

NGOs information to the UN Committee on the Rights of the Child

For consideration of the fifth and sixth periodic reports of

**CZECHIA**

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Submitted by:

Forum for Human Rights (FORUM)

Validity Foundation - Mental Disability Advocacy Centre

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

6 August 2021

## I. OVERVIEW

1. This written submission provides an update on the information on the implementation of the Convention on the Rights of the Child (hereinafter “the CRC”) by the Czech Republic submitted to the UN Committee on the Rights of the Child (hereinafter “the Committee”) by Forum for Human Rights (hereinafter “the FORUM”) and Validity Foundation in coalition with other non-governmental organisations and alone in April and May 2020 and in December 2020.
2. This additional submission has been written by Forum for Human Rights (FORUM), Validity Foundation and Inclusion Czech Republic. The submission focuses on recent developments in one of the areas already covered in these previous submissions: the institutionalisation of young children.<sup>1</sup> This area concerns particularly children with disabilities and Roma children.
3. **FORUM** is an international human rights organisation active in the Central European region. It provides support to domestic and international human rights organisations in advocacy and litigation and also leads domestic and international litigation activities. FORUM has been supporting a number of cases pending before domestic judicial authorities and before the European Court of Human Rights. FORUM has authored and co-authored a number of reports and has provided information to UN and Council of Europe bodies on the situation in the Central European region, especially in Slovakia and the Czech Republic. For more information, please visit [www.forumhr.eu](http://www.forumhr.eu).
4. **Validity Foundation** – Mental Disability Advocacy Centre is an international human rights organisation which uses legal strategies to promote, protect and defend the human rights of adults and children with intellectual and psychosocial disabilities. Validity's vision is a world of equality where emotional, mental and learning differences are valued equally; where the inherent autonomy and dignity of each person is fully respected; and where human rights are realised for all persons without discrimination of any form. Validity holds participatory status at the Council of Europe, and special consultative status at ECOSOC. For more information, please visit [www.validity.ngo](http://www.validity.ngo).
5. **Společnost pro podporu lidí s mentálním postižením v ČR, z. s. - Inclusion Czech Republic** has been working for over fifty years for the rights of people with intellectual disabilities and their families. The organisation has over 7 000 members associated in 57 local associations in the fourteen regions of the Czech Republic. Inclusion Czech Republic provides expert

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<sup>1</sup> The initial submission dealing with this issue is available at:  
[https://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/CZE/INT\\_CRC\\_NGO\\_CZE\\_42703\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/CZE/INT_CRC_NGO_CZE_42703_E.pdf).

opinions on changes and decisions made by authorities and institutions at all levels of public administration. The organisation points out discrimination and problems faced by people with intellectual disabilities and their families and pushes for changes that positively impact on their lives. It offers support for their mutual interaction, sharing of experiences, and solutions to the challenges they face and strives for people with intellectual disabilities to be taken by the whole society as equal citizens and to have the opportunity to participate in all areas of life. For more information, please visit: <https://www.spmpcr.cz/>.

## II. SPECIFIC COMMENTS

### **(a) Current developments concerning the transformation of early childhood medical care institutions**

6. In their previous submissions FORUM and Validity informed the Committee about the ongoing practice of institutionalisation of young children in Czechia, including children under the age of 3, in early childhood medical care institutions (“dětské domovy pro děti do 3 let věku”; former “kojenecké ústavy”). In the additional submission of December 2020, both organisations focused particularly on the fragmentation of the system of residential care for children enabling to institutionalise young children in different types of settings and Czechia’s failure to take the necessary transformative steps to unify the system as the necessary precondition for its effective deinstitutionalisation.
7. In their session of 6/8/2021, the Chamber of Deputy approved a set of amendments to the current legislation enacting the minimum age limit of 3 for the institutionalisation of young children.<sup>2</sup> Unfortunately, the minimum age limit contains an exception for siblings and children with disabilities. If the amendments are approved also by the Senate which is very probable, it will be possible to institutionalise children with disabilities, including young children up to 3 years of age, if they are expected to be strongly or fully dependent on the care of another person (degrees of dependency III and IV<sup>3</sup>). The amendments thus deny the right of these children to live independently in a family, have equal rights with respect to family life as children without disabilities, and receive alternative care in a family as guaranteed by Articles 19 and 23 (3) – (5) of the CRPD.

