



Public Defender of Rights of the Czech Republic

Submission to the Universal Periodic Review (Fourth Cycle) State under the review: Czech Republic

Introduction: Public Defender of Rights of the Czech Republic

1. Public Defender of Rights of the Czech Republic (hereinafter referred as “Defender” or “Ombudsman”) is the ombudsman institution in the Czech Republic. The institution was established in 2000 by the Act on the Public Defender of Rights (No. 349/1999 Coll.) to defend persons against the conduct of authorities and other institutions where such conduct is at variance with the law or does not comply with the principles of a democratic State governed by the rule of law and good administration, as well as against their inaction. Since the establishment of the institution, the Ombudsman has gradually been entrusted with additional legal mandates. Apart from the above-mentioned original competence, the Ombudsman currently performs the duties of the National Preventive Mechanism, Equality Body (under the EU directive), Monitoring Body under the Convention on the Rights of Persons with Disabilities, Body promoting equal treatment and supporting workers in the European Union and their family members (under the EU directive), and Forced Returns Monitoring Body (under the EU directive).
2. The Defender is not the National Human Rights Institution according to the Paris Principles. The National Human Rights Institution has not yet been established in the Czech Republic.

A. Rights of persons deprived of their liberty

3. Czech Republic has one of the highest prison population indexes among European countries. Prisons have long been overcrowded and face related problems (mass accommodation, lack of privacy, overcrowding, etc.). Changes described in the Prison Concept and generally desirable changes in penal policy have been manifesting slowly in practice. The Defender also draws attention to the unsustainable trend of increasing numbers of persons in pre-trial detention.¹
4. There is no protective treatment concept and the legal regulation is insufficient, as its scope does not correspond to the severity of the interference with human rights.²
5. According to the current legislation and practice, police officers or members of the Prison Service of the Czech Republic may be present during medical examination of a detainee. This is contrary to international standards and may, *inter alia*, discourage the detainee from disclosing information about ill-treatment. The presence of a police officer or a member of the Prison Service should only be possible at the request of the doctor for security reasons, and only on sight.
6. The legal regulation of duty of confidentiality of health care providers and health professionals needs to be changed so that this duty would not be an obstacle to reporting suspected ill-treatment. Currently, the exceptions to the duty of confidentiality cover only the most serious crimes, which does not cover all forms of ill-treatment.
7. There is no independent complaint mechanism for clients of social services. The Social Services Act needs to be amended in this respect.
8. Many serious intrusions into the privacy, safety, integrity, and dignity of clients of social and health services do not constitute an offence. As a result of this, less serious forms of ill-treatment with clients cannot be prosecuted. It also constitutes a low respect for the supervisory authorities. The list of offences in Social Services Act and Health Services Act needs to be complemented accordingly.
9. During his visits to psychiatric institutions, the Defender often encounters inadequate departments where patients are detained in undignified or endangering conditions. However, there are also modern departments with a smaller number of beds in rooms where the average length of hospitalization has been decreased; this may be related to the ongoing reform of psychiatric care.

¹ Report of the Public Defender of Rights: *Secure Preventive Detention. Extract of the Report on Systematic Visits Carried out by the Public Defender of Rights in 2018* [online]. Brno: Office of the Public Defender of Rights, 2019. Available at: <https://www.ochrance.cz/uploads-import/ESO/2018-secure-preventive-detention.pdf>

² Summary report on the inquiry of the Public Defender of Rights from systematic visits of psychiatric hospitals with focus on protective treatment, restrictive measures, and other issues [online], p. 80. Brno: Office of the Public Defender of Rights, 2019. Available at: https://www.ochrance.cz/uploads-import/ESO/21-2016-NZ-MLU_SZ-ochranne_leceni.pdf

