to 24 February 2023**

The Czech Republic thanks the Commissioner for Human Rights for her report following her visit to the Czech Republic from 20 to 24 February 2023 and for the many interesting discussions during the course of the visit. The Czech Republic is committed to the cooperation with the Council of Europe as regards the efforts to protect and promote human rights and highly appreciates the work of the Council of Europe and the Commissioner for Human Rights in this field. The report touches upon a number of important topics that the Czech Republic has been working on for a long time. The Czech Republic puts emphasis on the compliance of human rights and welcomes the possibility of cooperation with the Council of Europe and the Commissioner for Human Rights in this regard.

The reply by the Czech Republic consists of reactions of the Office of the Government, the Ministry of Education, Youth and Sports and the Ministry of Health.

**Chapter 1. General issues in relation to human rights protection**

***Conclusions and recommendations***

The amendment to the Act on the Public Defender of Rights, which should allow him to be accredited as a national human rights institution according to the Paris Principles, is being prepared and will be submitted to the government by the end of the year. This amendment should also establish a new institution of defender of children's rights (child ombudsperson), who shall focus on the protection of their rights.

**Chapter 2. The rights of the Roma**

**2.1. Institutional development**

The Government Council for Roma Minority Affairs (GCRMA), an advisory body of the Government of the Czech Republic in the area of Roma integration, continuously monitors the topics highlighted by the Commissioner for Human Rights of the Council of Europe in the Report following her visit to the Czech Republic from 20th to 24th February 2023.

## 2.2. Victims of forced sterilisation

GCRMA and its working body the Health and Social Committee monitors the development of the compensation mechanism of victims of forced sterilisation. In this regard GCRMA adopted the resolution in which it appealed to the Ministry of Health to remove the current barriers and expand the range of acceptable means of evidence. Moreover, the members of GCRMA pointed out that the victims often struggle to find the clear information about the compensation mechanism. In order to make the information about the compensation mechanism more accessible for the victims, the Ministry of Health created a special website regarding the compensation mechanism.

As regards the recommendations, the report calls for the development of a clear methodology for assessing applications, ensuring consistency and fairness, as well as describing clear application and evidence assessment processes (point 34.1). In 2021, the Ministry of Health published on its website a comprehensive and easy-to-understand methodology for the submission and handling of applications, including the marking and assessment of evidence. This concerns the following page on the Ministry website: <https://www.mzcr.cz/zadosti-o-odskodneni-protipravnich-sterilizaci/>. The information can be found on this website in the document entitled “Postup-pri-podani-zadosti-o-priznani-naroku-na-poskytnuti-jednorazove-penezni-castky-osobam-sterilizovany-m-v-rozporu-s-pravem.pdf”. It is also published for all potential applicants here: “Pouceni-o-pravech-a-povinnostech-v-rizeni-o-odskodneni-protipravni-sterilizace.pdf” along with a model application for compensation for sterilisation. The process of handling applications is a standard administrative procedure and its rules, including the assessment of supporting documents, are clearly established by Act No 297/2021 Coll., on the provision of a lump sum of money to persons sterilised in violation of the law and on the amendment of certain related laws (hereinafter referred to as “Act No 297/2021 Coll.”), and Act No 500/2004 Coll., the Administrative Code, as amended (hereinafter referred to as the “Administrative Code”).

Consistency and fairness in the assessment of applications and evaluation of evidence is ensured by the following mechanisms:

1. a two-stage approval of the application decision,
2. a two-stage administrative decision on the application,
3. a two-stage review of the administrative decision by the courts on the basis of a legal action.

Clear methodology already exists.

The report furthermore calls for a reassessment of previously rejected applications in the light of the amended methodology (point 34.2). If an applicant disagrees with the refusal of their application, every applicant has the possibility to have the reason for the refusal of their application reviewed by a higher administrative authority by way of a standard appeal. On the basis of such appeal, the applicant’s case will be examined by the Appeal Committee of the Minister of Health, which is composed of independent experts from outside the Ministry (Section 152(3) of the Administrative Code). This serves to strengthen

the objectivity and fairness of decisions on applications. Thereafter, the applicant also has the opportunity to have the grounds for refusing the application examined by the courts on the basis of a legal action against an unlawful administrative decision. Applicants are advised of this possibility (see the Ministry website listed above). Judicial review is also a two-stage process. Actions are to be filed at the Municipal Court in Prague and are exempt from court fees. A cassation appeal is lodged with the Supreme Administrative Court. Since a rejection does not constitute a bar, an applicant may submit a new application without any restrictions. Applicants often take advantage of this option. Given the wide range of remedies available to applicants and the enormous number of applications, the Ministry of Health does not consider it effective to reconsider applications that have already been refused. The Ministry of Health notes that some applications have also been rejected because there is no proof that the applicant was sterilised.