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<sup>2</sup> These amendments are part of the amendment to the Act no. 359/1999 Coll., on Social and Legal Protection of Children, registered by the Chamber of Deputies as the Chamber’s document no. 911. The document, including all the amendments is available in Czech at: <https://www.psp.cz/sqw/historie.sqw?o=8&T=911>.

<sup>3</sup> According to Act no. 108/2006 Coll., on Social Services, and ministerial decree no. 505/2006 Coll.

8. Furthermore, the Czech Parliament is currently dealing with a draft amendment to the Health Care Act<sup>4</sup> proposing to establish a new type of institution for children with disabilities – so-called “centres of complex care for children” (“centra komplexní péče o děti”). The draft was prepared as a plan to transform the infant homes. Although it was not submitted to the Parliament by the Government, but by the current Minister of Health as a deputy<sup>5</sup>, the Minister of Health confirmed that it was prepared by the Ministry of Health in cooperation with the Ministry of Labour and Social Affairs and the Ministry of Justice.<sup>6</sup> The draft was also supported by the relevant parliamentary Committee<sup>7</sup> and has a good chance of being approved in September.
9. According to the draft, the new centres of complex care for children should no longer be alternative care facilities, but purely health care ones. However, the draft defines both the target group of children as well as the type of care to be provided in the centres so broadly that it completely fails to guarantee that the centres will not function as *de facto* alternative care settings, without appropriate monitoring as required by Article 25 of the UN CRC. The centres are to be designed for chronically ill children and children with disabilities<sup>8</sup> whom they should provide with health care with special emphasis on the support of their psychomotor and socioemotional development, measures preventing “mental deprivations”, and developing their communication skills<sup>9</sup>. In its inpatient, i.e. residential form, the centres’ care could be provided to improve, stabilise, or keep the child’s health condition “with the aim to release her to her own social environment”.<sup>10</sup>

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<sup>4</sup> Act no. 372/2011 Coll., on Health Care Services and Conditions of Their Provision.

<sup>5</sup> The current Minister of Health used the opportunity of a very similar draft already dealt with by the Chamber of Deputies and submitted a proposal for its change. At the time of the submission, he was not in the position of Minister of Health but had a very close relationship to the Ministry (since he used to be Minister in the past). It is thus highly probable that through him the Ministry used the deputy’s competences and bypassed the ordinary legislative process. Since the Minister’s version got the backing of the relevant Committee of the Chamber of Deputies and is, therefore, more likely to be adopted than the initial draft, we below focus on its content. When we below cite concrete provisions, we cite them according to the Minister’s version. The draft amendment is available in Czech at: <https://public.psp.cz/sqw/tisky.sqw?tb1=2&utq=2&o=8&ng=&tb25=944&tb26=&tqa27=on&tqa28=on&tqa29=on&tqa64=on&tqa30=on&tqa31=on&tqa32=on&tqa63=on&tqa33=on&tqa34=on&tqa62=on&tqa35=on&ra=20> – no. 944/2.

<sup>6</sup> The speech of Adam Vojtěch, the Minister of Health, in the session of the Chamber of Deputies held on 28/7/2021. The videorecord of the relevant part of the session is available at: <https://videoarchiv.psp.cz/playa.php?cast=592> [part from 10:30].

<sup>7</sup> Decision of the Committee of Health Care of 9/6/2021. Available in Czech at: <https://www.psp.cz/sqw/text/tiskt.sqw?O=8&CT=944&CT1=5>.

<sup>8</sup> The draft amendment to the Health Care Act, PART ONE, Article I., Point 7.: The new § 113a (1).