B. Rights of foreigners

10. The determination of age of unaccompanied minors (UAMs), which is mostly carried out in administrative expulsion proceedings (the Act on the Residence of Aliens), exceptionally in asylum proceedings, has been problematic for a long time. The legal regulation and practice do not guarantee or respect the principle of priority of the least invasive methods (medical examination is always automatically used - bone X-ray³), the protection of the rights of the child, procedural protection and the benefit of the doubt principle. While minors are detained in Aliens Detention Centers (ADC) for vulnerable persons, if they are wrongly identified as adults they are transferred to centers for adults. The Constitutional Court⁴ stressed the need for a holistic approach, the use of multiple (not only medical) methods, and ensuring the procedural rights and protection of the UAMs. In response, Ministry of Interior supplemented the procedure with a statement of an ADC social worker (based on observation of the foreigner and interview with him/her). However, X-ray examination is still always carried out (instead of the wrist, now an X-ray of the collarbone, arm and shoulder blade, which is evaluated by the Criminal Institute of the Police of the Czech Republic), sometimes supplemented by the examination by a pediatrician (in a few cases, a visual assessment of secondary sexual characteristics has been used⁵, in violation of international standards⁶). The age assessment is an integral part of the detention decision; as a result, there is no separate review of it. The guarantees of the UAMs rights are still missing – the informed consent to all age determination procedures (including the observation by a social worker) and the information on the possibility to refuse it; information in a child-friendly manner; notification of the outcome of the assessment; possibility to comment on the outcome and any discrepancies found. We cannot confirm whether the presence of a guardian and an interpreter during age assessment prevails to be a problem. Actors involved in age assessment do not receive sufficient training.
11. There are still problems concerning the so-called uninsurable children of foreigners staying in the Czech Republic for more than 90 days. These children, unless they have a permanent residence, are not part of the public health insurance system and are legally obliged to be insured by a travel health insurance. However, in cases of long-term poor health, commercial insurance companies refuse to insure them. After 2021 legislative amendments⁷, these children are covered by public health insurance for the first 60 days after their birth. After 60 days, there is still no systematic solution of their situation and

³ Judgments of the Supreme Administrative Court of the Czech Republic from 30 March 2017, case No. 2 Azs 38/2017–28, and from 26 September 2019, case No. 7 Azs 87/2019-22

⁴ Judgment of the Constitutional Court of the Czech Republic from 7 July 2021, case No. II. ÚS 482/21

⁵ Judgments of the Regional Court in Prague from 21 December 2021, case No. 53 A 3/2021- 13, and from 22 December 2021, case No. 50 A 23/2021- 17

⁶ EASO Practical Guide on age assessment, Second edition, p. 34, 55-56; Parliamentary Assembly of the Council of Europe, Resolution 2195 (2017), para 6.7.; Council of Europe, Age Assessment for Children in Migration. A human rights-based approach, p. 16

⁷ Act No. 326/1999 Coll., on the Residence of Aliens, Act No. 48/1997 Coll., on the Public Health Insurance

these children may find themselves without the adequate health care.

12. As of 2 August 2021, the amendment to the legislation on the procedure for applications for a stateless person status significantly worsened the status and scope of applicants' rights (right of residence, protection from detention, issuance of a card, and access to housing and healthcare). There is no regulation of the applicant's legal status during the procedure in the new legislation; this restricts the accessibility of the procedure and participation rights of applicants.
13. Delays in administrative proceedings conducted by the Asylum and Migration Policy Department of the Ministry of the Interior (OAMP)^{8 9} are a long-standing problem.¹⁰

C. Rights of people with disabilities

14. There is still no strategy on the deinstitutionalization of social services in the Czech Republic which should include clear objectives and the implementation deadline for the gradual abolition of institutional care for people with disabilities and its replacement by community-based services. Terms like *deinstitutionalization*, *transformation* and *community-based social services* are not clearly defined in legal order and their inconsistent interpretations cause difficulties in practice. The state has transferred its commitment to the deinstitutionalization of social services to regions (major founders) who are responsible for social services planning and their availability on their territory. Moreover, children with disabilities under the age of 3 should no longer be placed in children's homes.
15. In legislative recommendations¹¹, the Defender calls for the adoption of the comprehensive support measures regulation. Currently, more than 50 000 adults in the Czech Republic benefit from support measures. Despite the objectives of Article 12 of the CRPD, the courts continue to favor restriction of legal capacity over other support measures. Between 2014 and 2021, decisions on support measures without interference with legal capacity constituted only 23% of all decisions¹² (see Annex I). Courts do not examine in detail the possibility of using less restrictive measures and usually simply state

⁸ Inquiries of the Public Defender of Rights, case No. 4784/2016/VOP or case No. 6741/2017/VOP. Available at: <https://eso.ochrance.cz>

⁹ Inquiries of the Public Defender of Rights, case No. 504/2021/VOP, 5657/2019/VOP, case No. 993/2017/VOP and case No. 7647/2016/VOP. Available at: <https://eso.ochrance.cz>

