

Ref No. KVOP-378/2020/S

Information on economic, social and cultural rights in the Czech Republic

A. General matters

A.1 The need for a National Human Rights Institution

1. The Public Defender of Rights in the Czech Republic contributes to the protection of human rights by performing his or her duties entrusted to the institution by law. However, the Defender still does not have the general, broad mandate to protect human rights as required by the Paris Principles. In substance, to a certain degree and in some regards, the Public Defender of Rights serves as the national human rights institution within the meaning of the Paris Principles; nevertheless, formally, the Defender is not such an institution, both from the international and national perspective.

2. In this regard, I deem the insufficient scope of the Defender's mandate to be the largest problem. Pursuant to Section 1 (1) of the Public Defender of Rights Act,¹ the Defender "*shall work to defend persons against the conduct of authorities and other institutions set forth in this Act where such conduct is at variance with the law or does not comply with the principles of a democratic State governed by the rule of law and good administration, as well as against their inaction, thereby contributing to the defence of the fundamental rights and freedoms.*" It is apparent from the definition of the Defender's competence that the given mandate is primarily to protect persons against unlawful conduct of authorities and other institutions where the protection of human rights is a "corollary" of these activities, not an objective in itself.

3. At the same time, the Defender's competence does not include all fields of law, i.e. does not cover all fundamental rights and freedoms. The definition of the Defender's scope of responsibilities cannot therefore be considered to be in accordance with the requirements of the Paris Principles regarding national human rights institutions (NHRI). Certain limitations also apply to the powers of the Defender, e.g. the lack of a general competence in the area of promotion of human rights, education, monitoring etc.

4. In other words, the Defender lacks statutory authorisation to assume the role of the NHRI and request international accreditation of his or her own will. As a public authority, the Defender may only do what the law expressly allows him or her to do. Any extension of powers or competence above the scope of the law would be unconstitutional. It does not

¹ Act No. 349/1999 Coll., on the Public Defender of Rights, as amended.

follow from the Public Defender of Rights Act that the legislature intended for the Defender to assume the role of a NHRI.

5. Therefore, in case the Public Defender of Rights (or another institution) was to assume the role of a NHRI in the Czech Republic in the future, legislative action, such as a relevant amendment, is needed.

Proposed questions for the Government:

- When does the Government plan to propose to the parliament any concrete act or amendment in order to establish a NHRI in the Czech Republic?
- When do you expect that such an institution corresponding to an A-status NHRI could be formally accredited in line with the Paris Principles?

A.2 Position of social rights in the Czech Constitution

6. In its response, the government noted that by virtue of Article 10 of the Constitution, the Covenant forms an integral part of the Czech legal system and its provisions prevail over provisions of national legislation in case the two are contradictory. The government made the statement in response to the Committee's observation that some rights contained in the Covenant are not explicitly incorporated into the Charter of Fundamental Rights and Freedoms (hereinafter 'the Charter'), recommending its amendment with view of fully aligning the content of the Charter with the Covenant.

7. It is to be noted that the fact that some of the provisions of the Covenant are not incorporated in the national Charter is not problematic per se, since it does not render such provisions invalid or unenforceable. Not only is the Covenant part of the Czech legal system binding for all state authorities when applying the law, it is also considered to be a part of the constitutional order. Based on the Constitutional Court case law, Czech constitutional order is based on 'polylegal' concept, meaning that not only the Constitution (Act No 1/1993 Coll.), but also other constitutional laws form integral parts of it. According to the Constitutional Court, international human rights conventions are also considered to be an integral part of constitutional order, having the same legal strength as constitutional laws. Therefore, the mere fact that certain Covenant-guaranteed rights are omitted by the Charter forms no obstacle to their enforcement.

