

NGO information to the United Nations Committee on the Rights of Persons with Disabilities

For consideration when compiling the List of Issues on the first Report of the Czech Republic under the Convention on the Rights of Persons with Disabilities

Submitted by the
Czech National Disability Council (CNDC)
Mental Disability Advocacy Center (MDAC)
League of Human Rights (LIGA)

I. OVERVIEW

- 1.** This written submission provides an outline of issues of concern with regard to compliance of the Czech Republic with the provisions of the Convention on the Rights of Persons with Disabilities (hereinafter “the CRDP”). The purpose of the submission is to assist the Committee on the Rights of Persons with Disabilities (hereinafter “the Committee”) with its consideration of Czech Republic’s report” in this initial stage of the compilation of the list of issues. **The submission has been written jointly by the Czech National Disability Council (CNDC), the Mental Disability Advocacy Center (MDAC) and the League of Human Rights (LIGA).**
- 2.** The *Czech National Disability Council*¹ (CNDC) is an umbrella organisation which unifies 107 member organisations with a total membership base of more than 250,000 person with disabilities. Its fundamental aim is to advocate, promote and meet the rights, interests and needs of persons with all kinds of disabilities. CNDC’s work is orientated towards collaboration with state

¹ Website: <http://www.nrzp.cz/english-info.html>, list of CNDC’s member organizations: <http://www.nrzp.cz/cndc-structures/639-member-organizations.html>)

administration and local government at all levels and with organisations and institutions working in this field.²

3. *Mental Disability Advocacy Center*³ (MDAC) is an international human rights organisation which uses the law to secure equality, inclusion and justice for people with mental disabilities worldwide. MDAC's vision is a world of equality – where emotional, mental and learning differences are valued equally; where the inherent autonomy and dignity of each person is fully respected; and where human rights are realized for all persons without discrimination of any form.⁴
4. *League of Human Rights*⁵ (LIGA) is a non-governmental non-profit organisation that uses law to advance human rights in the Czech Republic. LIGA use strategic litigation, advocacy and capacity-building to bring about systematic changes to prevent further human right violations. In our work, we mainly focus on the rights of especially vulnerable persons or persons facing social exclusion, such as the rights of children, persons with disabilities or victims of police violence. Our vision is just, free and engaged society for all.

II. SPECIFIC COMMENTS

Article 4 - General obligations

5. Article 4 of the CRPD requires states to ensure and promote the full realisation of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability. Articles 4(h) and (i) CRPD require the state to provide accessible information to persons with disabilities about mobility aids, devices and assistive technologies, including new technologies, as well as other forms of assistance, support services and facilities and promote the training of professionals and staff working with persons with disabilities so as to better provide the assistance and services guaranteed. Article 4(3) CRPD further requires states to closely consult with and actively involve persons with disabilities, including children with disabilities, through their representative organisations. Cooperation between

² CNDC is also part of European and worldwide movements of people with disabilities (member of EDF, RI, DPI etc.). Besides policy and monitoring work CNDC specialises in commenting on individual laws and drawing up its own legislative proposals. CNDC is an expert guarantor for various projects whose aims are to improve the situation of persons with disabilities in the Czech Republic. CNDC also works to raise public awareness of disability issues. At least 50% of the membership of all the CNDC's member organisations is persons with disabilities. Similarly, most of the co-authors of this submission for CNDC's part are persons with disabilities.

³ <http://www.mdac.org>

⁴ MDAC has three international campaigns to challenge the most widespread and systemic human rights violations against people with mental disabilities worldwide. *My Home, My Choice* seeks to challenge the institutionalisation of people with mental disabilities and advocate for the right independent living in the community. *I'm a Person* seeks to advance the right to legal capacity, ensuring that supports are provided for people with mental disabilities to make decisions recognised by the law, and ensuring that they can author their own lives. *Schools for All* challenges the segregation of children with mental disabilities in education systems and calls for all children to be educated in common learning environments with access to individualised supports.

⁵ <http://llp.cz/en/>

state and civil society organisations representing persons with disabilities and with patient organisations is piecemeal and sporadic. Even though the state must consult persons with disabilities in the preparation of legislation, in taking political decisions for the implementation of the CRPD as well as in other issues concerning persons with disabilities, and these consultations shall be realised mainly through active cooperation with organisations representing their interests, in practice legislative proposals are provided late or not at all to organisations representing persons with disabilities in the Czech Republic. Therefore it is very difficult or even impossible to ensure the genuine involvement of persons with disabilities. A common failure seems to be the lack of permanent mechanisms for consultation and involvement of persons with disabilities and their organisations, which results in a lack of participation.