¹⁰ Statement of the Deputy Defender for the Office of the Government Commissioner for Representation before the European Court for Human Rights, case No. 11333/2022/VOP. Available at: <https://eso.ochrance.cz>

¹¹ *Annual Report on Activities of the Public Defender of Rights 2021* [online]. Brno: Office of the Public Defender of Rights. Available at: https://www.ochrance.cz/dokument/zpravy_pro_poslaneckou_snemovnu_2021/vyrocnizprava-2021.pdf

¹² Brozová Rittichová B., Redlichová A. Support measures in the light of statistics. People with disabilities as a "new minority"- challenges and context. Brno: Public Defender of Rights, 2021. ISBN 978-80-7631-045-2

that they are not appropriate for the person being assessed or that there is no person who would provide the support.¹³ In up to 40% of judgments on the restriction of legal capacity, the courts applied the so-called summary restriction¹⁴, meaning that the person concerned cannot legally act in anything except ordinary matters of daily life. The restriction of legal capacity often results in interference with fundamental rights, such as the right to vote, to marry or to work.

16. People with disabilities cannot fully participate in political life. According to current data, 11 914 people have been restricted in exercising their right to vote since 2014, of whom 10 309 are also restricted in their ability to vote in elections (active suffrage). Overall, approximately 25% of people restricted in their legal capacity cannot vote. Although both the Ombudsman and the UN Committee on the Rights of Persons with Disabilities have pointed out that the restriction on the right to vote violates Article 29 of the CRPD,¹⁵ the government is currently discussing a new law on electoral administration leaving this barrier in place.
17. Another issue is that electoral laws do not require polling stations to be wheelchair accessible or election materials to be issued in accessible formats. There are cases in which people with disabilities are forced to vote in portable ballot boxes outside the polling station. People in institutions are prevented from voting even when they are not limited in their legal capacity, or they are forced to vote directly in the institution where the secrecy of vote is not always ensured and where they may be subject to undue influence.¹⁶
18. The availability of social services for children with disabilities and their families is also problematic. The average time between applying for early care and conclusion of the contract is longer than 210 days,¹⁷ which makes the service inaccessible in some cases. Long waiting times are caused by inflexible and inefficient system of planning and financing social services and, in some cases, the lack of support from the regions.

¹³ Report from the research of the Public Defender of Rights: *Crossroads of autonomy. The practice of the courts in deciding on support measures* [online]. Brno: Office of the Public Defender of Rights, 2020, p. 36-37. Available at:

https://www.ochrance.cz/fileadmin/user_upload/CRPD/Vyzkumy/2018_61_Vyzkum-svepravnost.pdf

¹⁴ Ibid., s. 47-56

¹⁵ Concluding recommendations of the Committee on the Rights of Persons with Disabilities on the initial report of the Czech Republic from 15 May 2015, para. 58. Available at:

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fCZE%2fCO%2f1&Lang=en

¹⁶ Summary report of the Public Defender of Rights on the right to vote of People with Disabilities [online]. Brno: Office of the Public Defender of Rights, 2020, p. 15. Available at:

<https://eso.ochrance.cz/Nalezene/Edit/8192>

¹⁷ Research of the Public Defender of Rights: *Accessibility of social services for children with disabilities and their families* [online]. Brno: Office of the Public Defender of Rights, 2020. Available at:

https://www.ochrance.cz/uploads-import/CRPD/Vyzkumy/11-2019_Vyzkum_soc-sluzby-pro-deti-s-postizenim.pdf