The report also calls for measures to be taken to prevent a disproportionate burden of proof being placed on applicants, including consideration of the possibility of a presumption of illegality of sterilisation (point 34.3). The processing of compensation claims, including the assessment of supporting documents, has clear rules set out in Act No 297/2021 Coll. and the Administrative Code. Pursuant to Sections 5 and 6 of Act No 297/2021 Coll., this is expressly an individual administrative proceeding initiated upon request with the standard allocation of the burden of proof under the Administrative Code. In the application procedure, the burden of assertion and proof lies with the applicant. Act No 297/2021 makes it easier for applicants as it only requires them to properly identify documents and other means of evidence to prove a particular claim. The rules of the administrative procedure, including the possibilities for proposing evidence and making representations in the administrative procedure for the application, are explained to the applicants in a detailed and comprehensible manner during the administrative procedure, especially if a decisive claim is not proven. The Ministry then actively procures the evidence identified by the applicant. In the course of the administrative procedure, the Ministry proactively obtains information to prove the claim and to objectively assess the application, namely from the hospital where the sterilisation allegedly took place (through requests for medical documentation), from state archives, from municipal and regional authorities, from the Czech Gynaecological Association, and from the Ministry of Health's specialist health care unit. If the applicant proves that in connection with the medical procedure of sterilisation a benefit was granted to them under social security regulations, the granting of which was linked to the performance of the medical procedure of sterilisation, then the sterilisation is automatically proven to be illegal pursuant to Section 3(3) of Act No 297/2021 Coll. The Ministry of Health, as the administrative body responsible for processing applications, has a statutory role as an objective, impartial and unbiased administrative body that must act in accordance with the law.

The report furthermore calls for the provision of sufficient human resources to deal with applications in a timely manner, including expert support on human rights, cultural and historical issues (point 34.4). The explanatory memorandum assumed that a total of 400 applications would be submitted, and therefore one new post was created to handle these applications. There are currently more than 1,300 applications on file, and the sterilisation compensation claims agenda is handled by all the clerks in the department over and beyond the historically assigned agendas. If the Ministry needs an expert opinion in

a particular case, it can easily contact an expert or an expert organisation in accordance with the Administrative Code and Act No 297/2021 Coll.

The report calls for ensuring sufficient awareness of the possibility of compensation along with proactive searching for victims of forced sterilisation. Consideration of extending the time limit to apply for compensation (point 34.5). The number of applications submitted every day suggests that the level of awareness regarding persons entitled to compensation is sufficient. In addition, these persons have strong support from NGOs such as Liga lidských práv (League of Human Rights). Some applicants are represented by the League of Human Rights and lawyers. The issue of illegal sterilisations is regularly covered by the media. The issue is also being monitored by the Ombudsman. Information on the possibility of compensation is also available to the public on the website of the Ministry of Health.

The report requests that applications from older applicants be prioritised (point 34.6.) however Such an approach would unduly disadvantage applicants who had submitted applications earlier.

### **2.3. Inclusive education**

GCRMA also repeatedly adopted resolution requesting the Ministry of Education, Youth and Sports to include the Roma culture and history in the revision of curriculum.

With regard to the statement “... *before a child can be assigned to an educational programme with reduced outcomes (whether in mainstream education or in special schools), their parents must give consent to such a course of action...*” (point 44) it is necessary to add that for a child to be assigned to an educational programme with reduced outcomes in special schools, a written request of the legal representative is required (not just consent). At the same time, the Czech Republic has already prepared a management plan for the advisory system, including legislative changes, which will change this situation. Although we understand that the report describes the current state of play, we would appreciate if the report mentioned the above-mentioned plan as well.

As regards ensuring appropriate levels of support (point 46), based on ongoing negotiations with the Czech Government Commissioner for Human Rights, the Czech Public Defender of Rights and the NGOs, the system of parameters is still being modified; the option to increase the number of school assistants extraordinarily based on a request was added, should the standard parameters not be sufficient. The Ministry of Education, Youth and Sports is convinced that the system of parameters will, on the contrary, improve the conditions of inclusive education and, among other things, will act as a measure against segregation mentioned in the previous paragraphs. Therefore, we do not share concerns about the increase in the number of pupils in special schools. It should also be mentioned that, according to our findings, the total number of teaching assistants per number of pupils in the Czech Republic is above average compared to the other European countries and the EU. However, different systems in different countries have to be taken in account.