Questions:

- **How will the Government take action to meet the provisions of the Article 4, including subparagraphs (h)(i) and (3) of the CRPD?**
- **How will the Government improve the cooperation between the state, persons with disabilities and their representative organisations in advancing the human rights and fundamental freedoms of all persons with disabilities?**

Article 7 - Children with disabilities

6. Children with disabilities continue to be institutionalised in the Czech Republic, including children under the age of 3. Children can be placed in an institution on in two ways, either by a court decision on institutional care⁶, an educational measure⁷ or preliminary measure⁸, or otherwise by a contract for social care services between parents (legal guardians) and social care providers⁹. In the former case, where the institutionalisation is ordered by a court, the law grants special protection to the child, such as the obligation to provide support to the family by the authority on social and legal protection of children¹⁰ or the court¹¹ or to attempt to place the child in foster care¹², and procedural safeguards, such as the obligation of the court to hear the opinion of the child¹³. On the contrary, in cases where the child is placed in institutional care by means of a contract signed by their parents, no special safeguards or protections are in place to prevent long-term institutionalisation. It is noteworthy that this procedure is only available in cases of children with disabilities; children

⁶ § 971 of Civil Code, Law no. 89/2012 Coll.,

⁷ § 13a of Social and Legal Protection of the Child Act, Law no. 359/1999 Coll.

⁸ § 452 of Act on special judicial proceedings, Law no. 292/2013 Coll.

⁹ § 90 of Social Services Act, Law no. 108/2006 Coll.

¹⁰ § 14(2) of Social and Legal Protection of the Child Act, Law no. 359/1999 Coll.

¹¹ § 474 of Act on special judicial proceedings, Law no. 292/2013 Coll.

¹² § 9a of Social and Legal Protection of the Child Act, Law no. 359/1999 Coll.

¹³ § 100(3) of Code of Civil Procedure, Law no. 99/1963 Coll.

without disabilities cannot, by law, be placed in an institution for an infinite or lengthy time period without judicial intervention.

7. The Committee has expressed their concern about the high number of children with disabilities in institutional care in member states.¹⁴ It has also criticised states for not taking into account the opinions of children with disabilities on the quality of care and for lack of services for their full development and social protection.¹⁵ It has recommended that the states use all financial and other resources¹⁶ and to take steps to prevent institutionalisation of children with disabilities, by means of setting up community services or assistance¹⁷ and to enable children with disabilities to live with their families.¹⁸

Questions:

- **How will the Government ensure the equality of children with disabilities and without disabilities in the system of social and legal protection of children?**
- **How will the Government ensure that children with disabilities are not institutionalised for lengthy periods and that sufficient supports exist in order to prevent separation of families and institutionalisation of children with disabilities?**

Article 9 - Accessibility

8. Article 9 of the CRPD requires accessibility of buildings, services, transport, medical facilities to promote the independence and inclusion of persons with disabilities in society. The Construction Act no. 183/2006 Coll., and Decree No. 398/2009 Coll. on general technical requirements ensuring the accessibility of buildings provide that in cases where construction documents do not meet legal requirements in terms of accessibility of buildings, such public building cannot be granted construction permission and cannot be passed for use. Despite this, many public buildings have been constructed that do not meet the legal requirements to ensure accessibility after this legislation came into force. The law has been substantially violated and new public buildings are still being built without meeting accessibility requirements.
9. Article 9(1) of the CRPD further requires that the state ensures access to transportation.¹⁹ In the Czech Republic, accessibility of transportation remains

¹⁴ E.g. Concluding observations on the initial report of El Salvador, adopted on 8 October 2013, para 19

¹⁵ Concluding observations on the initial report of Spain, adopted on 19 October 2011, para 23-24

¹⁶ Concluding observations on the initial report of Hungary, adopted on 22 October 2012, para 22

¹⁷ Concluding observations on the initial report of China, adopted on 15 October 2012, para 14

¹⁸ Concluding observations on the initial report of Hungary, adopted on 22 October 2012, para 22