<sup>9</sup> *Ibid.*, the new § 113a (2).

<sup>10</sup> *Ibid.*, the new § 113a (4).

10. The draft does not limit the inpatient stay in time. Practically, the draft offers only one safeguard against the unlawful placement of children who are the most vulnerable: the requirement of recommendation for such placement issued by an external doctor.<sup>11</sup> This is completely inadequate particularly for children with disabilities for whom the majority, especially among medical professionals, considers institutionalisation as the only possible option.

11. Another safeguard against using the centres as an alternative care setting should be the abolition of the court placement option.<sup>12</sup> Unfortunately, not even this safeguard seems to be adequate in the Czech context. Czechia has been facing long-term problems with so-called “voluntary” placements, i.e. placement on basis of the parental consent or contract concluded between the child’s parents and the institution. Voluntary placements exist even in the current early childhood medical care institutions while the European Committee of Social Rights clearly marked them as the practice “which unduly facilitates the placement of young children in institutions”.<sup>13</sup> But it is common in other contexts concerning children with disabilities – in social care homes and psychiatric facilities. In all these contexts, it enables long-term placements of children in residential facilities while the child protection system does not necessarily know about them. In the current draft, the role of the child protection system is even diminished. Since the new centres should formally provide children with only medical and not alternative care, they should be placed outside the scope of monitoring by child protection authorities.<sup>14</sup>

To conclude, if adopted, instead of abolishing one type of institution, the draft will create new options to uncontrollably institutionalise chronically ill children and children with disabilities, including those at a young age.

## Recommendations:

- **Ensure that chronically ill children and children with disabilities are not left behind the deinstitutionalising efforts in the field of care for young children. Adopt all the necessary legislative, administrative, budgetary, and other steps to abolish any exceptions from the minimum age limit for institutionalising, including exceptions concerning children with disabilities who are strongly or fully dependent on the care of another person, and even more, ensure that neither children with disabilities, nor children without disabilities are placed in institutional settings and instead are guaranteed the right to family life by growing up in a family.**

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<sup>11</sup> Ibid., the new § 113a (5).

<sup>12</sup> Ibid., the new § 113b (2).

<sup>13</sup> *European Roma Rights Centre (ERRC) and Mental Disability Advocacy Centre (MDAC) v. Czech Republic*, decision of the European Committee of Social Rights of 17/6/2020, complaint no. 157/2017, § 161.

<sup>14</sup> The draft amendment to the Health Care Act, PART TWO, Article III.: Proposal to amend the current Act no. 359/1999 Coll., on the Social and Legal Protection of the Child.

- **Ensure that early childhood medical care institutions are not transformed in the form of new institutions on the pretext that the new institutions will provide purely health care to chronically ill children and children with disabilities.**
- **Ensure that the health needs of these children are accommodated by the general health care network, without these children having to live outside their families in a residential facility.**

**(b) Deinstitutionalisation efforts and systemic support for families and foster parents**

12. In some maternity hospitals, parents of children born with a more severe disability are still advised to put their child in an institution. There is a lack of systemic guidance of families - timely provision of adequate information about a diagnosis, opportunities, contacts to support services and organisations. Accompanying Centres (Centra provázení<sup>15</sup>) are a promising initiative currently available in only a few university hospitals. The Centre supports families of children with disabilities requiring more intensive support from the first moment this need was identified and accompanies them in the first stages of coping with this new reality (linking social and health care services). A significant shortage of the current health care system is that many families do not know about the social service of early intervention and how it could help. This is due to a lack of cooperation between the social protection system and the health care system since health services are not used to informing about the available social services.