8. In spite of full incorporation of the Covenant into Czech legal system, justiciability of economic, social and cultural rights could be perceived as weakened due to the Article 41 (1) of the Charter. As the government described, this provision prescribes that certain enumerated rights from the Charter (mostly economic, social and cultural rights) could '*only be invoked within the limits of implementing laws which specify their content*'. The provision can have adverse impact on the enforcement of economic, social and cultural rights covered by its scope. However, according to the case-law of the Constitutional Court, the protection of the rights enumerated in the Article 41 (1) of the Charter is not necessarily limited to the implementing laws. At the same time, the Constitutional Court respects a wider margin of appreciation of governmental policies while implementing economic, social and cultural rights which is based on respecting the very essence (core) of a particular right as compared to the Court's approach to civil and political rights. Therefore, economic, social and cultural rights are duly protected by the Czech Constitution as interpreted by the Constitutional

Court, nevertheless, the scope of their protection is narrower, as it is based on a wider margin of appreciation.

Proposed questions for the Government:

- How many cases a year are being submitted at the Constitutional Court that claim violations of economic, social and cultural rights and how many violations are found annually?

B. Specific rights

B.1 Fight against discrimination (Article 2)

9. If a person seeks protection from discrimination and states in the court facts indicating that the defendant has indeed discriminated against the plaintiff, the law requires that the burden of proof be shared.² However, in cases of suspected discrimination based on “nationality” (*národnost*)³, disability, age, sexual orientation, religion and citizenship, the aforementioned provision only concerns the area of work and labour – it does not apply to access to housing, health and social care and other goods and services. Likewise, sharing of the burden of proof does not apply in cases of gender-based discrimination, except for the area of access to employment and provision of goods and services. For many people, it is difficult to defend themselves against discrimination, especially because they are denied procedural guarantees that are secured for other groups of persons – i.e. in cases of discrimination on the grounds of race or ethnic origin or, in some cases, gender-based discrimination.

Proposed questions for the Government:

- When will the State ensure the same level of protection for all victims of discrimination regardless of the protected characteristic and area of discrimination?

B.2 Access to the labour market and active employment policy (Article 6)

10. The Czech Republic currently has the lowest unemployment rate of all EU countries.⁴ Despite that, the ratio of registered jobseekers with disabilities keeps increasing and they currently make up 16.4% of all jobseekers.

2 Section 133a of Act No. 99/1963 Coll., the Code of Civil Procedure, as amended.

3 **Translator’s note:** The Czech language distinguishes between *státní příslušnost*, which is a term referring to nationality in the sense of holding citizenship of a state, and *národnost*, which refers to a person’s (self-)identification with a national group (based on shared language, culture, heritage etc.). The Czech Anti-Discrimination Act refers to both these concepts in addition to other grounds of discrimination such as ethnicity and race. In most contexts, ethnicity and race would be nearly synonymous with the Czech term *národnost*; unfortunately, it cannot be used as a translation equivalent in this text because of the wording of the Act. For this reason, we translate *národnost* as “nationality” with the Czech term indicated in brackets to clearly identify the meaning of the term. Conversely, we use “citizenship” to refer to *státní příslušnost*. This is by no means an optimal solution, but it is the only one available given the constraints set by the wording of the Act.

4 Euro area unemployment at 8.6%. Eurostat – Your key to European statistics [online]. European Commission – Eurostat, ©2019 [retrieved on 16 January 2019]. Available at: <http://ec.europa.eu/eurostat/en/web/products-press-releases/-/3-01032018-AP>

11. One of the tools for supporting employment of people with disabilities consists in the “mandatory share of the workforce” (i.e. an obligation that at least 4% of all employees are people with disabilities).⁵ However, an employer may choose alternative ways of complying: buying products and services or placing orders with employers of people with disabilities, or by providing additional contributions to the national budget.⁶ There are no publicly available statistics that could serve as a basis for evaluation of the effectiveness of this tool. According to an analysis which concerned exclusively the public sector, only two of fourteen Ministries have complied with the mandatory share fully, with other three Ministries having complied partially. It is to be expected that the situation in the private sector will be the same or worse.

