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COLLECTIVE COMPLAINT

Validity v. the Czech Republic

**on Failure to Safeguard Right to Health of Persons with Mental Disabilities Ill-Treated in
Psychiatric Hospitals and Wards by Placing Them in Cage or Netted-cage Beds**

**Violation of Article 11 § 1 of European Social Charter and Article 4 of the Additional Protocol to
the Social Charter**

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SUMMARY

1. According to official statistics, there were at least 43 netted cage-beds in use in Czech psychiatric hospitals and psychiatric wards of general hospitals as of May 2019. In 2019, the highest number of netted cage-beds was identified in Havlíčkův Brod psychiatric hospital (11 beds). The highest number of netted cage-beds in the psychiatric ward of a general hospital was in Klatovy hospital (10 beds).
2. Research conducted by the applicant organisations through monitoring of Czech psychiatric hospitals in 2013 and 2014 disclosed massive use of netted cage-beds predominantly against elderly people with dementia, uncovering the horrific experiences of persons who were put into netted cage-beds and the lack of basic understanding or empathy shown by hospital management towards those persons.
3. According to the applicable norms of international law, all persons with disabilities and all elderly persons have a right to health and a right to be protected against torture and ill-treatment, including specific coercive practices during hospitalisation. According to these norms, the use of cage-beds and netted cage-beds (sometimes called net-beds) must be immediately prohibited.
4. The ongoing ill-treatment of persons in psychiatric hospitals and psychiatric wards by placing them in netted cage-beds is endorsed by the Czech authorities, who have failed to comply with numerous explicit recommendations of various Council of Europe and United Nations human rights bodies to prohibit the use of netted cage-beds.
5. Since the Czech Republic ratified the European Social Charter and 1988 Additional Protocol, the complainant argues that the use of netted cage-beds in health care settings is contrary to the country's obligations under Article 11§1 of the European Social Charter and Article 4§3 of the 1988 Additional Protocol to the European Social Charter, and constitutes thus a violation of the right to health and of the right to social protection of elderly persons.

I. ADMISSIBILITY

(A) Standing of Validity

6. Validity Foundation (*hereinafter* "Validity"), formerly known as Mental Disability Advocacy Centre, is an international non-profit, non-governmental organisation. Validity was established in 2002 as a legal advocacy organisation to tackle the generations of isolation, segregation and exclusion faced by people with mental disabilities. Validity (Mental Disability Advocacy Centre) has standing with the European Social Charter collective complaint mechanism until 31 December 2020.
7. According to Article 3 of the Second Additional Protocol, international non-governmental organisations referred to in Article 1(b) may submit complaints only with respect to those matters regarding which they have been recognised as having particular competence. Validity has worked extensively in the area of the right to health of persons with disabilities and the prevention of torture and ill-treatment in institutions, including psychiatric hospitals. In 2013 and 2014, Validity conducted extensive research in Czech psychiatric hospitals and

produced a report calling for the prohibition of the use of cage-beds, including netted cage-beds, in health-care settings.¹ The research was followed by domestic and international advocacy efforts, including submissions during state reporting procedures to the United Nations Human Rights Committee,² the United Nations Committee against Torture,³ and the United Nations Committee on the Rights of Persons with Disabilities.⁴ Validity's concerns were voiced by these bodies in their concluding observations against the Czech Republic,⁵ but lead to no significant improvements on the part of the Czech authorities.

8. Validity is supported in this collective complaint by Central European non-governmental organisation, Forum for Human Rights (hereinafter "FORUM"). FORUM works to ensure that human rights are respected, protected and fulfilled in accordance with relevant international human rights standards, using litigation and advocacy to promote human rights before national and international human rights bodies. It provides support to domestic NGOs and conducts and supervises domestic and international litigation and advocacy activities. Recently, FORUM has cooperated with the International Commission of Jurists and they jointly submitted a collective complaint registered as International Commission of Jurists (ICJ) v Czech Republic, No. 148/2017. Forum also jointly submitted the collective complaint European Roma Rights Centre & Mental Disability Advocacy Centre v. the Czech Republic, No. 151/2017 together with Validity (Mental Disability Advocacy Centre).
9. This present collective complaint builds on this expertise and these efforts.

(B) Standing of the Czech Republic

10. This complaint is directed against the Czech Republic, which ratified the European Social Charter on 3 November 1999, accepting 52 of the Charter's 72 paragraphs, including Article 11. It ratified the 1988 Additional Protocol to the Charter on 17 November 1999, accepting all of the 4 articles. The Czech Republic ratified the Amending Protocol to the European Social Charter on 17 November 1999. It signed the Revised Charter on 4 November 2000 but has not yet ratified it. Lastly, the country ratified the 1995 Additional Protocol providing for a system of Collective Complaints on 4 April 2012.

¹ The report is available online at:

http://www.mdac.info/sites/mdac.info/files/cagebed_web_en_20140624_0.pdf

² The submission is available online at:

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fNGO%2fCZE%2f14416&Lang=en

³ The submission is available online at:

https://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/CZE/INT_CAT_CSS_CZE_30776_E.pdf

⁴ The submissions are available online at:

https://tbinternet.ohchr.org/Treaties/CRPD/Shared%20Documents/CZE/INT_CRPD_CSS_CZE_19782_E.pdf;

and

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCRPD%2fICS%2fCZE%2f33843&Lang=en.

⁵ All concluding observations are available online at:

<https://www.ohchr.org/EN/Countries/ENACARegion/Pages/CZIndex.aspx>

11. This complaint is submitted in writing under Article 4 of the 1995 Additional Protocol and relates to Article 11 of the European Social Charter, which enshrines the right to protection of health, and Article 4 of the 1988 Additional Protocol to the European Social Charter (hereinafter “1988 Additional Protocol”), incorporating the right of elderly persons to social protection. These provisions were accepted by the Respondent Government upon ratification of the European Social Charter.

II. SUBJECT-MATTER OF THE COMPLAINT

(A) Description of the issue

12. The Czech Republic is one of the few countries of the European Union (EU) which does not have a mental health policy.⁶ As a result of a directionless mental health service system, there is an abundance of institutional confinement, with tens of thousands of people hospitalised each year.⁷ Psychiatric hospitals are traditionally preferred to community-based services and are the best-funded component of the mental health system. The Czech Republic has one of the highest numbers of beds in psychiatric hospitals in the EU.⁸ Other forms of mental health support are highly neglected, and services based in the community are especially underdeveloped. Research shows that out-patient psychiatrists are overloaded and are either forced to refuse patients or have long waiting lists. In this context, for those persons with severe or acute mental health problems, hospitalisation is the only option.⁹ In this situation where institutional care predominates, the use of restrictive measures, including cage beds (also referred to as netted cage beds or net beds), is symptomatic.

13. The distinction between the metal and netted variants of cage beds is purely semantic, given that both types of restraints cause the same effects: they deprive a person of their liberty and personal autonomy, and their use amounts to torture or ill-treatment *per se* and in the context in which they are used. Cage beds and net beds differ only in their technical design. Nylon or other soft threading is used to secure and confine the person in a netted cage bed. In a metal cage bed, the netting is replaced with metallic wiring or metal bars, which serve the same purpose. Both terms are used interchangeably in the context of the

⁶ Jiří Raboch and Barbora Wenigová (eds.), *Mapování stavu psychiatrické péče a jejího směřování v souladu se strategickými dokumenty České republiky (a zahraničí)* (Czech), (Prague: Česká psychiatrická společnost o.s., 2012), at p. 2; see also, in English, Hoschl, Winkler, Pěč, *The state of psychiatry in the Czech Republic*. *International Review of Psychiatry*, August 2012; 24(4): 278–285; at p. 279. Available online at: <https://pdfs.semanticscholar.org/c6ba/c964df90d782d8b9358d47f3f13a1fd794d6.pdf>

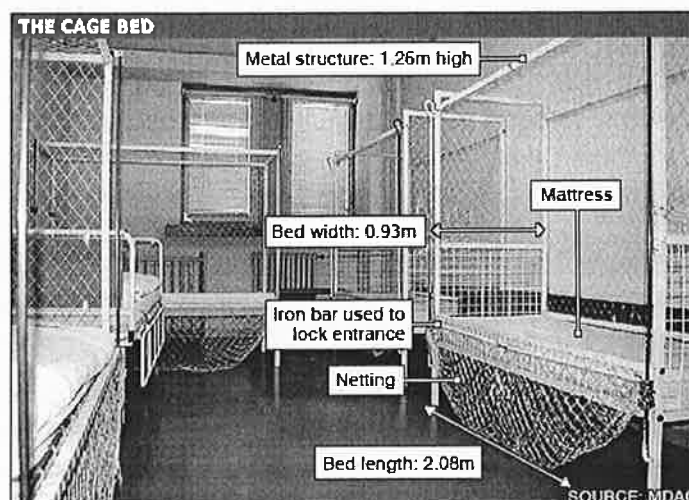
⁷ The official data from the State Institute for Data and Statistics in Health Care (ÚZIS) available from 2017: <http://www.uzis.cz/publikace/psychiatricka-pece-2017>, p. 17; also in Hoschl, Winkler, Pěč 2012, cited above fn. 6, p.280.

