

Written Response to the Additional Comments of the Government on the Merits of the Collective Complaint

Validity Foundation v. the Czech Republic
(no. 188/2019)

2 March 2022

Dear Mr Kristensen,

On 21 February 2022, Validity Foundation received additional comments of the Czech Government concerning Complaint no. 188/2019 *Validity Foundation v. the Czech Republic*, submitted with reference to Rule 31 of the Rules of Procedure of the European Committee for Social Rights. The Czech Government informs the Committee of the coming into force of the amendment of the Act no. 372/2011 Coll. on Healthcare Services. The amendment removed netted cage beds, whose use is the subject matter of the pending Complaint, from the list of permitted forms of restraint in healthcare settings.

Validity Foundation and Forum for Human Rights cordially welcome this legislative development adopted after enduring pressure from international human rights bodies. Indeed, as noted in our Written Response to Observations on Merits (§ 23), the explanatory report to the amendment in question, prepared by the Ministry of Health and adopted by the Government, explicitly states that it was necessary to prohibit the use of netted cage-beds because of the long-term critique of the Council of Europe and the United Nations human rights bodies. The explanatory report itself concludes that netted cage beds are a “*tool that contravenes the absolute prohibition of ill-treatment*” and that their use is in direct breach of the European Convention on Human Rights and the United Nations Convention Against Torture (“UN CAT”).¹

The position pursued by the Government domestically is in apparent contradiction with the arguments sustained by the Government in the present complaint procedure. The Government appears to insist before the Committee that the use of netted cage beds does not constitute ill-treatment, and their newly introduced prohibition is a result of a progressive realisation of the right to health. The Complainant wishes to point out that it is untenable to represent two different legal positions on the same issue simultaneously, one domestically and one internationally. It may be interpreted as insincere and indeed as a manifestation of bad faith.

¹ Explanatory report to the amendment of the Act on Healthcare Services, no. 2020, p. 37. Available at: <https://bit.ly/3tiRXCa>

The reaffirmed legal opinion of the Czech Government is, moreover, untenable in the light of the existing international jurisprudence and soft law. The Complainant refers the Committee to our previous submissions, detailing that the UN CAT Committee, the UN Human Rights Committee, as well as the UN CRPD Committee indeed explicitly consider the use of netted cage beds as ill-treatment and demand their absolute and immediate - not progressive and proportionate - suspension from use. This is also the position of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (“the CPT”), which stipulates that the use of net (or cage) beds should be prohibited under all circumstances.² In December 2021, the UN CAT Committee reaffirmed this position in a decision *Černáková v. Slovakia*,³ concluding that the applicant was ill-treated by the placement in a netted cage bed.

In this sense, we consider it essential to emphasise that the legislative prohibition of the use of the disputed measure does not absolve the Government of the obligation to recognise the violation and provide appropriate redress to all victims.⁴ Therefore, it remains of utmost importance that the Committee pronounces itself on the issue and declares the human rights violations that have taken place. Only this way will the Committee be able to affirm the obligation of the state to recognise and redress these human rights violations and urge the state to ensure effective implementation of the prohibition of the use of netted cage beds, including independent monitoring in psychiatric hospitals.

The Council of Europe Guidelines *Eradicating impunity for serious human rights violations*, applicable in cases concerning ill-treatment,⁵ provide a useful overview of what the state should do to prevent and redress similar human rights violations effectively. The need for public condemnation of human rights violations is particularly emphasised. This document also requires appropriate reprimanding for the violations through criminal and disciplinary measures. They likewise demand the adoption of reparation measures for the victims, including rehabilitation, compensation, satisfaction, restitution, and guarantees of non-repetition.⁶ The same measures are required by Articles 2 and 14 of the UN CAT.⁷ Penalisation and efficient prosecution of the acts of ill-treatment,⁸ training of the relevant professionals,⁹ and ensuring independent monitoring of psychiatric institutions are of essential importance in this regard.¹⁰

² CPT, Means of restraint in psychiatric establishments for adults, Revised CPT standards, 21 March 2017, CPT/Inf(2017)6, para 3.4.

³ Decision of 6 December 2021, CAT/C/72/D/890/2018. The decision is available online at: <https://validity.ngo/wp-content/uploads/2021/12/CAT-C-72-D-890-2018-English-clean-copy.pdf>

⁴ See, *mutatis mutandis*, the European Court of Human Rights’ judgments *Eckle v. Germany*, 15 July 1982, §§ 69 et seq., Series A no. 51; *Dalban v. Romania* [GC], no. 28114/95, § 44, ECHR 1999-VI; and *Gäfgen v. Germany* [GC], no. 22978/05, §§ 115 and 116, ECHR 2010, *Enver Sahin v. Turkey*, no. 23065/12, 30 January 2018, § 32

⁵ Part II, para 3 of the Guidelines.

⁶ Part XVI of the Guidelines.

⁷ UN CAT General Comment no. 3, 12 December 2012, CAT/C/G/3.

⁸ UN CAT General Comment no. 2, CAT/C/GC/2, 24 January 2008, § 18.

⁹ Article 10 of the UN CAT.

¹⁰ Article 11 of the UN CAT; see also UN CAT General Comment no. 3, 12 December 2012, CAT/C/G/3, para. 18.

In this context, we would like to bring to the Committee's attention that there exists a risk that an increase may follow the abolishment of netted cage beds in psychiatric hospitals in the use of other mechanical and chemical restraints, which are also impermissible coercive measures and may constitute torture or ill-treatment.¹¹ Therefore, it is of paramount importance that the prohibition of netted cage beds and its impact is vigorously monitored both by the Government and by independent monitors, including non-governmental organisations and organisations of persons with disabilities specifically. Civil society, in particular persons with disabilities and their representative organisations, have a recognised right to participate in such independent monitoring under Article 33 para 3 of the United Nations Convention on the Rights of Persons with Disabilities („UN CRPD”), and both the UN CRPD Committee¹² and the UN CAT Committee¹³ have consistently recommended the Czech Republic to ensure that such monitoring is allowed and facilitated in practice.

In conclusion, we reiterate our position that the use of netted cage beds constitutes ill-treatment and violates the immediate state obligation to respect the right to health. By legalising their use in psychiatric hospitals, including against elderly persons, the Czech Republic violated Articles 11 § 1 of the Charter and Article 4 § 3 of the Protocol.

Yours sincerely,

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¹¹ See, amongst many other authorities, ECtHR *Bureš v. the Czech Republic*, no. 37679/08, 18 October 2012; report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, A/HRC/22/53, § 63; the report of the Special Rapporteur on the Right to Health A/HRC/38/36, 2018, para 32; Concluding Observations of the Human Rights Committee to Czechia, 22 August 2013, CCPR/C/CZE/CO/3, § 14.

¹² Concluding observations of the Committee on the Rights of Persons with Disabilities to Czechia, 2015, CRPD/C/CZE /1, paras. 31-32, Concluding observations of the Committee on the Rights of Persons with Disabilities to Slovakia, 2016, CRPD/C/SVK/CO/1, paras. 46 and 86

¹³ Concluding observations of the Committee Against Torture to Czechia, 6 June 2018, CAT/C/CZE/CO/6, para 19(g).