¹⁹ More specifically the paragraph 11 of the Regulation (EC) No. 1371/2007 of the European Parliament and of the Council on rail passengers' rights and obligations states that "*Railway undertakings and station managers should take into account the needs of disabled persons and persons with reduced mobility, through compliance with the TSI for persons with reduced mobility, so*

seriously problematic and persons with disabilities face extreme difficulties in terms of transportation, especially accessibility of rail transport. Regarding accessibility, the Committee pointed out that some countries have an incomplete approach on accessibility as a physical and transportation matter, and that accessibility to information and communication remained unsolved (Costa Rica²⁰). The Committee has then stressed the need to ensure that municipalities and local authorities fully understand accessibility principles under the Convention. For this to be achieved, sufficient resources should be allocated to ensure the monitoring and implementation of disability standards (Australia²¹, Costa Rica²², Paraguay²³) and a regulatory framework concerning the public sector's responsibility to present information in accessible formats is essential (Sweden²⁴). The Committee has emphasised that the creation of monitoring mechanisms or bodies is essential for the implementation of accessibility standards (Hungary²⁵, Azerbaijan²⁶), and that sanctions in case of non-compliance must be established (Azerbaijan²⁷). States must also ensure that private entities take due account of all accessibility aspects (Argentina²⁸).

Questions:

- **How will the Czech Republic prevent violations of legislation outlining accessibility standards for public buildings? Which instrument is the Czech Republic going to use to prevent current situation?**
- **How the Government plans to ensure the accessibility of transportation to all persons with disabilities, especially the accessibility of rail transport?**

Article 12 - Equal recognition before the law

10. Article 12(2) CRPD requires states to recognize the legal capacity of all persons with disabilities. Furthermore, according to Article 12 (3) CRPD persons with disabilities should be supported to decide for themselves in all areas of their life and their autonomy should be respected. In 2012, the Czech Republic adopted new civil code no. 89/2012 Coll., which abolished the deprivation of legal capacity and introduced supported decision-making. Despite this step forward, the restriction of legal capacity remained in place as a protective measure. The Civil Code introduced several legal preconditions

as to ensure that, in accordance with Community public procurement rules, all buildings and rolling stock are made accessible through the progressive elimination of physical obstacles and functional hindrances when acquiring new material or carrying out construction or major renovation work."

²⁰ Concluding observations on the initial report of Costa Rica, para 20

²¹ Concluding observations on the initial report of Australia, para 21

²² Concluding observations on the initial report of Costa Rica, para 20

²³ Concluding observations on the initial report of Paraguay, para 24

²⁴ Concluding observations on the initial report of Sweden, 28

²⁵ Concluding observations on the initial periodic report of Hungary, para 24

²⁶ Concluding observations on the initial periodic report of Azerbaijan, para 23

²⁷ Concluding observations on the initial periodic report of Azerbaijan, para 23

²⁸ Concluding observations on the initial report of Argentina, para 18

for the restriction of legal capacity, however it also granted courts powers to restrict a person's capacity in a number of ways, *inter alia* in respect of parental rights²⁹, marital rights³⁰, the right to vote and stand for elections.³¹ Moreover, available statistics show that despite the new civil code (which came in force on 1st January 2014) and the introduction of supported decision-making and representation of next of kin, the number of persons under guardianship continues to grow.³² This indicates the need for better training and education of the Czech judiciary on the new civil code.

- 11.** Even though the Civil Code introduced a number of alternatives to guardianship, including supported decision making, which should be welcomed, it still maintains the restriction of legal capacity and it also failed to simultaneously ensure appropriate and effective safeguards to prevent abuse. Furthermore, the law without any rationale forbids the combination of various alternatives to the restriction of legal capacity.

Questions:

- **How will the Government ensure that the legal capacity of persons with disabilities in specific areas, such as parental, marital and voting rights, will not be restricted in a discriminatory way?**
- **What appropriate and effective safeguards is the Government planning to introduce preventing abuse with respect to the alternatives to guardianship?**
- **What steps will the Government take to raise the awareness of the judiciary and the general public about alternatives to guardianship and supported decision-making in the new Civil Code?**

Articles 14 – 17 - Liberty and security of the person/ Freedom from torture or cruel, inhuman or degrading treatment or punishment/ Freedom from exploitation, violence and abuse/ Protecting the integrity of the person

- 12.** As documented by the Mental Disability Advocacy Centre in their report *Cage beds and coercion in Czech psychiatric institutions*, persons with mental disabilities continue to be subjected to inhuman or degrading treatment, and even torture, in psychiatric facilities.³³ Thousands of persons are hospitalised against their will every year and are forced to undergo involuntary medical

²⁹ Article 868(2) Civil Code no. 89/2012 Coll.