⁸ Pěč, Ondřej. *Mental Health Reforms in the Czech Republic*. *BJPsych International*, Vol. 16, No. 1, February 2019, pp. 4-6. Available at: <https://www.cambridge.org/core/journals/bipsych-international/article/mental-health-reforms-in-the-czech-republic/601015D14C482551BA5401486D335EBE/core-reader>.

⁹ *Ibidem*.

Czech Republic, including by international human rights bodies,¹⁰ because, from a human rights perspective, the violation occasioned by the use of either type of bed is the same. The harm caused includes severe deprivation of personal liberty; great psychological pressure exerted upon the person; restraint and seclusion which worsens the individual's mental health; humiliation; and often deprivation of food and water and/or opportunities to use the bathroom. Victims have described to the complainant organisations that the subjective experience is identical whether they are placed in a metal or netted cage-bed. Use of both types of restraint is considered to be a form of ill-treatment and the Czech Republic has been required to prohibit their use in practice.¹¹ Moreover, netted cage beds can cause serious injuries and even death. Such a tragedy happened in the Czech Republic in January 2012 when a 51-year-old woman hanged herself on the netting while confined in a netted cage-bed.¹²

Picture no. 1: Diagram of the functioning of net or cage bed.¹³



14. This collective complaint highlights that the continuing use of netted cage-beds in the mental health system in the Czech Republic constitutes torture or ill-treatment and violates the rights persons with mental disabilities and elderly persons enshrined in the European Social Charter and the 1988 Additional Protocol. Although the overall number of netted cage-beds in psychiatric institutions in the country has decreased in recent years, many remain and are

¹⁰ Concluding Observations of UN Committee against Torture – Czechia, 63rd Session, 23 April – 18 May 2018, § 33.

¹¹ Concluding Observations of UN Committee against Torture – Czechia, 63rd Session, 23 April – 18 May 2018, § 33.

¹² The report to the Czech Government on the visit to the Czech Republic carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 1 to 10 April 2014, para. 170.

¹³ BBC, Q&A: Cage beds, 15 January 2008, available online at: <http://news.bbc.co.uk/2/hi/europe/7181854.stm>.

still in active use. Moreover, the reduced numbers of netted cage-beds have not prompted any decrease in overall levels of coercion, which remains a hallmark of the general psychiatric practice in the country. Other restrictive techniques including seclusion, physical and chemical restraints – all of which are abusive and amount to ill-treatment or torture – have become increasingly relied upon.¹⁴

15. Validity reiterates that, as a binding human rights treaty, the Charter serves to complement the Universal Declaration of Human Rights and the European Convention on Human Rights. Its ratification by the Respondent Government gives real meaning to the notion of the indivisibility and interdependence of human rights.¹⁵ Therefore, the techniques amounting to ill-treatment in health-care settings also irreparably violate the rights related to the provision of mental health services as enshrined in the European Social Charter and its 1988 Additional Protocol.

(B) Legislation on use of restraints in the Czech Republic – overview

16. This section provides an overview of the relevant legislative framework. It shows that Czech law allows the use of netted cage-beds in psychiatric settings, while their use has been prohibited in social care settings.

(i) 2011 Health Care Act

17. The Health Care Act No. 372/2011 Coll. provides under Section 39 (1) an exhaustive list of restraints which can be applied by health care providers. Section 39 (1) states:

“The following can be used to restrict patient’s freedom of movement while providing health care:

- a) grip of the patient by medical staff or other persons assigned by the provider*
- b) restriction of the patient in his or her movement by belts or straps*
- c) **placing the patient in a net bed***
- d) placing the patient in a room assigned for secure movement*
- e) protective jacket or vest restricting movement of upper patient’s limbs*
- f) psychopharmaceuticals or other healing substances administered parenterally which are suitable for restriction of free movement of the patient during providing health care if it does not concern treatment upon request of the patient or continuous treatment of the psychiatric disorder, or*
- g) combination of methods under a)-f).”*

18. Under Section 39 (2) restrictions can be applied only if the aim is to avoid imminent danger to life, health or safety of the patient or other persons, and only for such a period of time when the reasons for restrictions remain.

(ii) 2006 Social Services Act

¹⁴ Mental Disability Advocacy Center, Cage beds and coercion in Czech psychiatric institutions, available at: http://www.mdac.org/sites/mdac.info/files/cagebed_web_en_20140624.pdf, p. 19.

¹⁵ Conclusions XVIII-1 – Statement of interpretation – Comments of a general nature, 2006.

19. The Social Services Act no 108/2006 Coll. also provides an exhaustive list of restraints that can be applied in Section 89 (3). Section 89 (3) provides that *“the social care provider is under an obligation to apply the least restrictive measure. Intervention can take place firstly by physical grips, then placing the person into a room assigned for a secure stay or, upon the decision of a medical doctor and with his or her presence, administering healing substance.”* By contrast with the legislation applicable to psychiatric hospitals, the use of belts, straps, net beds and protective jackets or vests has been prohibited in social care institutions since 2006.

(C) The use of netted cage-beds in practice

20. According to official data provided by Czech psychiatric hospitals following a Freedom of Information Act request submitted by FORUM, there were at least 43 netted cage-beds in active use in Czech psychiatric hospitals and the psychiatric wards of general hospitals as of May 2019. The highest number of netted cage-beds was identified in Havlíčkův Brod psychiatric hospital (11 beds). The highest number of netted cage-beds in the psychiatric ward of a general hospital was identified in Klatovy hospital (10 beds).

21. The data received, including the frequency of use of the cage-beds, is provided in Annex 1 to this complaint. The Government does not collect or publish data which would enable tracing of comprehensive statistics about the frequency or type of restraints applied in psychiatric settings.

(i) The use of netted cage-beds in Czech psychiatric institutions

22. In 2013 and 2014, Validity conducted visits to several psychiatric hospitals in the Czech Republic to monitor the use of restraints and particularly, netted cage-beds. Data and information collected and presented in the ensuing report serves as an overview of the use of netted cage-beds in practice in the Czech Republic. The report is, until now, the most comprehensive and accurate research carried out on this topic in the Czech Republic, and Validity therefore refers to these findings below in order to describe how this coercive practice works.¹⁶

23. At the time of the monitoring visit in February and March 2013, Kosmonosy Psychiatric Hospital had 29 netted cage-beds in use,¹⁷ the highest number in any institution visited at the time. Management denied the monitoring team access to rooms in which the netted cage beds were located, purportedly because it was impossible to “receive relevant consent

¹⁶ All of the following information and data referred to here are based on the monitoring visits conducted within this research and are presented in the report. Mental Disability Advocacy Center, Cage beds and coercion in Czech psychiatric institutions, available at:

http://www.mdac.org/sites/mdac.info/files/cagebed_web_en_20140624.pdf

¹⁷ As verbally reported by the Director of the institution, although this differs from the number declared in response to MDAC’s freedom of information request to the same institution at the end of 2012 where 27 were declared. In a further response in 2016 on the number of net-beds, the hospital firstly refused to answer and eventually stated that five net-beds were removed from the list. The hospital did not provide any further information whether these beds had been destroyed or refurbished and re-used.

from the patients" placed in netted cage-beds. Instead, the monitoring team met with staff and residents in the cafeteria. Staff emphasised that they did not use the term "cage" or "net beds", but referred to them as "protective beds", and that they are used mostly for women. They would be "insufficient" for men, said one staff member, as men could too easily damage the netting. Instead, men were usually restrained with straps, she explained. Another staff member explained that netted cage beds were used for "delirious grandmas". The director of the institution said that 90% of the use of netted cage beds occurs on ward B1 (a female admission ward) and on ward B3 (a female elderly admission ward). Cage-beds "are great for geriatric patients and the mentally retarded: isolation or straps are much worse," he explained. He reported that the admissions ward (B1) had two netted cage-beds in one room with a glass window to the nursing station. In another ward, there were six netted cage-beds in one room. The room had a window and heating, but no means of monitoring patients from outside the room. Staff asserted that netted cage-beds are used for agitated or distressed patients and each use is documented, giving the duration of and the reason for use. Because the monitoring team was denied access to any of the areas containing netted cage-beds in the hospital, none of these assertions could be verified.