Concerning the call to work towards a paradigm shift on the role of testing (point 54), our point of view is that an examination in school counselling centres is important with regard

to the provision of support (for example assistants). However, we understand that this might partly contribute to the placement of pupils in schools and classes for pupils with mild intellectual disabilities. We believe that it is necessary to further work with the target groups. It is also important to mention that the management plan of the system of the school counselling centres is a part of the Long-term Plan for Education until 2027.

#### **2.4. Further comments on the discrimination of Roma**

Further in the area of housing, the Ministry for Regional Development submitted the bill on support in housing. This bill should be an alternative to the originally intended bill on social housing. According to the bill on support in housing, contact points will be set up in municipalities with expanded competence to advise people with regard to their specific situations, for example, to aid them with finding new housing for an affordable price. They could also facilitate access to such housing by providing guarantees to apartment owners or the aid of social workers. In addition, they will map the housing situation in their area, which will facilitate better housing investments. Considering the fact that Roma in the Czech Republic significantly encounter housing segregation and discrimination on the housing market and therefore should be one of the target group of this bill, the Government Commissioner for Roma Minority Affairs Ms. Lucie Fuková submitted her comments within the inter-ministerial comment procedure in which she asked for the inclusion of the group of persons discriminated against on the housing market, e.g. because of their supposed or real ethnic origin (we believe Roma would be a majority included in this group) in the list of the groups of especially vulnerable persons. The listed groups will get extra points in the support system and thus be prioritised before those without the status of vulnerable persons. Further, the Government Commissioner for Roma Minority Affairs requested the Ministry for Regional Development to guarantee the simple proof of discrimination will be adopted in the practice in order to ensure the support system to be as accessible as possible. These two comments are currently being processed by the Ministry for Regional Development, as the inter-ministerial comment procedure is still ongoing.

#### **2.5. The treatment of Ukrainian Roma**

Concerning the Roma refugees from Ukraine, GCRMA recommended to Government Commissioner for Human Rights to establish a working group on the needs of particularly vulnerable groups of refugees. This working group was established in May 2022 and consisted of representatives of the Ministry of Interior, Ministry of Labour and Social Affairs, Ministry of Regional Development, Administration of the Refugee Facilities, regional Roma coordinators, NGOs and other relevant institutions. The Council in its resolution recommended to the Government to ensure equal access for all applicants in the process of temporary protection application submission, to proactively ascertain an actual applicants date of entrance to the Schengen area, to ensure the possibility of administrative and judicial review of declined temporary protection applications, to ensure sufficient accommodation capacity as well as provision of transparent information about the accommodation capacity and lastly to ensure the provision of social services to all refugees including the access to the health care and social services and education to

children. Additionally, GCRMA recommended to the Government to initiate negotiations with UNHCR about the offered financial support intended to strengthen the capacities in the assistance for Ukrainian refugees, including the capacities of Regional Assistance Centres for Help and assistance to Ukraine.

## **Chapter 3. Persons with disabilities**

### **3.1. General developments**

In the reform of psychiatric care, despite a promising start between 2017-2020, there was a slowdown in the implementation of individual necessary changes. Therefore, the tasks from the reform were also incorporated into the National Plan for the Promotion of Equal Opportunities for Persons with Disabilities (2020-2025). Unfortunately, significant systemic changes have not yet been restarted and the measures included in the National Action Plan for Mental Health 2020-2030, which was approved by the government in January 2020, have not yet been implemented. The Ministry of Health, as the authority responsible for implementing the entire process, is only implementing partial steps, for example the active involvement of peer consultants (point 73).

The Government Committee for Persons with Disabilities participates in ensuring the implementation and coordination of the Convention as a governmental coordination, advisory and initiative body for disability issues. Thus it coordinates the creation of national plans for the support of persons with disabilities, but also monitors the implementation of their individual measures. In order to effectively implement the current plan, the position of ministerial coordinators was created, as well as an inter-ministerial implementation group. Individual tasks are also dealt with at separate meetings with representatives of ministries. At the same time, the committee's secretariat issues methodological materials, if necessary, to help the responsible authorities to fulfil their tasks, e.g. mapping barriers in office buildings and other institutions (point 74).