Proposed questions for the Government:

- What are the Government plans in the area of employment of people with disabilities in an open labour market? Are there specific steps with the objective to transfer people with disabilities from the protected labour market to an open labour market?
- What is the Government plan in reducing unemployment of people with disabilities?
- Who keeps the statistical data regarding compliance with the “mandatory share” obligation and in what manner? Who evaluates the developments in statistical data over time and how are they taken into account in the creation of national policies in the area of employment of people with disabilities?
- Does the Government have available complete information on the compliance with the mandatory share of people with disabilities in the workforce in the private sector?

B.3 Insurance and non-insurance benefits (Article 9)

12. One of the measures ensuring adequate living standards consists in State financial support via the non-insurance system, i.e. allowances for care or special-aid allowances. The insurance system provides disability pensions to people with disabilities. For the purposes of granting the aforementioned allowances, the medical condition of the applicants has to be assessed by the medical assessment service.⁷ There has been a long-term problem with **insufficient staffing of the medical assessment service**, which leads to longer deadlines for processing applications for the individual allowances, with the associated higher error rate. The average age of medical assessors is also increasing, which could lead to further paralysis of the assessment service.⁸

Proposed questions for the Government:

- What steps has the State taken, specifically, to provide for adequate staffing of the medical assessment service to avoid delays in proceedings, especially in cases of allowances for care, contributions, and issuance of disability cards?

5 Section 81 (1) of Act No. 435/2004 Coll., on employment, as amended.

6 Section 81 (2) of Act No. 435/2004 Coll., on employment, as amended.

7 Act No. 582/1991 Coll., on organisation and implementation of social security, in conjunction with Act No. 108/2006 Coll., on social services.

8 Findings obtained in previous cases the ombudsperson has dealt with.

- What further steps will the State take to ensure sufficient staffing of the assessment service in order to ensure its continuous operation when older assessors retire?

B.4 Protection of the rights of children and families, family life (Article 10)

13. **Care for vulnerable children and their families is still not unified.** A bill on family support was not adopted and no actual steps are currently being taken towards unification of care (the Ministerial Committee, which was to co-ordinate care for children, is practically non-functioning). In the Czech Republic, the system of care for children continues to be split among various Ministries (Ministry of Labour and Social Affairs, Ministry of Education, Ministry of Health and Ministry of Justice).

14. The Czech Republic is still among countries **with the highest number of institutionalised children** in Europe. Over the past 20 years, the Government invested into development and renovation of over three hundred institutional facilities for children. The State has no concept of transformation of care for children and deinstitutionalisation. The law governing institutional education is obsolete, accentuating the elements of constitutionality.

15. No **age limit** has been enacted **for children who should never be placed in institutional care.**⁹ The Ministry of Health has yet to adopt steps to **abolish children's homes for children under three years of age** (children's centres).¹⁰ The Ministry of Labour and Social Affairs fails to use sufficient efforts **to ensure an adequate number of foster parents** in accordance with the requirement for personal care for very young children and the lowest possible number of children entrusted to institutional care.

Proposed questions for the Government

- What steps does the State plan to unify the system of care for vulnerable children?
- What measures will the State adopt towards deinstitutionalisation of facilities for the performance of institutional education?
- By when does the State plan to abolish children's homes for children under three years of age?
- When will the State adopt an age limit restricting placement of children in institutional care?
- What steps does the State plan to ensure an adequate number of foster parents, so that very young children need not be placed in institutional care?

9Information available on Lumos website: <https://www.wearelumos.org/czechrepublic/about/>.

10 See the collective complaint lodged with the European Committee of Social Rights in the case of European Roma Rights Centre & Mental Disability Advocacy Centre (ERRC & MDAC) v. the Czech Republic (No. 157/2017), claiming violation of Article 17 of the Charter concerning the prohibition of discrimination on the grounds of ethnic origin and disability, on the grounds of routine placement of children under three years of age with special needs (children of Roma origin and children with disabilities) into early childhood medical care institutions (*kojenecké ústavy*) regardless of the negative effects of institutionalisation on the children's further development, as well as on grounds of lack of alternative solutions. The Government submitted its opinion on the acceptability of the complaint to the ECSR in December 2017.