24. In April 2014, the Kosmonosy hospital was also visited by a delegation of the European Committee for the Prevention of Torture (the CPT). The CPT expressed its concern that the delegation received misleading information from senior staff about the use of netted cage-beds as a means of restraint and described the situation as follows: *"At Kosmonosy, there were some 30 net-beds used in 7 of the establishment's 15 wards (namely the gerontopsychiatric, admission and chronic care wards).¹⁸ As a rule, between four and six netted cage-beds were located in one room in each of the wards concerned, and patients were thus restrained in full view of each other. Moreover, in contrast to the rooms where patients were restrained by straps, there was no possibility of direct visual contact with staff, let alone continuous, direct and personal supervision by staff. Regular inspections by the staff of patients placed in net-beds carried out every two hours cannot substitute for this measure."¹⁹*
25. The CPT also expressed its concern about the excessive duration of placement of certain patients in netted cage-beds. The CPT noted: *"For example, according to the registers examined by the delegation, one patient has been restrained in a net-bed for a total of almost 2,600 hours (i.e. the equivalent of 108 days) during some 180 days since 18 October 2013. Another patient was placed in a net-bed between 22 September 2013 and 4 March 2014 (163 days) for more than 1,800 hours (i.e. the equivalent of 75 days). It would thus appear that certain patients were spending half or even more of their time in net-beds over several months. The risks linked with the use of net-beds and the need for supervision may*

¹⁸ In some wards, every fifth bed was a net-bed.

¹⁹ Report to the Czech Government on the visit to the Czech Republic carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 1 to 10 April 2014, para. 170.

*well be illustrated by another case, namely that of a 51-year old woman who died in a net-bed at Dobřany Psychiatric Hospital in January 2012. The patient concerned was reportedly placed in a net-bed on the day of her admission to the hospital and, after having spent several hours therein, she tore the net and strangled herself in the loop.*²⁰ The CPT formulated a strong recommendation to put an end to the use of net-beds (see below).²¹ This strong recommendation was repeated again in the latest 2018 CPT report on the visit to the Czech Republic.²²

26. At the time of Validity's monitoring, Opava Psychiatric Hospital had 22 netted cage-beds. The management reported their desire to have more, but they lacked the space. Staff told the monitoring team that netted cage-beds were sometimes used as regular beds: the bars were pulled down and staff expected the patient to ignore the netting around the bed. At any moment, the side of the bed could be pulled up and the person encaged. Staff showed the monitoring team a room containing three netted cage-beds. Each had a metal frame and a sliding bar that could be raised upwards and locked, enclosing a patient inside a net made of approximately 5mm thick cord. The monitoring team were told that one or two of these netted cage-beds were in use at any one time. In this hospital, cage-beds were mainly used at night to restrict people with dementia or delirium to their bed. Other times, they were used in response to behaviour that staff perceived to be "dangerous" (for these people straps were also used). A nurse told the monitoring team that a person can be in a netted cage-bed for a period varying from one to twelve hours, and it is usually used for people with delirium, and people who self-harm or are "aggressive". Staff reported that before they place someone into a netted cage-bed, they may medicate the person.
27. A side room visited by the monitoring team had three beds, one of which was a netted cage-bed, empty at the time of the visit. A nurse said that patients who are confused and mobile could stand up in their beds or climb over the horizontal bedrails. Netted cage-beds are, therefore, "effective". At the time of the visit, there were two doctors for 830 patients in the hospital. Netted cage-beds are particularly used, said staff, for "confused patients that have a tendency to get up and leave during the night." The doctors tried to reduce the amount of medication given to patients, but they believed the use of netted cage-beds was "more humane." Getting rid of netted cage-beds would result in increasing the dose of medication, which can lead to death in older patients, said one doctor. A person in a netted cage-bed was observed every three hours, staff told the monitoring team.
28. Although a variety of netted cage-bed designs were used in the hospital, there was no material difference in the functioning. All of these netted cage-beds could be shut and locked

²⁰ Report to the Czech Government on the visit to the Czech Republic carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 1 to 10 April 2014, para. 170.

²¹ *Ibidem*.

²² Report to the Czech Government on the visit to the Czech Republic carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 2 to 11 October 2018, para. 106.

with an Allen key. None of the rooms had curtains or other coverings on the windows. The rooms were bare except for the cages. In a women's room, there were three beds, of which one was a cage-bed. Staff told the monitoring team that if a person was restrained in this cage, the other two beds may continue to be used for other patients if the hospital was at full capacity. Some netted cage-beds in the elderly ward had clean nappies on top of them, prepared for new entrants who are not allowed out to use the bathroom. At the time of the visit, the room smelled of urine and disinfectant. The nurses told the monitoring team that caring for these patients is "like caring for 25 children, it is impossible to maintain all of them" ("je to jako 25 dětí, není možné je udržet"). Again, likening patients to children, another nurse said that netted cage-beds were "like cots for infants", explaining that she might put an agitated person into a netted cage-bed for one or two hours, sometimes after giving medication.

29. In Prague Bohnice Psychiatric Hospital, the monitoring team was informed that there was one remaining netted cage-bed in the female long-term care unit (ward 16) for a specific patient: a woman with an intellectual disability for whom the hospital is her (completely inappropriate) home. The woman's parents had lobbied the hospital to retain "her" netted cage-bed because they feared she would otherwise be strapped. Staff told the team that the woman had lived in the hospital for several years and had "behavioural problems," was often "restless" and "attacked other patients." She was put in the netted cage-bed every day, but the netting of the bed was not closed the whole time. The netted cage-bed was situated in a regular room with three normal hospital beds and was used by the woman as a regular, everyday bed. The room was not locked from the outside and there was a window in the door through which her humiliating situation could be seen by staff but also by other residents. Staff told the monitoring team that she just played with her toys in the netted cage-bed. Every two hours, a nurse took her out to use the toilet. Food was brought to her in the room when she was locked in the netted cage-bed.
30. In Lnáře Psychiatric Hospital, the director told the monitoring team that staff rarely used restraints, and that the hospital's four netted cage-beds, straps or a straitjacket are used only "in extreme cases". Netted cage-beds are the "most humane form of restraint", he said, because, "a person is free to move there." They are used for "acute psychotic patients, who attack other patients or harm themselves" and may be placed there for up to 24 hours. They are also used for residents with dementia who are caged during the night if they are restless. The director said that elderly women could "weave themselves out" of the netted cage. A nurse on duty said netted cage-beds are usually used as ordinary beds and are unlocked, adding that having been a nurse for 30 years, she considered netted cage-beds "a bit dated". In a ward for elderly people, the monitors saw a room with six beds, one of which – a netted cage-bed – was not currently in use. The team was also shown a room with 4 beds – one of which was a netted cage-bed, which had its front open. The room was fully occupied by elderly male patients, sleeping after lunch, including in the open netted cage-bed.
31. Even though Opařany Children's Psychiatric Hospital reportedly removed the last remaining netted cage-bed at the end of February 2013, the testimony of the director and his

description of the situation is very illustrative. The director explained how netted cage-beds “would be dangerous for children without intellectual disabilities [...] because they would move”. This testimony is in clear contradiction with the opinions gathered in other institutions. After removing the netted cage-beds, staff told the monitoring team that some of the new seclusion rooms had not been used and others were used infrequently. To their surprise, staff managed to handle children who would previously have been placed in netted cage-beds without resorting to any form of restraint.

Picture no. 2: Cage bed in Klatovy Hospital Psychiatric Department, Czech Republic, in 2014.²³



32. Klatovy Hospital Psychiatric Department had nine netted cage-beds at the time of the visit. “We have some internal regulation, but not in detail. We have no information about how long, in what situations, etc., the cage-beds are used.” said the director openly, noting that since netted cage-beds had been banned in social care institutions, some former social care institution residents had been transferred to his hospital where netted cage-beds are still allowed. An isolation room contained two netted cage-beds standing side by side lengthways. The frames had been attached to the wall in order to prevent the inhabitant from toppling the cage to the floor, which had reportedly happened in the past. Staff told the monitoring team that the beds were old and strong and cannot be broken easily and that they are used for isolating “problematic” patients. Both netted cage-beds had old leather straps with a belt buckle attached to them. Staff explained that the straps were permanently attached to the beds for cases when there “may not be enough time” to attach them. Staff said that a patient had once “escaped” from the netted cage-bed by lifting up the mattress

²³ Mental Disability Advocacy Center, *Cage Beds and Coercion in Czech Psychiatric Institutions*, 2014, ISBN 978-963-89303-6-1, page 31, available online at: http://www.mdac.org/sites/mdac.info/files/cagebed_web_en_20140624.pdf

and the underlying boards. He had been "caught" in the corridor. It was clear that leather belts were used to restrain people damaging the netting. In this hospital, patients could be simultaneously placed in a seclusion room, put into a cage-bed, strapped down by leather belts, and sedated with neuroleptics. This amounts to quadruple means of restraint applied simultaneously on the same patient.