D. Rights of children

19. The need to unify the care of children at risk and the associated problems remains. The law on family support has still not been adopted and no systemic action towards the unification of the care is ongoing.
20. The transformation of collective (institutional) care for children at risk (deinstitutionalization) is not satisfactory either. The Ministry of Education, Youth and Sports has not yet presented a concept of institutional and protective education, neither has it proposed amendments to the Act on the Execution of Institutional or Protective Education, even though the act is outdated and, in many respects, does not meet children's needs.
21. The Defender welcomes that the placement of children under the age of three in collective institutions has been legislatively prohibited as of 2025.
22. The situation in psychiatry, especially pedopsychiatry, in the Czech Republic has long been unsatisfactory. This concerns all forms of care - outpatient, community, and inpatient. There are insufficient personnel and other capacities and the increasing number of pediatric patients (including in the context of the COVID-19 pandemic) deepens the problem.
23. The pedopsychiatric care in the Czech Republic is still based mainly on the acute inpatient care or after-care provided in psychiatric hospitals (in psychiatric department of hospitals). The capacity of inpatient care is insufficient. Moreover, it is intended for acute conditions when the difficulties cannot be managed on an outpatient basis; this is not the case because of the acute unavailability of outpatient care.
24. It usually takes several months to get an appointment for outpatient pedopsychiatric care. Outpatient pedopsychiatrists have high numbers of patients and often do not have sufficient time for them which may lead to late diagnosis and hidden, undetected psychiatric children morbidity. The pedopsychiatric outpatient care often lies in psychopharmacology.
25. The availability of community-based services offering children help and care in their natural environment is low. There is a lack of coherence of care, both in terms of cooperation between outpatient clinics and inpatient facilities and in terms of cooperation with general practitioners, clinical psychologists, etc.
26. A positive development signifies the pilot project of the first three Mental Health Centers for Children and Adolescents, whose philosophy is a multidisciplinary approach, outpatient and outreach services provided in the natural environment, services focused both on crisis and longer-term therapeutic assistance, etc. The Czech Republic's strategy is to create 25 such centers in the next 10 years.
27. The Czech Republic has not yet explicitly legally prohibited physical punishment of children within the meaning of Article 19 of the Convention on the Rights of the Child, although the

international community has repeatedly called for it¹⁸. Currently, any physical punishment of children is explicitly legally prohibited only in institutions. The long-standing position of the Czech Government is that the current legislation is sufficient, as it cannot be interpreted as allowing corporal punishment of children.¹⁹ Only appropriate educational measures can be used in the family²⁰; inappropriate educational measures can be punished as an offence.²¹

28. Based on inquiries of individual cases, the Defender learned that there is a lack of specialized services for families with children at risk. In some cases these services are inaccessible to them as they are located only in larger cities or do not have the capacity to provide sufficiently intensive support to children and their families.

E. Strengthening the procedural status of victims of discrimination

29. The Defender's 2020 research²² on the Czech courts' adjudication of discrimination disputes between 2015 and 2019 shows that the number of discrimination disputes in the Czech Republic is small, as is the success rate of plaintiffs in such disputes. Courts either do not award monetary compensation for non-pecuniary damage at all or in a significantly reduced amount. The Defender has long recommended the following: 1) amend provision of Section 10 of the Anti-Discrimination Act so that victims of discrimination can claim compensation even if other claims (refraining from discrimination, removing its consequences or an apology) are sufficient to compensate for discriminatory interventions; (2) extend sharing of burden of proof in discrimination cases on grounds other than race or ethnicity also to areas other than work and employment; (3) reduce the court fee for appeals in discrimination cases; and (4) publish court decisions in a publicly accessible database. The Defender further recommends the introduction of an education system in anti-discrimination law for judges and lawyers.

¹⁸ Among others see judgment of the European Committee on Social Rights on collective complaint APPROACH *versus* Czech Republic, complaint from 20 January 2015, No. 96/2013; Concluding observations of the Committee against Torture on the fourth and fifth periodic report on the Czech Republic from 13 July 2012, CAT/C/CZE/4-5; Concluding observations of the Committee on the Rights of the Child on the third and fourth periodic report on the Czech Republic from 4 August 2011, CRC/C/CZE/CO/3-4

¹⁹ Statement of the Government of the Czech Republic on the collective complaint No. 96/2013

²⁰ Section 884 para. 2 of the Act No. 89/2012 Coll., Civil Code

²¹ Section 59 para. 1 h) of the Act No. 359/1999 Coll., on the Social-Legal Protection of Children

²² Research of the Public Defender of Rights: *Decision-making of Czech courts in discrimination disputes 2015 – 2019* [online]. Brno: Office of the Public Defender of Rights, 2020, case No. 61/2019/DIS. Available at: <https://www.ochrance.cz/uploads-import/ESO/Decision-making%20of%20Czech%20courts%20in%20discrimination%20disputes%202015%E2%80%932019.pdf>