B.4.1 Transformation and deinstitutionalisation (paragraphs 98–100)

16. Thousands of children and adults with disabilities live in institutional care facilities in the Czech Republic. The country has yet to adopt a long-term strategy for deinstitutionalisation with a clear timeframe and allocations of funding. The strategies used to date have always been tied to projects dependent on external funding and their long-term sustainability is therefore in doubt. No government paper contains the final goal of the deinstitutionalisation process, i.e. complete replacement of institutional care by services provided in a community in respect of all departments (social services, healthcare facilities, facilities for children, etc.).

Proposed questions for the Government:

- How will the State ensure sufficient availability (temporal, local and financial) of fully individualised services for all people with disabilities in order to support them in independent living and remaining in a person's natural social environment?
- When will the State adopt a strategy of deinstitutionalisation with a clear timeframe and clearly allocated funding?

B.4.2 Access of foreigners, asylum seekers and refugees to economic, social and cultural rights (paragraph 104)

17. Some problems exist in the access of foreigners to healthcare due to the way the health insurance system operates. Public health insurance is only available to foreign nationals permanently residing in the Czech Republic or those foreigners who are employed here. One cannot opt in (or out) of the system on a voluntary basis. Tens of thousands of foreigners from non-EU countries who are staying in the Czech Republic on a long-term basis, but do not meet the conditions for joining the public health insurance system (e.g. self-employed persons, family members of Czech citizens or other resident foreigners) thus have to take out commercial health insurance.

18. However, the system of commercial health insurance has not been fit for its purpose in the long term. The terms and conditions often include many problematic elements (e.g. numerous gaps in coverage, waiting times for payment of insurance indemnity and limits to the maximum amount of reimbursement). At the same time, insurance companies have no legal duty to provide a policy, which is why many foreigners who are already ill or otherwise non-desirable in terms of insurance risk (especially new-born children with health problems or older people) are completely deprived of access to health insurance. Along with the Government Council for Human Rights, the Czech Medical Chamber, NGOs working with the migrants, the Czech Patient Association and some hospitals, I have recommended to open the public health insurance system to hitherto excluded categories of foreigners staying in the country.

Proposed questions for the Government:

- Why does the State refuse to allow non-EU foreign nationals to access the public health insurance system despite the fact that it is clear that the system of commercial insurance is not satisfactory?

B.5 Fight against poverty and social exclusion (Article 11)

B.5.1 Securing living conditions and assistance in material need (paragraphs 120, 121)

19. The living minimum is a State-recognised poverty threshold. The law allows (rather than requires) the Government to increase the amount of living and subsistence minimum if the year-by-year inflation increases by more than 5%. The Government has used this option only once since 2006 (in 2012). Consequently, as a result of inflation, the fair value of the living minimum is constantly decreasing and the persons whose living depends on benefits can afford less and less. The Research Institute for Labour and Social Affairs (public institution established by the State) reached the conclusion that the respective amounts had to be increased by several hundreds of crowns. The Government refused to increase the amounts in 2018, and they have not been increased since the beginning of 2020 either.

Proposed questions for the Government:

- How will the Government secure a minimum standard of living for persons in material need that will not be gradually reduced as a result of growing inflation?

B.5.2 Access to housing and its support, response to findings No. 16 (paragraphs 137–141)

“Benefit-free” zones

20. In mid-2017, the Chamber of Deputies passed an amendment to the Assistance in Material Need Act, which allows municipalities to report areas with higher occurrence of socially undesirable phenomena. Persons in material need newly moving to these areas are not entitled to housing benefits intended for the most deprived persons. The amendment was to prevent further growth in “poverty business”, i.e. lease of sub-standard real estate to people dependent on housing benefits for an unreasonable price. Instead, however, the amendment made housing substantially less available for the most deprived persons and the possibility to move is now much restricted inside certain cities and towns. As a result, the cities and towns nearby also establish such areas to dissuade destitute people from looking for housing in their territories. Thus, the measure’s negative impact spills over. The State thereby disproportionately restricts the right to adequate housing and creates areas where assistance in the form of benefits is substantially limited. In view of the fact that some cities and towns announce such measures indiscriminately, some areas can be as large as a whole city or town.