33. When a patient is in a netted cage-bed, the nurse checks on them at intervals of up to an hour, staff said. The patient is not given food, and a drink only if they requested it. Patients could be taken to the toilet but, given that the cage-beds were used mostly for elderly patients, staff place nappies on them and therefore did not feel that this was necessary. Staff said that sometimes a patient is locked into a netted cage-bed at 8pm and released at 6am. Alternatively, if a patient is found wandering around at 1am, staff reported that they would place them in a netted cage-bed. Patients are administered medication as a chemical restraint before being placed in cage-beds. "Aggressive patients" are always chemically restrained, regardless of whether they are being placed in a cage-bed or not. In case they became "really aggressive", they are restrained with straps. The monitoring team observed a male doctor walk over to an elderly woman in one of the netted cage-beds, pulling up the netting on the side of the cage-bed as an unrequested demonstration of how the cage-bed can be closed. As he did this, the woman became visibly frightened and repeatedly said, "please don't do that".

(ii) Testimonies of patients

34. Testimonies collected by the monitors during 2013 visits were horrifying. The reasons for use of cage-beds reported by staff **relate to understaffing, mismanagement and safety**. Two female residents at Kosmonosy Psychiatric Hospital told monitors that the cage-beds (residents made no distinction between metal cage-beds and netted cage-beds) are often used as a result of understaffing. In a particularly troubling finding, some interviewed residents reported feeling safer in cage-beds due to high levels of violence in psychiatric institutions. One male resident at Kosmonosy Psychiatric Hospital said that the reason he felt safe in a cage-bed was because he felt scared on the ward. At the same institution, a 40-year-old female resident said that she had been placed in a cage-bed because she could not protect herself from other residents.
35. Many residents raised the issue of **urination and defecation in a netted cage-bed**. A male resident at Kosmonosy Psychiatric Hospital said he had been in a cage-bed six or seven times, always during the night, and released at approximately 6am the following day. He recalled how two other residents helped the staff to place him in the netted cage-bed. He said he was injected with medication against his will, which made him fall asleep. He explained how he requested to use the toilet, to which the staff responded: "hold it". A 59-year-old woman from the same institution told the monitoring team about a corner room which has five cage-beds. They were for people "who cannot hold their urine and faeces", she said, adding that residents are placed in this room at 7pm and let out at 7am. She told the monitoring team about a patient on her ward who was in a netted cage-bed all the time. Residents had no chance to go to the toilet when placed in netted cage-beds: the staff sometimes had to

change the bed linen in the mornings, and a resident reported seeing urine and faeces on the sheet, despite the fact that many caged patients are required to wear nappies. He said that nurses bring meals and tea for residents to eat in their netted cage-beds. Another key theme addressed by the interviewed residents was the use of netted cage-beds to deal with residents who are considered to be agitated and restless.

36. The residents interviewed described that they felt total isolation, a lack of any available help or support, especially during the night, and feelings of powerlessness, fear, and degradation. They reported that there is no accessible complaints mechanism. A 33-year old woman told the monitoring team: "I did not want to be in a cage. I was afraid I would be there forever." She recalled how four nurses had grabbed her, given her a tranquilising drug and placed her in a netted cage-bed. Once inside, she had no way to contact the nurses. She subsequently learned that the hospital routinely placed newly admitted residents into netted cage-beds. She explained: "It is a part of the treatment, the patients there realised why they were put there, and they don't do the same thing afterwards." Asked whether she would have preferred to be treated differently, she said: "It would be better if they had given me something to calm down, rather than put me in the cage." She explained how later during her hospitalisation she saw another woman who had been in a cage-bed for a month. When the monitoring team asked whether she ever complained about her or the other woman's treatment, her answer was: "There is nobody to complain to."
37. At Klatovy Hospital Psychiatric Department, the monitors spoke to a woman in a netted cage-bed. She said: *"Don't even ask me what I can feel, we have to shut out our emotions. It doesn't help our health – it's not therapeutic. We feel like we are free when we can walk [outside the netted cage-bed]. It doesn't help to call for staff, they won't come. Maybe if I scream, they would, but the night staff would not come even then."*
38. At Opava Psychiatric Hospital, the monitors met a 68-year old woman who described the previous night she had spent in a netted cage-bed. "It's bad" ("Je to blbý"), she said of the netted cage-bed, adding that she did not know why she was placed there. No one had given her any reasons. She reported that it was a degrading experience. She did not call for help as, "nobody would come anyway". She said that nobody came to check up on her during the night.
39. A 65-year-old female resident at Kosmonosy Psychiatric Hospital told the monitoring team that she had been put in a netted cage-bed every night for a year. She disliked how the netted cage-beds could be seen by other people through the windows. A recurring theme the cage-bed victims complained about was the fact that "everybody can see you", as a 30-year old male resident at the same hospital put it, highlighting the degrading experience of being "on show" in a cage.

(iii) Staff views

40. According to statements made by staff of the psychiatric hospitals concerned, the following four reasons are usually used to justify the use of cage-beds:
 - i) *Cage-beds are part of the admissions procedure,*

- ii) *Cage-beds are used to deal with aggression,*
- iii) *Cage-beds are used to deal with restlessness, and*
- iv) *Cage-beds are used to punish bad behaviour.*

41. *Cage-beds are part of the admissions procedure.* In one hospital, a resident told the monitoring team that she had been in a netted cage-bed for the previous two weeks, since the time of her admission. She said that newly admitted patients are placed in netted cage-beds, but the cage is not always locked. This happens to all new admissions for the first one or two weeks, until a "proper bed" is found, she said. Staff members confirmed that netted cage-beds were used for admission of patients who are in a state of "acute restlessness". In another hospital, the netted cage-bed was located in the "admissions room" with other regular beds; this netted cage-bed was sometimes left unlocked and "used as a regular bed".
42. The use of netted cage-beds as an overflow control mechanism as described becomes inevitable when a hospital operates at or near full capacity. The netted cage-beds are likely to be the last available beds on any admission ward. According to hospital staff, patients on such wards are only placed in cage-beds in response to what the staff perceive to be "difficult behaviour": a label which is undoubtedly given to all newly admitted residents. Residents who are admitted at times when all normal beds are occupied are likely to be assigned to a netted cage-bed. Even when the front panel of the cage is left open so that such patients are not actually locked in the cage, it is clear that this constitutes a degrading and intimidating start to any hospital experience.
43. *Cage beds are used to deal with aggression.* The monitors found that staff frequently spoke about their difficulties in dealing with situations which they perceived as "dangerous". Staff in several hospitals explained that netted cage-beds are used for patients who they judged to be "aggressive", although staff rarely defined what this actually means, and how it differs from "anger" – a perfectly natural response to being detained and injected with medication against one's will, without the possibility of complaining or achieving any sort of remedy. In some places, netted cage-beds are used as a way for a predominantly female workforce to control residents: it is difficult to recruit men, especially in psychiatry, the team was told, because of low pay and the status of the job. The length of time a person is placed in a netted cage-bed seems to depend on their level of perceived aggression at the time of placement. A psychiatrist told the monitoring team that in cases where patients "were in delirium or more aggressive", they are placed in a netted cage-bed for three days.
44. One resident described that another person had been placed into a netted cage-bed simply "because she was moving too much." This resident explained that "we cannot have dangerous objects such as [phone] chargers because we could hang ourselves." The mother of a young resident told the monitoring team that netted cage-beds are used because staff lack skills to protect patients from violence. Her son had been given new medication that made him distressed. He had been screaming for three days which in turn caused other residents to become agitated and they beat him up, so the staff "isolated him in a net bed to protect him."