³⁰ Article 673 Civil Code no. 89/2012 Coll.

³¹ See below

³² The number of persons under guardianship was on 4th April 2014 in total 36 428. 8230 persons was registered as persons with restricted legal capacity and 28 198 registered as persons deprived of legal capacity.

³³ MDAC: *Cage beds and coercion in Czech psychiatric institutions*, 2014. Available online at: http://www.mdac.info/sites/mdac.info/files/cagebed_web_en_20140624_0.pdf

treatment within a strict regime which intervenes in every aspect of their private life. Persons with psycho-social disabilities are subjected to discipline and punishment by means of physical or chemical restraints or seclusion in most psychiatric hospitals. Despite recent amendments to legislation³⁴, the attitudes of psychiatric staff and courts continue to reflect a bias in favour of depriving the liberty of persons with psycho-social disabilities, and using restrictive and forced treatment as the norm. On 8 October 2013, the Ministry of Health issued a *Strategy for psychiatric care reform*, however, to this day, individual competencies or a time-frame for implementation are not clear, and the strategy does not mention the issue of ill-treatment or human rights monitoring in psychiatric institutions. In addition, civil society organisations are concerned that the finances allocated for implementation of the strategy will be used to enlarge capacities of big psychiatric hospitals and social care institutions, rather than to developing community-based services.

13. Moreover, in cases where ill-treatment occurs in a psychiatric institution, the legislation prevents persons with disabilities from accessing justice. The law does not contain any special safeguards for the victims or torture or ill-treatment with disabilities³⁵, it does not enshrine criminal responsibility for legal persons (such as health facilities or other corporate bodies) and keeps the burden of proof on victims rather than shifting this to state authorities that may be implicated. This lack of procedural safeguards prevented the authorities from properly investigating the death of two women in cage beds in 2006 and 2012 or to hold a psychiatric hospital responsible for the unlawful use of straps amounting to ill-treatment, despite the judgement of the European Court of Human Rights in the case of *Bureš v. the Czech Republic*.³⁶

14. The Committee has repeatedly expressed its concern about the fact that most State parties still allow for deprivation of liberty in health care facilities based on the presence of a disability,³⁷ where persons are subjected to forced medical interventions³⁸ or inhuman and degrading treatment by means of institutionalisation³⁹, or use of restraints⁴⁰. The Committee has recommended the abolition of all forms of coercion and forced treatment of persons with disabilities, including the use of net beds⁴¹ or other forms of chemical, mechanical or physical restraints and seclusion⁴². Similarly, the UN Special Rapporteur against torture Juan Méndez called for the abolition of all forms of restraint and coercion in his report from 2013,⁴³ as these are likely to amount to ill-treatment banned by international law. The Czech Republic has been

³⁴ Health Services Act, Law no. 372/2011 Coll.

³⁵ § 149 of Criminal Code, Law no. 40/2009 Coll.

³⁶ ECHR, *Bureš v the Czech Republic* from 18 October 2012,

³⁷ See eg. Concluding observations on the initial report of Sweden, adopted on 12 May 2014, para 35 -36

³⁸ See e.g. Concluding observations on the initial report of Australia, adopted on 21 October 2013, para 32

³⁹ See e.g. Concluding observations on the initial report of Costa Rica, adopted on 12 May 2014, para 33

⁴⁰ Concluding observations on the initial report of Austria, adopted on 30 September 2014, para 33

⁴¹ Concluding observations on the initial report of Austria, adopted on 30 September 2014, para 33

⁴² Concluding observations on the initial report of Australia, adopted on 21 October 2013, para 36

recently criticised for human rights violations in psychiatric care by other international and regional bodies, such as the Committee against Torture (CAT)⁴⁴, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)⁴⁵ and the Human Rights Committee⁴⁶. All these bodies demand that the Government take urgent steps to ban the most abusive practices in psychiatric facilities; establish an effective human rights monitoring mechanism in psychiatric hospitals and social care institutions; and bring forward legal safeguards for persons with disabilities who are victims of ill-treatment, including the access to free legal aid.