Proposed questions for the Government:

- How will the Government ensure that persons with low income receive housing benefits regardless of the territory in which they apply for such benefits?

B.5.3 Lack of adequate housing available for persons in housing need

21. No law has been adopted to date that would guarantee the right to adequate housing for persons in housing need (social housing). For certain vulnerable groups of persons (families with children, single parents, elderly, Roma), housing benefits alone are not sufficient to ensure adequate housing. Even after having received housing benefits, rental housing is still unavailable for these groups due to a high price or other barriers, e.g.

insufficient funds for a security deposit, discriminatory conduct of landlords or real estate agencies. For some groups of inhabitants (e.g. Roma people and single mothers with multiple children), municipal housing is also often unavailable, as the rules for assignment of municipal flats sometimes disadvantage families with many children, persons receiving social welfare benefits or people without income from employment. As a result, these people live in commercial accommodation facilities where the living conditions are poor (lack of space, poor hygiene conditions, unsuitable conditions for children's upbringing and preparation for school), although housing fees are usually very high. Details regarding unavailability of housing for the Roma can be found in the [opinion](#) for the European Commission against Racism and Intolerance (ECRI) of July 2019 (p. 14).

22. In 2017, the Government submitted a comprehensive draft of the system of public social housing, but the Chamber of Deputies did not manage to discuss the draft. No other bill on social housing has been prepared since then. The Ministry for Regional Development's subsidy titles for the construction of social flats for lease have been unable to offer a generally-applicable solution; only handful of municipalities have used it so far.

Proposed questions for the Government:

- How will the Government secure adequate housing for persons in housing need who are unable to find housing on free residential market even after having received housing benefits?
- How will the Government secure equal access for the Roma to rental housing on the private residential market?

B.6 Health-care system

23. While the Convention on the Rights of Persons with Disabilities stresses the need for a comprehensive rehabilitation that begins at the earliest possible stage and include a multidisciplinary assessment; however, the Czech Republic still lacks legal rules to ensure linkages and co-ordination between the individual rehabilitation components. The requirement of adopting new legal rules has been repeatedly included in the National Plan on Promoting Equal Opportunities for Persons with Disabilities, but the responsible Ministries have so far failed to reach agreement on their parameters.

Proposed questions for the Government:

- When will the State adopt legal rules ensuring co-ordinated rehabilitation?

B.6.1 Sterilisation

24. In the past, attempts were repeatedly made to adopt a law on the basis of which unlawfully sterilised women could be compensated. The vast majority of claims for indemnification enforced in civil proceedings were dismissed on the grounds of a plea of limitation (as time-barred). Unfortunately, the draft was rejected at a Government meeting in 2015 (for various reasons, such as that the women should have sought and should seek indemnification in courts or that the proposed amount of CZK 300,000 was too high). Since then, the Government has taken no active steps to revive the issue.

25. In September 2019, a group of Deputies and the Government Commissioner for Human Rights submitted to the Chamber of Deputies a draft law on compensation for sterilisation performed at variance with the law. The Government issued a neutral opinion on the draft law. The Chamber of Deputies is yet to discuss the draft.

Proposed questions for the Government:

- If the State does not support the adoption of the relevant law on compensation for persons sterilised at variance with the law, in what way does it intend to compensate the women?

B.7 Education (Articles 13 and 14; paragraphs 183–186; 194, 195)

B.7.1 Education of children with disabilities

26. The current setting of the education system is not fully inclusive within the meaning of Article 24 of the Convention. Also the general public fails to see inclusion in a positive light, as public space is often affected by distorted information, frequently based on prejudices.