45. *Cage beds are used to deal with restlessness.* In most hospitals, agitation was the reason staff gave for using netted cage-beds. At Opařany Children's Psychiatric Hospital, where netted cage-beds have been withdrawn, the staff reported that the netted cage-beds "had never been used for children with normal intelligence". They were used mostly to constrain children during the night, so as to prevent them running around. On wards for elderly people, the netted cage-beds were purportedly effective in restraining elderly residents at risk of falling out of bed if left unsupervised.
46. At Kosmonosy Psychiatric Hospital, a nurse reported to the monitors that a woman who could not walk had been in a netted cage-bed for three-and-a-half years. Sometimes staff took her out in a wheelchair, said one staff member, recalling that this had only happened five times during the whole time she was placed in the netted cage-bed. She would accept visitors in the netted cage-bed, eat, and drink in the netted cage-bed. When she wanted to use the toilet, the nurses would take her out. Apparently, she recovered her walking and when she started to walk again, she was finally released. At Opava Psychiatric Hospital, staff justified the use of netted cage-beds by explaining that some patients would get confused and wander somewhere, then urinate on the floor, slip on their urine and break a bone.
47. *Cage beds are used to punish bad behaviour.* When asked why people are placed in netted cage-beds, a nurse at Kosmonosy Psychiatric Hospital said it happens "when people get naughty, break stuff, make stuff dirty." Many residents said that "people are put in the beds as a punishment." Two female residents at the same hospital said that that nurse put people into "cages" when they are "naughty", for example when they scream or fight. Another resident in the same hospital explained how nurses break up fights between residents and then "nurses grabbed patients by the collar and put them in net beds." Another female resident at Klatovy Hospital Psychiatric Department told the team that netted cage-beds are used as punishment throughout Czech psychiatric hospitals. She explained that some years ago when she was at a different hospital, she and other patients complained to the chief nurse about the attitudes of some of the nursing staff. Upon hearing this, the chief nurse put all the complainants in netted cage-beds, she reported.

(D) Grounds of the complaint

(i) The scope of Article 11 of the European Social Charter and Article 4 of the 1988 Additional Protocol

48. Validity argues that the grounds of the complaint are covered by Article 11 of the European Social Charter and Article 4 of the 1988 Additional Protocol. The use of netted cage-beds constitutes a violation of the right to health provided under Article 11 of the European Charter and a violation of the right to social protection elderly people guaranteed under Article 4 of the 1988 Additional Protocol.
49. The European Committee of Social Rights (hereinafter "the ECSR" or "the Committee") has stated that States are obliged not only to provide citizens with the highest possible standard of health attainable but also to respond appropriately to avoidable health risks i.e. ones that

can be controlled by human action.²⁴ It has explicitly noted that the right to protection of health guaranteed in Article 11 of the Charter complements Articles 2 and 3 of the European Convention on Human Rights, as interpreted by the case-law of the European Court of Human Rights, by imposing a range of positive obligations designed to secure the effective exercise of that right. This normative partnership between the two instruments is underscored by the Committee's emphasis on human dignity.²⁵ In *FIDH v. France*, complaint no. 14/2003 the Committee stated that "*human dignity is the fundamental value and indeed the core of positive European human rights law – whether under the European Social Charter or under the European Convention on Human Rights and [that] health care is a prerequisite for the preservation of human dignity*" (§ 31). Article 3 of the European Convention absolutely prohibits torture and ill-treatment, also in health care settings. The European Court of Human Rights has repeatedly dealt with the use of restraints in health care settings under Article 3 of the European Convention.²⁶

50. The Committee also emphasized that it „pays attention to preventive policies regarding mental health, (...). It focuses particularly on conditions in psychiatric institutions (...) also in the light of Articles 3 and 5 of the European Convention on Human Rights as well as the Council of Europe Committee of Ministers Recommendation (2004) 10 concerning the protection of the human rights and dignity of persons with mental disorder.“²⁷
51. In 2005 Conclusions on Romania, the Committee underlined a link between the right to health, and torture, degrading and inhuman treatment in psychiatric hospitals. The Committee noted: “... various reports concerning the alarming situation in certain psychiatric hospitals. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) visited three mental health establishments: [...] The Committee observes that these findings are corroborated by other sources. The European Commission points out that there are continuing reports of ill-treatment in psychiatric hospitals. ... In light of this information, which reveals that the living conditions in certain psychiatric hospitals are manifestly inadequate, the Committee considers that the situation is not in conformity with Article 11§1 of the Charter.”²⁸
52. The rights of elderly persons in psychiatric institutions are complementarily protected under the right to social protection enshrined in Article 23 of the Revised Social Charter, which is identical to the right to social protection guaranteed in Article 4 of the 1988 Additional Protocol. The final part of Article 4 of the 1988 Additional Protocol deals with the rights of elderly persons living in institutions. The Committee also examines the use of physical restraints in health care settings under this provision.²⁹

²⁴ Conclusions XV-2, Denmark, pp. 126-129.

²⁵ Conclusions 2005, Interpretative Statement on Article 11 of the Charter.

²⁶ See, inter alia, *Bureš v. the Czech Republic*, no. 37679/08, 18 October 2012.

²⁷ Conclusions 2005, Interpretative Statement on Article 11 of the Charter.

²⁸ Conclusions 2005, Romania, 2005/def/ROU/11/1/EN.

²⁹ Conclusions 2003, Slovenia, 2003/def/SVN/23//EN, p. 530.

53. The complainant therefore asserts that the use of netted cage-beds in psychiatric institutions in the Czech Republic falls both within the scope of the right to health under Article 11 of the Charter and the rights of elderly persons in institutions as protected by Article 4 of the 1988 Additional Protocol.

(ii) International standards on restraints and netted cage-beds

54. Validity argues that use of cage-beds in health care settings constitutes a violation of the right to health in conjunction with the absolute prohibition of torture and ill-treatment under international human rights law. The self-standing right to health is closely related to and interdependent upon the realisation of other human rights, including the absolute prohibition of torture and ill-treatment. These and other rights and freedoms form integral components of the right to health.³⁰

55. The right to health as well as the prohibition of torture and inhuman and degrading treatment are enshrined in many international instruments ratified by the Czech Republic. These include:

- International Bill of Rights;
- UN Convention Against Torture;
- UN Convention on the Rights of Persons with Disabilities; and
- European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

(a) International Bill of Rights

56. The right to the highest attainable standard of health is grounded in the right to live in dignity and is closely related to and dependent upon the realisation of other human rights, including the prohibition of torture.³¹ The right to health contains both freedoms and entitlements. The freedoms include the right to control one's health and body, including sexual and reproductive freedom, and the right to be free from interference, such as the right to be free from torture, non-consensual medical treatment, and experimentation.³²

57. The UN Committee on Economic, Social and Cultural Rights (CESCR Committee) further explained that states are under an obligation to respect the right to health by, *inter alia*, refraining from applying coercive medical treatments.³³ Therefore, legal obligations concerning the right to health are inseparably conjoined with the obligation to observe the

³⁰ UN CESCR General Comment no. 14 on the Right to the Highest Attainable Standard of Health, E/C.12/2000/4, § 3.

³¹ *Ibidem*.

³² *Ibidem*, § 8.

³³ *Ibidem*, § 34. Although the Committee goes on to say that coercive medical treatments must be refrained from "unless on an exceptional basis", this norm has been superseded by the later adoption of the UN Convention on the Rights of Persons with Disabilities which bans coercive medical treatments on the basis of disability in all circumstances.

most fundamental aspects of related rights, such as the absolute prohibition of torture and ill-treatment in all circumstances.

58. The interdependent approach is supported by the positions of the UN Committee against Torture (CAT Committee) and UN Committee on the Rights of Persons with Disabilities (CRPD Committee), which are specialised human rights bodies with distinct areas of concern and which both deal extensively with the treatment of persons institutionalised in mental health facilities. These positions, summarised below, call for an interdependent assessment of the use of netted cage-beds as a form of ill-treatment together with their impact on right to health itself.
59. The UN Special Rapporteur on the Right to Health additionally makes it clear that the obligation to *respect* the right to health is of immediate effect and is not subject to progressive realisation.³⁴ Therefore, unlike other aspects of the right to health, which may be subject to progressive realisation, states must immediately refrain from violating the right to health of persons with mental disabilities by ill-treating them, irrespective of the economic or social conditions in the said state.
60. The UN Special Rapporteur on the Right to Health also considers that users of mental health services in institutional settings, such as psychiatric hospitals, are vulnerable to violations of their human rights. The Special Rapporteur has received numerous accounts of the long-term, inappropriate institutionalisation of persons with mental disabilities in psychiatric hospitals and other institutions where they have been subjected to human rights abuses, including being chained to soiled beds for long periods of time, and, in some cases, being held inside cages.³⁵
61. The use of netted cage-beds has been addressed by the Human Rights Committee in 2013 when reviewing the reports of the Czech Republic under Articles 7 and 10 of the International Covenant on Civil and Political Rights. The Human Rights Committee expressed its concern at reports of excessive and unsupervised use of these and other restraints in psychiatric institutions and reiterated **that this practice constitutes inhuman and degrading treatment**. The Human Rights Committee called upon the Czech Republic to take immediate measures to abolish the use of enclosed restraint beds in psychiatric and related institutions.³⁶ The Czech Republic took no action in response.