Although the National Plan is not directly binding on territorial self-governing units, these are not only included in its creation, but the need to implement individual steps to ensure equal rights of persons with disabilities in all areas is also continuously communicated with them. Therefore, the Government Committee also has an expert group for regional development, which debates current and conceptual issues in this area with representatives of all regions. People with disabilities and their organizations also participate in the creation of national and regional plans through working groups and other means of participation.

In line with the task included in the national plan, the Czech School Inspectorate carried out in the 2022/2023 school year an investigation to determine the number of pupils with hearing impairment in schools established in accordance with § 16 paragraph 9 of the Education Act, as well as the quality of their education and the teaching of Czech sign language at these schools. The results of this investigation will be published in the coming months. Parents of pupils with hearing impairment, as well as representatives of non-profit organizations, have long drawn attention to the insufficient competence of pedagogues in teaching the Czech sign language and the insufficient level of communication with pupils whose mother tongue is precisely Czech sign language. The Ministry of Education, Youth and Sports is aware of these problems and is trying to find

suitable solutions in cooperation with parents and organizations. In the past, a project related to the description of the language framework for the Czech sign language was implemented by the National Pedagogical Institute. Discussions are now underway regarding the implementation of a follow-up project, through which a reference framework for Czech sign language exams should be established (point 76).

### **3.2. The right to live independently and to be included in the community**

The Committee repeatedly draws attention to the necessity of necessary changes increasing the possibilities of persons with disabilities to remain in their natural social environment and the availability of individualized community care. Therefore, repeated negotiations are being conducted with the Ministry of Labour and Social Affairs and the Ministry of Finance regarding partial amendments to individual laws to increase the availability of social services, the care allowance and other support leading to an increase in the actual income of persons with disabilities (e.g. keeping the spouse tax credit also for carers). Currently, the actual purchase power of the care allowance is constantly decreasing, and thus the availability of social services is also deteriorating. Despite intensive negotiations, it was not possible to improve this situation due to the consolidation of public finances.

### **3.3. Involuntary placement in social and health care institutions and involuntary treatment**

In the area of involuntary placement of persons with disabilities in social service facilities, the Ministry of Labour and Social Affairs envisages its legal regulation through an amendment to the Act on Social Services. In view of the long-lasting professional and political discussion regarding this amendment, it has unfortunately not yet been possible to advance this matter more effectively.

The report draws attention to involuntary hospitalisation, which is contrary to Article 5 of the European Convention on Human Rights (the right to liberty and security). In this regard, the report points out that a court must be informed of involuntary hospitalisation and must decide whether the conditions for such hospitalisation have been met and how long it may last. Organisations working with people facing involuntary hospitalisation have expressed concern about a lack of information (article 85 and 86).

The legislation governing this area addresses the issue in detail. Here it is also necessary to take into account the applied practice for which these regulations are used and, at the same time, the interpretative procedures applied to these regulations. For example, court decisions do not always contain a full description of the decision-making mechanisms and all the information necessary for the correct course of such hospitalisation for the patients themselves (persons with disabilities and their guardians) and for health care providers. The wording of the report also often presents the perspective of organisations representing persons with disabilities without a balanced representation of opinions or information on the settings and competences of the system from relevant ministries and State institutions.

### **3.4. Legal capacity**

The Committee is aware of the problems that occur in practice in limiting legal capacity and the implementation of guardianship and support measures. Therefore, in 2020, the Expert Group for the Support of Persons with Limited Legal Capacity was established, which aims in particular to map the use of support measures in the event of limitation of an adult's capacity to legally act regulated by the Civil Code, to propose effective sharing of good practice and solutions in areas where it is currently practice insufficient. Its members are not only representatives of interested ministries, but also representatives of the professional and academic sphere, the Office of the public defender of rights and representatives of organizations defending the rights of persons with disabilities.

Currently, the most serious deficiency is considered to be the failure to appoint a responsible authority for public and private guardianship. Individual ministries like the Ministry of Justice, Ministry of the Interior and Ministry of Labour and Social Affairs deal only with partial issues within the scope of their competence. The lack of a manager for this issue is significantly reflected in the implementation of these institutes in practice. A number of aspects that would ensure high-quality and efficient performance of guardianship, such as methodical guidance and conceptual education of guardians, both public and private, are not conceptually and methodically adjusted. Therefore, the Committee adopted a resolution dated August 7, 2023 in this context, through which it requested the government to implement the legislative steps needed to determine the responsible authority for public and private guardianship.