13. Furthermore, the capacity of early intervention services is insufficient, and, in many regions, these services are not available to families. In three regions: Central Bohemia, South Moravia and the Capital City of Prague, families interested in support of these services have to wait longer than 210 days.<sup>16</sup> Service providers targeting families with children with autism have the longest average waiting times. The frequency of visits is very low (usually after 6-8 weeks). According to the Ombudsperson's findings, an increase in the number of interventions would be especially welcomed by service providers who are offering services for children with autism<sup>17</sup> and for children with hearing impairments. However, in connection with the possible increase in the number of interventions in the family, it should be borne in mind that the goal of early intervention is not to "take care" of the family, but to empower it. And again the information about early intervention service is not systematically communicated to the families

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<sup>15</sup> <https://centrumprovazeni.cz/>

<sup>16</sup> Availability of social services for children with disabilities and their families, Ombudsman research 2020 [https://www.ochrance.cz/uploads-import/CRPD/Vyzkumy/11-2019\\_Vyzkum\\_soc-sluzby-pro-deti-s-postizenim.pdf](https://www.ochrance.cz/uploads-import/CRPD/Vyzkumy/11-2019_Vyzkum_soc-sluzby-pro-deti-s-postizenim.pdf) p. 26

<sup>17</sup> [https://www.ochrance.cz/uploads-import/CRPD/Vyzkumy/11-2019\\_Vyzkum\\_soc-sluzby-pro-deti-s-postizenim.pdf](https://www.ochrance.cz/uploads-import/CRPD/Vyzkumy/11-2019_Vyzkum_soc-sluzby-pro-deti-s-postizenim.pdf) p. 30 and see also Research and recommendations on the availability of social services for children with autism <https://www.ochrance.cz/aktualne/klient-s-autismem-socialni-sluzbu-prakticky-nenajde/> and

concerned: some families of children with disabilities do not know about the possibility at all or find out about it too late.

#### **Recommendations:**

- **Ensure that families have adequate and timely support through postnatal and early intervention services to guarantee the right of children with disabilities to live in a family environment.**
- **Ensure that the situation of families is addressed comprehensively (what social and health care services are available, to what and when they are entitled, to whom they should turn, how to deal with specific life situations, etc.)**
- **Ensure that early intervention services have sufficient staff to adequately and timely support families.**
- **Support the creation of Accompanying Centers in all maternity hospitals.**

#### **(c) Current deinstitutionalising efforts going beyond the abolition of the early childhood medical care institutions**

14. We would further like to take this opportunity to inform the Committee about Czechia's current efforts to deinstitutionalise the childcare system going beyond the abolition of early childhood medical care institutions. Czechia has currently a new National Strategy to Protect Children's Rights 2021-2029<sup>18</sup> adopted in December 2020 and a new Action Plan to Fulfil the National Strategy 2021-2024 adopted in July 2021<sup>19</sup>. Also, the documents adopt a quite progressive language, their aims seem less ambitious than those of the previous National Strategy adopted in 2012 directly following the Committee's Concluding Observations of 2011.

15. One of the major weaknesses of both documents is that Czechia fails to unify the alternative residential care for children under the administration of one ministry. The Czech Government, particularly the Ministry of Labour and Social Affairs, dispose of several analytical materials concluding that an effective deinstitutionalisation of care for children is not possible without the unification of the whole system (for more details see our submission of December 2020 – Annex). Unfortunately, the unification has shown impassable through the Ministry of Education, Youth and Sports and the Ministry of Health which do not agree about their institutions being transferred under the Ministry of Labour and Social Affairs as it

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<sup>18</sup> The National Strategy is available in Czech at: [https://www.mpsv.cz/documents/20142/225508/NARODNI+STRATEGIE+OCHRANY+PRAV+DETI+2021\\_2029\\_FINAL.pdf/4d20b44e-a8c5-6882-d46f-a8d0fb7695d5](https://www.mpsv.cz/documents/20142/225508/NARODNI+STRATEGIE+OCHRANY+PRAV+DETI+2021_2029_FINAL.pdf/4d20b44e-a8c5-6882-d46f-a8d0fb7695d5).