(b) The UN Convention Against Torture and Special Rapporteur on Torture

62. Netted cage-beds have been addressed by the CAT Committee in several concluding observations. In 2010, the CAT Committee expressed its concern about the use of net beds

³⁴ Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health of 11 August 2014, A/69/299, § 10.

³⁵ Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Paul Hunt, of 11 February 2005, E/CN.4/2005/51, § 8-9.

³⁶ Concluding Observations on the Third periodic report of the Czech Republic, Human Rights Committee, 22 August 2013, CCPR/C/CZE/CO/3, § 14.

as a measure of restraint in psychiatric and social welfare establishments in Austria, explicitly recommending that “the State party should immediately cease the use of net beds as it constitutes a violation of article 16 of the Convention.”³⁷

63. In 2012, the CAT Committee expressed very similar concern vis-à-vis the Czech Republic, noted that “*notwithstanding the changes in legislation announced by the delegation of the State party, the Committee is concerned about ... the continued use of cage-beds, despite the prohibition in law, and of net-beds as well as the use of other restraint measures (...) often in unhygienic conditions and with physical neglect. The Committee is also concerned about the absence of investigations into the ill-treatment and deaths of institutionalized persons confined to cage and net-beds, including suicides*”. The CAT Committee very concretely recommended that the Czech Republic amend the Health Care Act „to include the prohibition of the use of net-beds since their effects are similar to those of cage-beds”. The Government again has taken no steps to implement these recommendations.

64. The use of restraints and cage-beds for persons with mental disabilities has been systematically criticised by the UN Special Rapporteur on Torture. He criticised tying people with disabilities to their beds, cribs or chairs for prolonged periods, including with chains and handcuffs; locking them in “cage” or “net beds” and overmedication as a form of chemical restraint. He concluded that “there is no therapeutic justification for the prolonged use of restraints, which may amount to torture or ill-treatment”.³⁸

65. Juan Méndez, the then UN Special Rapporteur against Torture, in his 2013 comprehensive report on certain abuses in health-care settings recognised that any use of restraint against people with mental disabilities, even a short period of time, may constitute torture and ill-treatment. He concluded that it is essential that an absolute ban on all coercive and non-consensual measures, including restraint of people with psychological or intellectual disabilities, should apply in all places of deprivation of liberty, including in psychiatric institutions.³⁹

(c) The UN Convention on the Rights of Persons with Disabilities (“the CRPD”)

66. The use of restraints and net beds, in particular, has been also criticised by the UN CRPD Committee as amounting to torture or cruel, inhuman and degrading treatment, absolutely prohibited under Article 15 of the CRPD. In its concluding observations on the Czech Republic, the CRPD Committee has expressed deep concern that mechanical and chemical restraints, which may amount to torture, and cruel, inhuman and degrading treatment, are a common practice in psychiatric institutions. The CRPD Committee explicitly “*urges the State Party to immediately ban and prohibit the practice of the use of mechanical and*

³⁷ Concluding Observations of CAT Committee – Austria, 44th Session, 26 April – 14 May 2010, § 25.

³⁸ Interim report of the Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, A/63/175, § 55.

³⁹ A/HRC/22/53, report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, § 63.

chemical restraints of persons with psychosocial disabilities in psychiatric hospitals, and to strengthen monitoring and inspection of those facilities to prevent such practices."⁴⁰ The CRPD Committee took very similar standpoint in their recent concluding observations on Slovakia, where the situation is identical.⁴¹

67. The complainants emphasise that the ECSR has in its jurisprudence acknowledged the CRPD as providing the appropriate legal standards concerning the rights of persons with disabilities: *"With regard to international law, the Committee notes that the United Nations Convention on the Rights of Persons with Disabilities of 13 December 2006, which has already been signed and ratified by over 80 states and came into force on 3 May 2008, reflects existing trends in comparative European law in the sphere of disability policies."*⁴²

(d) The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

68. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter "the CPT") has systematically criticised the use of netted cage-beds in European countries. In their Standards, the CPT explains that *"certain mechanical restraints, which are still to be found in some psychiatric hospitals visited by the CPT, are totally unsuitable for such a purpose and could well be considered as degrading. Handcuffs, metal chains, and cage-beds clearly fall into this category; they have no rightful place in psychiatric practice and should be withdrawn from use immediately."*⁴³ Regarding all forms of restraint, the CPT is clear that *"there is no scientific proof in support of any therapeutic benefit from the use of restraints... Neither has it been proven that restraint is an effective measure to reduce the overall level of violent episodes or reduce situations where there is an imminent danger to self or others. The question concerning benefits is in any case irrelevant, as the use of restraint is restricted to the prevention of danger and physical harm, and has no therapeutic justification whatsoever."*⁴⁴

69. The CPT already in 2002 informed the Czech Government that *"it is of the opinion that net- and cage-beds are not an appropriate means of dealing with patients/residents in a state of agitation. It recommends that cage-beds be immediately withdrawn from service and that net-beds cease to be used as a tool for managing such persons as soon as possible."*⁴⁵ In its 2010 report visiting the Czech Republic, the CPT noticed that the Czech Republic introduced

⁴⁰ Concluding observations on the initial report of the Czech Republic (25 March-17 April 2015), CRPD/C/CZE/1, § 31-32.

⁴¹ Concluding observations on the initial report of the Slovak Republic (29 March-21 April 2016), CRPD/C/SVK/CO/1, § 46.

⁴² *FIDH v Belgium*. Complaint no. 75/2011, decision on the merits of 18 March 2013, § 112.

⁴³ CPT Standards, § 40.

⁴⁴ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT): The Use of Restraints in Psychiatric Institutions, CPT (2012) at para. 1.6.

⁴⁵ Report to the Czech Government on the visit to the Czech Republic carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 21 to 30 April 2002, § 128.

a ban on the use of netted cage-beds in social care homes but continues to use this form of restraint for psychiatric patients. It expressed that it *“has difficulty understanding such a divergence in approach, in particular as several psychiatric hospitals in the Czech Republic have already ceased using net-beds”*. The CPT formulated a simple but clear recommendation for the Czech authorities to *“pursue a policy of putting an end to the use of net-beds in psychiatric hospitals at the earliest opportunity”*.⁴⁶ The Czech Government did nothing.

70. In 2012, after a 51-year old patient hanged herself in the netted cage-bed, the Czech Government again had no reaction. In a recent 2014 report, the CPT again noted that *“the CPT reiterates its previous recommendations that net-beds be withdrawn from service in psychiatric hospitals in the Czech Republic. If necessary, staffing levels in facilities providing psychiatric care should be reviewed in this context.”* The CPT further explained, especially in relation to elderly patients, that *“if there are patients who need protective measures, such as persons with impaired mobility or nocturnal disorders (e.g. disorientation/ sleepwalking), the CPT recommends that more suitable protective means than net-beds be found to ensure their safety.”*⁴⁷ The Czech Government again failed to take any action to implement these recommendations.

71. The concerns raised by these international human rights bodies point to the fact that certain forms of ill-treatment and violations of the right to health, in particular the use of netted cage-beds, are endemic to healthcare in mental health institutions. The clear consensus of the human rights protection system, both regional and international, is a strong call for complete abolition of the use of netted cage-beds, as, firstly, they are degrading and cause enough harm to constitute ill-treatment, and, secondly, they do not have any therapeutic benefit at all for people with mental disabilities. Their use, therefore, lacks any legitimate purpose or basis.

(iii) The law of the European Social Charter

(a) Article 11 of the European Social Charter

72: Article 11 of the Charter, titled *“The right to protection of health”*, insofar as relevant, reads as follows:

⁴⁶ Report to the Czech Government on the visit to the Czech Republic carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 7 to 16 September 2010, § 112.

⁴⁷ Report to the Czech Government on the visit to the Czech Republic carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 1 to 10 April 2014, § 170.

³⁴ Vienna Declaration and Programme of Action (A/CONF.157/23), adopted by the World Conference on Human Rights, held in Vienna, 14–25 June 1993.