A new law is also currently being prepared, which should help to resolve the existing ambiguities, including the designation of the responsible authority (Ministry of Labour and Social Affairs). However, the subject of the proposal in its current form is only public guardianship, private guardianship would thus remain completely unsystematic without further detailed regulation. That is why, together with other actors, the Committee is striving to extend the scope of this law also to private guardianship, and in this regard intensive negotiations are currently underway at the highest level.

### **3.5. Protection of persons with disabilities**

The report welcomes the legislative amendments to the Health Services Act which banned the use of cage beds in psychiatric hospitals from 1 January 2022 (article 92). The Ministry of Health notes that the exclusion of the use of restraint in the form of placing a patient in a cage bed did not apply only to psychiatric hospitals, but to all health care facilities.

The report refers to evidence of the use of force, including restraint in various forms, against persons with disabilities. The shocking case of a woman who was continuously chained to a bed for 12 years in a psychiatric hospital in Opava came to light in 2002 (article 93). The Ministry of Health worked intensively with psychiatric hospitals on the quality of their services and respect for human rights in the period from 2018 to 2022, when transformation plans for these facilities were prepared, including a section directly addressing changes in the area of quality. Long-term and sustained support from both health care institutions and individuals is needed to change the approach to patients. For this reason, the WHO QualityRights e-training tool focusing on mental health, human rights, disability and recovery has been recently translated. The WHO QualityRights



assessment tool kit and the WHO Training Programme Guide on Quality of Care for People with Mental Illness were also used. Education on de-escalation and the Safewards concept - ensuring safe separation with a minimum of regime measures and reducing the need for restraints - was also implemented. At the same time, recommended practices for psychiatric hospitals have also been developed that focus on grievance mechanisms, legal liability for the use of restraints, and individual planning.

## **Chapter 4: Other issues raised**

### **4.1. Violence against women and domestic violence**

The government approved the proposal for the ratification of the Istanbul Convention on June 21, 2023 and submitted it to both chambers of the Parliament of the Czech Republic for approval. The political debates are ongoing and educational debates with experts are planned in both chambers in order to educate, emphasize the importance and dispel myths about the convention.<sup>1</sup> The Government Commissioner for Human Rights continues to strongly support the ratification.<sup>2</sup> Even the President of the Republic, other members of the Government and the Parliament are spreading awareness of the importance and usefulness of the Istanbul Convention.<sup>3</sup>

The government is also now preparing a new definition of rape, which would strengthen the protection of victims by punishing non-consensual sex and not just forced sex. The proposal is now being discussed between individual ministries.

The new Action Plan for the prevention of domestic and gender-based violence for the years 2023-2026 has been approved by the government in August 2023. Following on from previous documents, it envisages the inclusion of the topic of domestic and gender-based violence in framework educational programs, together with methodical support and the support for educational and public awareness activities in the area domestic and gender-based violence.

Furthermore, it will support the development of specialized services for victims of sexual violence, the increase in their quality and their availability and interconnectedness. Finally, it should ensure further education and specialization of experts in contact with persons at risk of domestic and gender-based violence, as well as the safety and access to justice for victims.

### **4.2. The situation of LGBTI people**

The amendment to the Civil Code and some other laws allowing marriage for same-sex couples with all the rights and obligations was discussed by the Chamber of Deputies of the Parliament in the 1st reading in June 2023 and referred to its committees for further discussion. The 2nd reading should then take place at the end of October 2023.

Many leading Czech politicians and officials condemned the hate attack in Bratislava's Tepláreň club in October 2022. These included, for example, the President of the

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<sup>1</sup> For the event in the Chamber of Deputies see [here](#). A similar event in the Senate is planned for October

<sup>2</sup> See for example. [here](#).

<sup>3</sup> See for example [here](#)., [here](#), [here](#) or [here](#)

Republic, the Prime Minister, the 1st Deputy Prime Minister and Minister of the Interior, the Chairman of the Senate or the Speaker of the Chamber of Deputies.<sup>4</sup> Others such as the Chairman of the Senate also supported the aforementioned call Together Against Hate.<sup>5</sup> Politicians express support for LGBT+ people on other occasions as well.<sup>6</sup>

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<sup>4</sup> See for example a [dedicated page](#), including the reactions of the [President of the Republic](#), [Prime Minister](#), [1st Deputy Prime Minister and Minister of Interior](#), [Chairman of the Senate](#) or [Speaker of the Chamber of Deputies](#).

<sup>5</sup> See for example [here](#).

<sup>6</sup> See for example [here](#), [here](#), [here](#), or [here](#).