<sup>19</sup> The Action Plan has not yet been published on the official website on the Ministry of Labour and Social Affairs and is not easily available either from other governmental resources. We thus use the version available in Czech at: <https://www.mas-podhostynska.cz/aktuality-akcniho-planu/i-akcni-plan-k-narodni-strategii-ochrany-prav-deti-2021-2029-na-obdobi-2021-2024>.

happened in other countries with the same Soviet legal heritage, for instance in Slovakia, Bulgaria, or Romania.<sup>20</sup>

16. In the new National Strategy, the Ministry of Labour and Social Affairs, a long-time promoter of the idea of unification, itself gave up that goal and replaced the idea of unification of the alternative residential care with the idea of “harmonisation” – “unification of approaches”.<sup>21</sup> Unfortunately, this aim is incapable of ensuring the primary goal of the unification – to unify the budget and the responsibility for the management of the whole system to one centre. Even if the approaches to children are harmonised, it cannot change that due to the fragmentation of the system the amount allocated to institutional care under the Ministry of Education, Youth and Sports and the Ministry of Health cannot be easily transferred to other forms of support for vulnerable children and their families, since these alternatives usually exist under the Ministry of Labour and Social Affairs (social services, material aid, foster care, etc.).

17. The new Action Plan anticipates that the transformation of institutional care for children will take place without the previous unification of the system. As such, the whole process risks that the transformation will not lead to the reduction of children who are living outside their natural families as well as children who are living in residential facilities, but just to the transformation of big institutions in smaller institutions for, for instance, 8 children. However, as the UN Committee on the Rights of Persons with Disabilities has emphasised, “large or small group homes are especially dangerous for children, for whom there is no substitute for the need to grow up with a family. “Family-like” institutions are still institutions and are no substitute for care by a family.”<sup>22</sup>

18. Furthermore, both the National Strategy and the Action Plan fail to address another important issue and that is the scope of the forced interventions in the children's family, including forced separation of children from their parents. Also, in this regard the Czech child protection system is marked with a strong Soviet heritage. Its scope remains broad and based on vague terms, often referring to moral categories<sup>23</sup> which fail to meet the criteria of legality as defined for instance by the European

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<sup>20</sup> For Bulgaria and Romania see, inter alia, GUTH, A. Reform Steps Towards Child Protection Bulgaria – Romania: A comparative approach [online]. childpact.org [cited 3/8/2021]. Available at: [https://www.childpact.org/wp-content/uploads/2014/04/Reform\\_steps\\_Romania-and-Bulgaria.pdf](https://www.childpact.org/wp-content/uploads/2014/04/Reform_steps_Romania-and-Bulgaria.pdf).

<sup>21</sup> See the National Strategy, Sub-Goal no. 1: There is a unified approach to securing and promoting the best child's interest. – p. 27.

<sup>22</sup> CRPD/C/GC/5, para. 16 (c).

<sup>23</sup> Terms like „favourable development“ of the child, or „the interest of the child“ which is, unfortunately, not understood as a reference to the child's rights as guaranteed by the UN CRC, but rather to general idea of what's in the child's interest.

Court of Human Rights.<sup>24</sup> It thus creates a virtually boundless space for the national authorities to forcibly enforce prevailing ideas about childcare and upbringing and giving the whole system a significant disciplining nature.

19. The disciplining nature of the child protection system has a particularly negative impact on all those who differ from common standards, especially if they are facing poor living conditions as poverty, social exclusion, racial discrimination, etc. These social and ethnic minorities are far more likely to be subjected to forced interventions in their families, including their most restrictive forms. Please note that only about 5,8 % of children are removed from their families due to maltreatment or abuse in Czechia. The most common reason for the forced separation of children from their parents is “child neglect” usually representing about 1/2 of cases of forced separation, followed by equally vague “other obstacles in the care of the child on the parts of the parents” and definitely disciplining “upbringing difficulties in the child’s behaviour” affecting mainly adolescent children, including adolescent with mental disabilities (for more information see tables no. 1 and 2).