“With a view to ensuring the effective exercise of the right to protection of health, the Contracting Parties undertake, either directly or in co-operation with public or private organisations, to take appropriate measures designed inter alia:

1. to remove as far as possible the causes of ill-health;”

73. Article 11 of the Charter guarantees the right to protection of health for all persons. Even though neither the European Social Charter nor the 1988 Protocol expressly enshrines the right to freedom from torture and ill-treatment, this freedom is an intrinsic part of the right to health, as demonstrated above.⁴⁸ Similarly, elderly people that are institutionalised in care or treatment facilities retain their human rights in full, including respect for their dignity and needs, right to privacy, and right to make decisions about their care and quality of their lives.⁴⁹ This includes their right to be free from torture and ill-treatment.

74. Human rights are interdependent, indivisible and interrelated,⁵⁰ including the rights to health and freedom from ill-treatment.⁵¹ Both are based on a common and core value of human dignity and there is a strong link between the right to health,⁵² the right not to be subjected to torture or ill-treatment, and the right to respect for dignity.⁵³ In this regard, the European Committee of Social Rights (hereinafter “the ECSR”) considers that:

“... human dignity is the fundamental value and indeed the core of positive European human rights law – whether under the European Social Charter or under the European Convention on Human Rights and [that] health care is a prerequisite for the preservation of human dignity (...).

The right to protection of health guaranteed in Article 11 of the Charter thus complements the protection afforded to the principle of human dignity by Articles 2 and 3 of the European Convention on Human Rights as interpreted by the European Court of Human Rights.”⁵⁴

75. Human dignity is an immanent value in both the prohibition of torture and ill-treatment, and the right to health. All the international human rights sources listed above (see paragraphs 55-68 above) refer to human dignity in the context of persons with disabilities and their placement in psychiatric and social care facilities. The ECSR reiterates the same position,

⁴⁸ UN CESCR General Comment no. 14, E/C.12/2000/4, § 3.

⁴⁹ United Nations Principles for Older Persons, adopted by the United Nations General Assembly resolution 46/91 of 16 December 1991, § 14.

⁵⁰ See Vienna Declaration and Programme of Action (A/CONF.157/23), adopted by the World Conference on Human Rights, held in Vienna, 14–25 June 1993.

⁵¹ UN General Comment no. 14, E/C.12/2000/4, § 3.

⁵² This is particularly underlined in contemporary human rights law and in relation to persons with disabilities. Article 25 (d) of the CRPD brings the crucial concepts of human rights, dignity and autonomy together and links them to the notion of free and informed consent.

⁵³ See for example *Bouyid v. Belgium* [GC], no. 23380/09, §§ 89-90, ECHR 2015 – in relation to degrading treatment.

⁵⁴ *FIDH v. France*, Complaint No. 14/2003, § 31; *International Planned Parenthood Federation – European Network (IPPF EN) v. Italy*, Complaint No. 87/2012, § 66.

emphasising that “living conditions in hospitals, including psychiatric institutions and other care centres, must be adequate and preserve human dignity”.⁵⁵

76. The complainants argue that the use of restraints interferes both with the right to health and with human dignity, and any interference with human dignity strikes at the very essence of the European Social Charter. That applies in particular to the use of netted cage-beds against elderly persons and persons with disabilities, which is regarded in contemporary human rights law as unacceptable because it lacks any legitimate purpose and is a serious interference with the dignity of persons placed therein. It can likewise cause serious emotional and psychological distress, and, as an involuntary or coercive measure, can impair psychological health and prevent improvement. All relevant international sources cited above call for an immediate withdrawal of cage-beds from use. This withdrawal is not subject to progressive realisation as it is a form of ill-treatment and unlawful interference, disguised as a medical intervention, which decisively impacts the right to health of the persons concerned.

77. The intrinsic connection between the right to health and other rights, particularly the prohibition of torture and ill-treatment, has already been highlighted by the ECSR in relation to the provision of healthcare services in the Czech Republic. The ECSR emphasises that in substance any medical treatment without informed consent raises issues under Article 11 of the Charter.⁵⁶ In the context of the said decision, the ECSR also considered that the right to health is closely interlinked with the protection from ill-treatment under Articles 3 of the European Convention. Similarly, to other human rights bodies referenced above, the ECSR recalled the great importance the European Court of Human Rights attaches to interdependent assessment of the said provisions.⁵⁷

(b) Article 4 of the 1988 Additional Protocol

78. Article 4 of the 1988 Additional Protocol, titled “Right of elderly persons to social protections”, in its relevant parts reads as follows:

“With a view to ensuring the effective exercise of the right of elderly persons to social protection, the Parties undertake to adopt or encourage, either directly or in co-operation with public or private organizations, appropriate measures designed in particular:

1 (...)

2. (...)

⁵⁵ Conclusions XVII-2 and 2005, statement of interpretation of Article 11, §5; Conclusions 2005, Romania; Conclusions XIX-2, Hungary, XIX-2/def/HUN/11/1/EN.

⁵⁶ Transgender Europe and ILGA-Europe v. the Czech Republic, Complaint No. 117/2015, § 81.

⁵⁷ Transgender Europe and ILGA-Europe v. the Czech Republic, Complaint No. 117/2015, § 83.

3. to guarantee elderly persons living in institutions appropriate support, while respecting their privacy, and participation in decisions concerning living conditions in the institution."

79. Article 4 of the 1988 Additional Protocol specifically protects the rights of elderly people placed in institutions, including psychiatric hospitals and psychiatric wards of general hospitals. In its review mechanism, the ECSR regularly considers the rights of elderly persons under Article 4 of the 1988 Additional Protocol in relation to the provision of health care, the right to health and the protection from ill-treatment in institutions.⁵⁸ In particular, neglect, abuse and ill-treatment in institutions are regularly raised by the ECSR.⁵⁹
80. In the context of the requirement that social care for elderly people be provided in a dignified manner, the ECSR also regularly raises the use of restraints in institutions,⁶⁰ and has specifically raised the use of restraints against the elderly people in the Czech Republic.⁶¹
81. As the provision of care under this provision is intrinsically linked to preserving the dignity of elderly persons,⁶² the complainants argue that the same considerations concerning restraints in psychiatric institutions against elderly people are relevant for the assessment of state obligations under Article 4 of the 1988 Additional Protocol in the use of cage-beds.

(c) Application of the international norms relevant to the use of netted cage-beds in the context of the European Social Charter

82. The Committee explains that the purpose European Social Charter, as a living instrument dedicated to the values of dignity, equality and solidarity, is to give life and meaning in Europe to the fundamental social rights of all human beings.⁶³ It is precisely in the light of that finding that a teleological approach should be adopted when interpreting the Charter. It is therefore necessary to seek the interpretation of the treaty that is most appropriate in order to realise the declared aim and achieve the object and purpose of the treaty, not the interpretation which would restrict the Parties' obligations to the greatest possible degree.⁶⁴
83. Considering the above, Article 11 §1 of the European Social Charter and Article 4 §3 of the 1988 Additional Protocol should be interpreted in light of current conditions and

⁵⁸ Conclusions XVI-2, Slovak Republic, XVI-2/def/SVK/23//EN; Conclusions, Slovak Republic, 2017/def/SVK/23/EN.

⁵⁹ Conclusions XVII-2, Czech Republic, XVII-2/def/CZE/23//EN; Conclusions XIX-2, Slovak Republic, XIX-2/def/SVK/23//EN; Conclusions XIX-2, Czech Republic, XIX-2/def/CZE/23//EN; Conclusions 2013, Slovak Republic, 2013/def/SVK/23/EN; Conclusions XX-2, Czech Republic, XX-2/def/CZE/23/EN; Conclusions XVI-2, Denmark, XVI-2/def/DNK/23//EN.

⁶⁰ Conclusions 2017, Ukraine, 2017/def/UKR/23/EN; Conclusions, Slovenia, 2003/def/SVN/23//EN.

⁶¹ Conclusions 2017, Ukraine, 2017/def/UKR/23/EN.

⁶² Conclusions, France, 2005/def/FRA/23//EN; Conclusions, France, 2003/def/FRA/23//EN

⁶³ DCI v. Belgium, Complaint no. 69/2011, decision on the merits of 23 October 2012, § 30.

⁶⁴ Defence for Children International v. the Netherlands, Complaint No. 47/2008, decision on the merits of 20 October 2009, § 36.

international human rights standards calling for the total abolition of practices that are now understood to be violent, inhumane and harmful to human dignity.