Questions:

- **How and when will the Government end the use of all coercive practices in health care facilities, particularly deprivation of liberty, the use of (netted) cage beds or other forms of chemical, mechanical and physical restraints, seclusion and involuntary medical interventions?**
- **When will the Government come up with a detailed time-frame for implementation of the Psychiatric care reform and how will they ensure that implementation is in line with the object and purpose of the CRPD?**
- **What steps will the Government take to ensure that all medical interventions on persons with disabilities are based on the principle of free and informed consent?**
- **How will the Government ensure the protection of persons with disabilities from torture and ill-treatment by providers of health or social care and guarantee access to justice in cases of torture or ill-treatment?**
- **What steps will the Government take to establish regular, effective and independent human rights monitoring of places where persons with disabilities are deprived of liberty, including psychiatric facilities, social care institutions and forensic facilities?**

Article 19 - Living independently and being included in the community

⁴³ Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, from 1 February 2013, no. A/HRC/22/53

⁴⁴ Concluding observations of CAT on the report of the Czech Republic, adopted on 13 July 2012, para 21

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 7 to 16 September 2010, published on 18 February 2014, para 110-117

⁴⁶ Concluding observations of HRC on the report of the Czech Republic, adopted on 22 August 2013, para 14

- 15.** According to Article 19 of the CRPD persons with disabilities should be free to choose where and with whom they want to live. Access to individualised support services should be provided as well as access to the general services available to everyone. The Committee has underlined in several of its concluding observations the need for developing a national framework for the closure of residential institutions (deinstitutionalisation), and allocating resources for support services to enable persons with disabilities to live in their communities (Paraguay⁴⁷, Australia⁴⁸, Austria⁴⁹, Costa Rica⁵⁰). In this way, freedom of choice as to where and with whom persons with disabilities want to live must be ensured, and sufficient financial assistance to personal assistance programmes must be provided, facilitating independent living in the community (Austria⁵¹, Sweden⁵², Azerbaijan⁵³, Argentina⁵⁴). On this point, the Committee stresses the promotion of community services to ensure that persons with disabilities can be included in the community (Costa Rica⁵⁵).
- 16.** On 21 February 2007 the Czech Government adopted a strategy entitled ‘The Concept of support of transformation in residential social care services to different kinds of services provided in the natural community and supporting the social inclusion of the user to society’.⁵⁶ The overall aim was to reduce the capacity of large institutions. The scope of the project, however, is narrow. It only concerns 40 Homes for persons with disabilities out of 218 and it only addresses persons with intellectual disabilities. Besides, as it has been pointed out by the Committee on Economic, Social and Cultural Rights in its recent Concluding Observations on the Czech Republic, the progress of deinstitutionalisation and the implementation of the right to live in the community are slow.⁵⁷
- 17.** There are two main issues. The first is the lack of the sustainability of the transformation process, because the Government failed to allocate concrete funds for the deinstitutionalisation of social care after 2013 and instead it decided to focus on other priorities. Secondly, the above mentioned policy is limited in scope, since it only covers institutional services for persons with intellectual disabilities, but other groups, especially elderly people and persons with psycho-social disabilities are excluded. With respect to psychiatric care, the Government adopted a strategy called the ‘Reform of the Psychiatric Care (2014-202)’, however its implementation raises relevant concerns. It is questionable whether it will be implemented in a way that ensures the right to

⁴⁷ Concluding observations on the initial report of Paraguay, para 50

⁴⁸ Concluding observations on the initial report of Australia, para 42

⁴⁹ Concluding observations on the initial report of Austria, para 37

⁵⁰ Concluding observations on the initial report of Costa Rica, para 46

⁵¹ Concluding observations on the initial report of Austria, para 39

⁵² Concluding observations on the initial report of Sweden, para 44

⁵³ Concluding observations on the initial periodic report of Azerbaijan, para 33

⁵⁴ Concluding observations on the initial report of Argentina, para 34

⁵⁵ Concluding observations on the initial report of Costa Rica, para 40

⁵⁶ Resolution of the Government of the Czech Republic of 21 February 2007 No. 127.

⁵⁷ Committee on Economic, Social and Cultural Rights, Concluding Observations, Czech Republic, E/C.12/CZE/CO/2, 23 June 2014, para 18.

independent living and inclusion in the community for persons with psychosocial disabilities.