27. Most educational institutions are not accessible in terms of layout, equipment or information provided. The educational system also lacks sufficient opportunities for recreational and lifelong learning for people with disabilities.¹¹

28. There is a lack of legislative clarity as to who should be responsible for **healthcare tasks carried out in schools**. Since the law does not specify who should carry out healthcare tasks (such as insulin administration or mucus removal) nor who would be liable for any harm potentially caused, many schools are reluctant to provide for these tasks. This essentially bars disabled children from attending such schools, which could constitute a disability-based discrimination.

29. Insufficient expertise in inclusive learning on the part of teachers also remains problematic; there is also insufficient linkage between education and vocational training for specific jobs and insufficient funding of supporting measures.¹² All these problem areas were covered as part of the Action Plan for Inclusive Education with specific solutions; however, it is not clear how effectively these solutions have been implemented.¹³

Proposed questions for the Government:

- To what extent have the goals specified in the Action Plan for Inclusive Education in 2016–2018, Education Policy Strategy 2020, and the Long-term Plan for Education and

11 Insufficient provision for recreational learning has been repeatedly pointed out to the Defender by groups advocating the rights of people with disabilities, e.g. AUTISTIK, z. s. The fact that this is one of the problem areas also follows from the Czech Schools Inspectorate's 2016/2017 thematic report, which indicates that "the provision of supporting measures to persons interested in recreational learning was sufficient only in 42.6% of the visited free-time centres.

12 To mention several disability rights organisations, the problems were mentioned e.g. by Českomoravská unie neslyšících, z. s., Občanské sdružení D.R.A.K., z. s., and others.

13 The extent to which the goals specified in the Action Plan for Inclusive Education in 2016–2018 has not yet been evaluated.

Development of the Educational System in the Czech Republic 2015–2020 been met, especially in terms of material, information and communication accessibility of educational institutions, including institutions for recreational and lifelong learning; and material and financial accessibility of various supportive measures, ensuring teacher expertise in inclusive learning and linkage between education and the labour market?

- In what way does the State inform the public of inclusive education and its benefits?
- When will the State impose on schools a legislative duty to provide for healthcare interventions during school hours?

B.7.2 Access of Roma children to education

30. The access of Roma children to good-quality and unsegregated education is another issue. Although the judgement in the case of D.H. and Others v. the Czech Republic¹⁴ was already rendered thirteen years ago, almost a third of all pupils educated according to programmes for pupils with mild mental disability are still Roma children – in spite of the fact that they form only 4% of the entire number of pupils.

31. Another problem lies in ethnic segregation in education. As of the school year 2018/2019, there were 70 primary schools (standard as well as special schools) where Roma children made up over 50% of pupils. In thirteen schools, the share of Roma children even exceeded 90%. First of all, such education reduces the chances of the segregated pupils to attain higher education. As a result of the homogeneity of the school and family environment in which children are present, parents' poor education passes to their children. Classes lack "leaders" who could serve as a role model for their classmates. Furthermore, this arrangement strengthens social exclusion and prevents individuals from lifting themselves out of poverty. There may be cumulative occurrence of pathological phenomena (truancy, use of addictive substances) that can be perceived as socially recognised standards in the absence of good patterns.

32. Details are available in my [opinion](#) addressed to the Committee of Ministers of the Council of Europe in May 2019, and in the summary of a [research](#) on inclusive education of Roma and non-Roma children of December 2018.

Proposed questions for the Government:

- How will the State ensure that Roma pupils are educated based on programmes for pupils with mild mental disability only where this is objectively justified?
- How will the State ensure that Roma pupils are not educated in ethnically segregated schools?

Brno, 17. 1. 2019

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14 Judgement of the Grand Chamber of the European Court of Human Rights in Case of D.H. and Others v. the Czech Republic of 13 November 2007, No. 57325/00; available at <http://hudoc.echr.coe.int/eng?i=001-83256>.