84. There are various reasons why netted cage-beds cause serious harm to victims placed in them. The isolation in a netted cage-bed causes inevitable physical and mental suffering, accentuated by the prolonged periods for which people are usually restrained in them (this is especially so for elderly people) and the particular characteristics of the victims (individuals with psychosocial or intellectual disabilities, including dementia and Alzheimer's disease, and, in particular, when the victim is a person with multiple combined disabilities). The use of netted cage-beds is dangerous, and experience shows that people do die or otherwise harm themselves while confined therein.
85. The cages are used in breach of privacy and hygiene standards (see particularly paragraphs 35-46 above), further intensifying the suffering of the people confined inside. The evidence collected by the monitoring team and detailed in this complaint shows that the use of netted cage-beds is not compatible with the preservation of human dignity. People's testimonies disclose horrific experiences, and, on the other hand, statements by medical staff prove at best insensibility and even crudeness. Lack of empathy, especially towards elderly people, is striking in this regard, considering their, sometimes absolute, dependence on the medical staff.
86. The use of netted cage-beds lacks any therapeutic purpose (see paragraph 62 above), and the purposes which are usually cited for their use by the staff, including punishment of the person, isolation of restless individuals etc., have no legitimacy. Evidence shows that individuals placed in cage-beds are not and cannot be sufficiently supervised to avoid potential further harm or even death. The complainant asserts that the use of cage-beds in psychiatric hospitals in the Czech Republic amounts to ill-treatment and, consequently, taking into account current human rights standards, violates the relevant provisions of the European Social Charter.
87. The aim and purpose of the European Social Charter, being a human rights instrument, is to protect rights not merely theoretically, but also in fact.⁶⁵ The rights recognised by the law of the European Social Charter, including the right to health and the right of elderly people to social protection, must be fully implemented by national authorities.⁶⁶ It is therefore the duty of the Czech Government to take legislative steps to ban the use of netted cage-beds in psychiatric hospitals.
88. The complainant wishes to emphasise, however, that implementation cannot be achieved by simply prohibiting the use of cage-beds: it must include adoption of clear policies to

⁶⁵ International Commission of Jurists v. Portugal, Complaint no. 1/1998, decision on the merits of 10 September 1999, § 32.

⁶⁶ FIDH v. Belgium, Complaint No. 62/2010, decision on the merits of 21 March 2012, §§ 54 and 55; The Central Association of Carers in Finland v. Finland, Complaint No. 70/2011, decision on the merits of 4 December 2012, § 55; The Central Association of Carers in Finland v. Finland, Complaint No. 71/2011, decision on the merits of 4 December 2012, § 45

prevent institutions from using the prohibition of cage-beds to attempt to justify increased recourse to other forms of restraint.⁶⁷ States are obliged to ensure the rights enshrined in Article 11 of the European Social Charter and Article 4 of the 1988 Additional Protocol in compliance with human dignity and with the right to be protected from ill-treatment. The use of restraints is incompatible with this obligation. The complainant argues therefore that together with the prohibition of cage-beds, the state must adopt clear and comprehensive policies ensuring that the prohibition will not lead to increased use of other forms of restraint. The example of the psychiatric hospital in Opařany (see above paragraph 29) clearly shows that there is positive experience in the country of achieving this objective.

89. Indeed, even when netted cage-beds are banned in psychiatric hospitals and progressive realisation of the right to health and the right to social protection becomes relevant, the jurisprudence of the Committee makes clear that, in order to ensure steady progress towards achieving the goals laid down by the Charter, it is expected that the Government will not only take legislative action, but will also make available the resources and introduce the necessary operational procedures to give full effect to its obligations.⁶⁸ Effective enjoyment of certain fundamental rights such as the right to health and the right to social protection requires a positive intervention by the state: the state must take necessary and adequate legal and practical measures towards effective protection of these rights.⁶⁹ This requirement to take positive measures necessarily entails steps to eliminate and prevent practices harmful to enjoyment of Charter rights.
90. The ECSR assesses the efforts made by states not only with reference to their national legislation, but also regulations and undertakings entered into with other international bodies, such as the European Union and the United Nations,⁷⁰ and with reference to how the relevant laws are applied in practice.⁷¹ As is obvious from the description above, the use of netted cage-beds in the Czech Republic has been systematically criticised by various international bodies since 2002. Moreover, since 2010 various international human rights bodies explicitly and repeatedly called on the Czech Government to immediately cease using netted cage-beds. The Czech Republic has since that time failed to take any appropriate steps to abolish the use of netted cage-beds in health-care settings – despite the fact that the only necessary step to comply with these obligations is to amend Section 39 of the Health Care Act no. 372/2011 Coll., to prohibit their use and prohibit recourse to any and all other measures of restraint and ill-treatment.

⁶⁷ Such as reported in the referenced MDAC's report on cage beds, p. 19-20.

⁶⁸ International Movement ATD Fourth world v. France, complaint No 33/2006, decision on the merits of 5 December 2007, § 61.

⁶⁹ European Roma Rights Centre v. Bulgaria, Complaint No. 31/2005, decision on the merits of 18 October 2006, §35.

⁷⁰ Conclusions XV-2, Italy, XV-2/def/ITA/11/3/FR.

⁷¹ Marangopoulos Foundation for Human Rights (MFHR) c. Greece, complaint No. 30/2005, aforementioned decision, § 204.

91. The complainants are confident that the arguments and data set out in this complaint provide clear evidence that the use of netted cage-beds in the Czech Republic constitutes a violation of the right to protection of health of people with psychosocial disabilities and a violation of the right to social protection of elderly persons. They thus invite the Committee to declare that there has been a violation of both Article 11 §1 of the European Social Charter and Article 4 §3 of the 1988 Additional Protocol.

III. CONCLUSION

92. In ratifying the European Social Charter, the Czech Republic signified that it intended to fully ensure the right to protection of health as enshrined in Article 11 §1 of the European Social Charter and to guarantee elderly persons living in institutions appropriate support, while respecting their privacy, as enshrined in Article 4 §3 of the 1988 Additional Protocol. However, this complaint proves that the continuous use of netted cage-beds in psychiatric and general hospitals violates the rights of the affected persons.

93. For these reasons, Validity asks the European Committee of Social Rights to find that the use of netted cage-beds in health-care settings in the Czech Republic constitutes:

- a violation of Article 11 §1 of the European Social Charter;
- a violation of Article 4 §3 of the 1988 Additional Protocol to the European Social Charter.

Prague and Budapest, 4 December 2019



Ann Campbell
Co-Executive Director

VALIDITY FOUNDATION



Maroš Matiaško
Chair

FORUM FOR HUMAN RIGHTS

Annex no. 1

The following figures were elicited from directors of 45 psychiatric facilities across the Czech Republic following official freedom of information requests on the basis of Act 106/1999 (free access to information) submitted in 2016 and 2019.

| Name of the hospital | Number of netted cage-beds according to data from 2018/2019 |
|--|---|
| Psychiatric hospital Kosmonosy | 0 |
| Psychiatric hospital Opava | 0 |
| Psychiatric hospital Havlíčkův Brod | 11 (used 128 times in 2018) |
| Psychiatric hospital Jihlava | 4 (used 305 times in 2018) |
| Psychiatric ward - hospital Klatovy | 10 (used 24 times in 2018) |
| Psychiatric hospital, Petrohrad, p.o. | 4 (used 67 times in 2018) |
| Psychiatric hospital Dobřany | 0 |
| Psychiatric ward - hospital Pardubice | 4 (used 16 times in 2018) |
| Psychiatric hospital Lnáře | 3 |
| Children psychiatric hospital Opařany | 0 |
| Psychiatric clinique klinika FN Brno Bohunice a LF MUNI | 1 (used 9 times in 2018) |
| Psychiatric ward - army hospital Olomouc | 2 |
| Psychiatric ward - faculty hospital Plzeň | 2 (used 25 times in 2018) |
| Psychiatric ward - hospital České Budějovice | 0 |
| Psychiatric ward - Svitavy hospital | 0 |
| Psychiatric hospital Prague - Bohnice | 1 (used 37 times in 2018) |
| Children psychiatric hospital Velká Bíteš | 0 |
| Psychiatric hospital Bílá Voda | 0 |
| Psychiatric hospital Šternberk | 4 (used 21 times in 2018) |
| Psychiatric hospital U Honzíčka | 0 |
| Psychiatric clinique - Olomouc hospital | 2 (used 98 times in 2018) |

| | |
|---|---------------------------|
| Psychiatric ward - Ostrava municipal hospital | 0 |
| Psychiatric ward - Liberec hospital | 2 (used 95 times in 2018) |
| Private psychiatric ward CNS | 0 |