Questions:

- **What concrete and targeted steps the Government will take to ensure that the deinstitutionalisation process will be sustainable and will ensure practice inclusion of persons with disabilities in their communities within a reasonable timeframe?**
- **When will the Government adopt a detailed plan with a timeframe for the improvement of social services that are accessible for persons with disabilities to ensure real inclusion of persons with disabilities in the community?**
- **Can the Government explain what measures they plan in the field of transformation of large residential institutions for elderly people, and in respect of psychiatric institutions?**
- **How will the Government ensure that there are community based services for children with combined severe disabilities, autism and intellectual disabilities?**

Article 20 - Personal mobility

18. According to Article 20(b) of the CRPD, the state must provide access to quality mobility aids for persons with disabilities. In the Czech Republic the quality mobility aids covered by the public health insurance system are not available for all persons with disabilities to borrow in the required extent and structure. In practice it is very difficult to obtain more than one medical device for simultaneous use despite the recognition of this right under national law. Health insurance companies also prevent the borrowing of certain medical devices concurrently by arguing that they cannot be used simultaneously or that they serve the same aid (when in fact they don't). Moreover, from a systemic perspective, the reimbursement of some medical devices, which are covered by the public health insurance, is insufficient and does not reflect the developments in this area⁵⁸.

Questions:

- **How the Government plans to ensure that persons with disabilities have access to quality mobility aids without any inappropriate impediments?**

⁵⁸ see the Annex to Act no. 48/1997 Coll.

Article 24 - Education

- 19.** Most children with mental disabilities attend special or “practical“ schools or special classes in mainstream schools. These facilities not only segregate children with disabilities from their non-disabled peers, but also offer a lower standard curriculum, both of which have detrimental effects on their future education, careers and social inclusion. The Education Act is discriminatory, allowing for segregation based on the presence of a disability and it does not explicitly provide a right to inclusive education for all children, as required by Article 24 of the CRPD.⁵⁹
- 20.** The education in the Czech Republic is divided into two systems – mainstream and special education. The two streams of education are independently administered and funded. Mainstream schools are administered and financed by the municipalities whereas special schools are controlled by the regional authorities. Mainstream schools are not resourced, funded or equipped to provide inclusive education for all children and can reject children with disabilities on the basis of insufficient capacity or resources. The regional authority is responsible for financing the salary of pedagogical assistants, but there are no clear criteria and the decision-making of the regional authority on the extent of support provided to schools is arbitrary. This leads to a situation where parents must co-finance or fully finance the salary of assistants despite the fact that by law the provision of reasonable accommodation in primary education is free of cost.⁶⁰
- 21.** Recently, vis-à-vis the Czech Republic, the UN Committee on Economic, Social and Cultural Rights expressed its’ concern that children with disabilities are still primarily schooled in specialized institutions. The Committee recommended the Czech Republic ensure better accessibility to schools at all levels of education for all children, including children with disabilities and to fully promote inclusive education for children with disabilities. This requires the allocation of resources to the provision of reasonable accommodation and any additional professional support needed, including the training of teachers. It also recommended that inclusive education and the obligation to provide reasonable accommodation be incorporated into the Education Act⁶¹ and designated as the preferred model of education.
- 22.** Similarly, the Committee has urged the State parties to increase efforts to ensure inclusive education, from kindergarten to secondary school and to provide reasonable accommodation in education (Australia⁶², Hungary⁶³, Austria⁶⁴, Azerbaijan⁶⁵, Paraguay⁶⁶, and Argentina). It has called for the

⁵⁹ Act no. 561/2004 Col.

⁶⁰ Ibid.

⁶¹ CESCR, Concluding observations on the second periodic report of the Czech Republic, para 19.

⁶² Concluding observations on the initial report of Australia, para 46

⁶³ Concluding observations on the initial periodic report of Hungary, para 41

⁶⁴ Concluding observations on the initial report of Austria, para 43

⁶⁵ Concluding observations on the initial periodic report of Azerbaijan, para 41

⁶⁶ Concluding observations on the initial report of Paraguay, para 58

promotion of the involvement of children with disabilities in the day-to-day implementation of inclusive education models (Austria⁶⁷, Azerbaijan⁶⁸) ensuring that inclusive education reaches every person with incapacity, including adults and rural areas, as well as marginalized communities (Costa Rica⁶⁹, Hungary⁷⁰).