**Table no. 1: Reasons for removals of children in the Czech Republic from their families (2016 - 2020)**

	Child maltreatment	Child abuse	Neglect of the child's upbringing	Upbringing difficulties in the child's behaviour	Other obstacles in the care of the child on the part of the parents	Total number of removals
<b>2016</b>	158	42	1 665	937	1 010	<b>3 812</b>
<b>2017</b>	141	24	1 640	871	1 070	<b>3 746</b>
<b>2018</b>	122	43	1 541	862	1 071	<b>3 639</b>
<b>2019</b>	167	29	1 608	843	932	<b>3 579</b>
<b>2020</b>	144	25	1 463	552	719	<b>2 903</b>

Source: Ministry of Labour and Social Affairs<sup>25</sup>

<sup>24</sup> Especially as regards the criterion of clarity and foreseeability. See the ECHR, Guide on Article 8 of the European Convention of Human Rights, Updated on 31 December 2020, §§ 14-20. Available at: [https://www.echr.coe.int/Documents/Guide\\_Art\\_8\\_ENG.pdf](https://www.echr.coe.int/Documents/Guide_Art_8_ENG.pdf).

<sup>25</sup> Data are available in Czech at: <https://www.mpsv.cz/web/cz/statistiky-1> [accessed 8/1/2021].

**Table no. 2: The proportion of children who were removed due to maltreatment or abuse and due to “child neglect”**

	<b>The proportion of cases of child maltreatment and child abuse in the total number of removals (%)</b>	<b>The proportion of cases of “child neglect” in the total number of removals (%)</b>
<b>2016</b>	5,2	43,7
<b>2017</b>	4,4	43,8
<b>2018</b>	4,5	42,3
<b>2019</b>	5,5	44,9
<b>2020</b>	5,8	50,4

Source: *Ministry of Labour and Social Affairs*

20. As a system of social discipline, the child protection system still relies predominantly on forced interventions against the child and her family instead of the child's and her family's entitlements to different forms of support, mainly material support, including housing. The system would thus need to establish clear limits for forced interventions so that they remain reserved for the protection of the child's right to life, right to freedom from torture and other forms of ill-treatment and from all forms of violence against the child's parents or other caregivers and to expand the child's and her family's entitlements to different forms of support, including material support, that the child and the family will be able to receive based on their free and informed decision and not on coercion, including indirect coercion.

21. Although the National Strategy and the Action Plan require the adoption of new legislation in the field of family support<sup>26</sup>, they fail to explicitly include the above-described principles governing the scope of forced interventions in the child's family. They do not guarantee that the new legislation will address this problem and will not lead to the further expansion of forced interventions in the name of prevention and early intervention. Both strategic documents fail to ensure that the support for the child and her family will be based predominantly on improving their access to social determinants of life<sup>27</sup> and health<sup>28</sup> and not on forced individual interventions in their family and privacy.

### **Recommendations:**

- **Adopt all the necessary legislative steps to ensure the unification of all the residential alternative care for children under one authority to enable its effective deinstitutionalisation.**

<sup>26</sup> See the National Strategy, Sub-goal 1.1; The Action Plan, measure A3.

<sup>27</sup> CCPR/C/GC/36, para. 26.

<sup>28</sup> E/C.12/2000/4, paras. 4 and 11.

- Ensure that the deinstitutionalising efforts will lead to the reduction of the number of children who are separated from their parents as well as the number of children who are living in residential care. Do not enable that they lead just to replacement of large facilities by smaller group homes which are still institutions, ineligible to provide the child with the family environment she needs.
- Ensure that the new act on family support anticipated both by the National Strategy and the Action Plan will clarify the scope of forced interventions in the care and upbringing of children by their families to ensure that such forced interventions are legitimate only in case of a serious endangerment of the child, such as endangering their right to life, their freedom from torture and ill-treatment, and in cases of all forms of violence by her parents or other caregivers. In the rest, replace the forced interventions by the child's and her family's entitlements to all forms of the necessary support, including material aid and housing.

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**Annex:**

Submission of FORUM and Validity Foundation of December 2020