²³ Section 35 para. 2 of the Act No. 128/2000 Coll., on Municipalities

F. Adoption of the Social Housing Act

30. Although municipalities shall create conditions to satisfy the need for housing²³, municipal housing is often unavailable or too small for families with multiple children. Therefore, the Defender has repeatedly stressed that the adoption of the Social Housing Act is necessary to address housing needs. The Act has not been adopted yet. The previous government instead of supporting the Social Housing Act proposal implemented a subsidy support for the acquisition, construction and reconstruction of social housing stock through the Ministry of Regional Development. However, the Defender's findings show that this measure is not sufficient to address housing need in a systematic way (some municipalities do not want to use the support for the acquisition of social housing or do not plan to expand their housing stock).²⁴

G. Education of Roma children

31. A high number of Roma children are still educated according to the minimum recommended standards for children with mild intellectual disabilities. The majority of these children are moreover educated in schools or classes separated from children in mainstream schools or classes. The Defender appreciates the introduction of a compulsory final year of pre-school education, however, many children do not participate in it for various reasons.²⁵

H. Adoption of the law on assistance dogs

32. The Defender has long advocated²⁶ for the adoption of a law regulating rights of persons with disabilities using assistance dogs with special training.^{27 28} This law has not yet been introduced, the Government, however, issued a consenting opinion on the 2020 MP's legislative proposal. The Chamber of Deputies did not discuss the proposal during its term.

²³ Section 35 para. 2 of the Act No. 128/2000 Coll., on Municipalities

²⁴ Research report of the Public Defender of Rights: *Municipal housing from the perspective of the right to equal treatment and the role of municipalities in addressing housing need* [online]. Brno: Office of the Public Defender of Rights, 2020, case No. 69/2019/DIS. Available at: <https://eso.ochrance.cz/Nalezene/Edit/7946>

²⁵ Monitoring report of the Public Defender of Rights: *Implementation of the right to equal treatment and protection against discrimination* [online]. Brno: Office of the Public Defender of Rights, 2020, case No. 62/2020/DIS. Available at: <https://eso.ochrance.cz/Nalezene/Edit/9218>

²⁶ *Annual Report on Activities of the Public Defender of Rights 2021* [online]. Brno: Office of the Public Defender of Rights. Available at: https://www.ochrance.cz/dokument/zpravy_pro_poslaneckou_snemovnu_2021/vyrocnizprava-2021.pdf

²⁷ Recommendation of the Public Defender of Rights to the Government of the Czech Republic in relation to issuing the law regulating certain rights of persons with disabilities who are using the assistance of a dog with special training, case No. 23/2015/SZD. Available at: <https://eso.ochrance.cz/Nalezene/Edit/4000>

²⁸ Recommendation of the Public Defender of Rights on the access of guide and assistance dogs to public premises, case No. 31/2010/DIS. Available at: <https://eso.ochrance.cz/Nalezene/Edit/2682>

I. National Human Rights Institution

33. The Czech Republic has not yet established the National Human Rights Institution (NHRI) despite the increasing criticism from the international community. The Ombudsman partly performs some of the NHRI tasks but the institution does not have a broad human rights mandate within the meaning of Paris Principles. Therefore, many human rights areas remain without systematic monitoring of an independent institution. If the Ombudsman is to become the NHRI in the future, the Act on the Public Defender of Rights has to be amended accordingly. No such legislative proposal has been presented in the past monitoring period.
34. In the meantime, the Defender has been systematically working on preparation for the potential NHRI role, e.g. by strengthening the human rights perspective in its agendas (consultations, argumentation, and training) or by intensifying cooperation with international partners.

J. The Ombudsman for Children

35. The missing Ombudsman for Children in the Czech Republic is another institutional deficit. The 2020 legislative proposal to establish the Ombudsman for Children as a separate institution was not discussed by the Chamber of Deputies. However, the need for such an institution has been demonstrated, for example, during the COVID-19 pandemic (2020 - 2021). The period of time in which children in the Czech Republic were educated in the form of distance learning was one of the longest in the European Union. Negative consequences of this measure are yet to manifest themselves. This demonstrates that children are unable to effectively defend their rights against the interests of other groups in the society and they have little influence on decisions affecting them. It is therefore necessary to establish a specialized and independent institution that would deal with children's rights systematically, communicate with children about their world view, and promote their rights on a systemic level. The Ombudsman institution deals with children's rights in many areas of its work but its legal mandate does not allow the Defender to address children's rights systematically and in all important areas of life.