Questions:

- **How and when will the Government outlaw segregation in education based on the presence of a disability and incorporate the right to inclusive education in legislation?**
- **What steps will the Government take to guarantee the right to reasonable accommodations in education for every child with a disability?**
- **How will the Government ensure sufficient technical, personal and economic resources for mainstream schools in order to secure the equal access to mainstream education for all children with disabilities?**
- **What the Government plans to ensure the appropriate education of teachers within the paradigm of inclusive education?**

Article 25 - Health

23. The Health Care Services Act no. 372/2011 Coll. provides that health care providers are obliged to “ensure that the patient is provided with an information in an understandable manner and to a sufficient extent on his/her health status and on proposed individual treatments and all their modifications”. Moreover, the law provides that the patient or a person designated by the patient can ask additional questions related to his/her health status and proposed health care, which must be answered in an understandable manner. However, in practice, there is usually no employee employed by the vast majority of health care providers, who would be able to communicate with persons with communication difficulties effectively and to the full extent. I.e., with the deaf, persons who have got difficulties to express themselves, who have speech impairments, with the blind persons, the deaf-blind persons, persons with intellectual, cognitive or developmental disabilities, etc. Providers often do not even know where to quickly find such a person to assist with communicating with such persons. In cases of acute health problems of the above mentioned persons, or where these persons do not have necessary background, providers are not able to fulfil the obligation stated by the law. Persons with disabilities therefore experience

⁶⁷ Concluding observations on the initial report of Austria, para 43

⁶⁸ Concluding observations on the initial periodic report of Azerbaijan, para 41

⁶⁹ Concluding observations on the initial report of Costa Rica, para 46

⁷⁰ Concluding observations on the initial periodic report of Hungary, para 42

disproportionate stress during treatment. This lack of communication with a patient may lead to fatal consequences.

24. Moreover, even though the law provides for free choice of health care provider they can refuse to accept the patient for treatment if his/her acceptance brings disproportionate workload or the operational reasons, staffing or technical or material equipment of the medical facility hinder his/her acceptance. 'Exceeding the proportionate workload' means a situation where providing health care to the patient means reducing the level of quality and security of health care provided to the patients already accepted. Therefore, provisions of the Health Care Services Act in practice give a possibility to the medical facility not to accept persons with disabilities. With reference to the above mentioned provision, providers refuse patients with serious disabilities. The most common excuses are the lack of sufficient or needed personnel, technical or material equipment of medical facility. These patients have to choose providers according to their willingness to accept them, and not according to the quality of services or distance from their residence. (Cf. the comment No. 1.)
25. Article 25 of the CRPD stipulates that "States Parties shall take all appropriate measures to ensure access for persons with disabilities to health services". The spa treatment is dealt in a very insufficient way in the Czech Republic and persons with some specific types of disability have got very restricted access to the necessary treatment.

Questions:

- **How will the state ensure that every health care provider fulfils their duty stated under the law and to ensure the fluent communication with persons with disabilities accessing healthcare services?**
- **How will the Government ensure that persons with disabilities can use support when they decide about their health care issues?**
- **How will the state ensure that providers do not discriminate against persons with disabilities and that they can freely choose their doctor or health care provider on an equal basis with others?**
- **How will the Czech Republic ensure equal access for all persons with disabilities to spa treatment?**

Article 27 - Work and employment

26. Even though Article 27(1) of the CRPD clearly recognises the right of persons with disabilities to work, on an equal basis with others and requires the prohibition of discrimination on the basis of disability with regard to all matters concerning all forms of employment, persons with disabilities face direct discrimination in employment. The Employment Act no. 435/2004 Coll. states under paragraph 25(2)(d) that "*a natural person may not become a job seeker*

during the period when he is an invalid in the third level, with the exception of a natural person who is an invalid in the third level and is able to perform gainful activity under special conditions".⁷¹ In the Czech Republic, there are more than 200,000 persons who were granted the 'third degree of invalidity' and thus cannot be registered as job seekers at the Labour Office and are excluded from the labour market. Moreover, Governmental Decree no. 567/2006 Coll., on minimal wages provides in paragraph 4 that the minimum wage for recipients of invalid pensions is lower by 500,- CZK compared to a minimum wage of other employees. Both situations should be considered as discriminatory against persons with disabilities and in violation of Article 27 of the CRPD. Moreover, the law enable the court to decide on restriction of legal capacity in employment matters, which can result in denial of work and employment for persons with mental disabilities.

Article 29 - Participation in political and public life

27. The Committee has considered it necessary to recommend the enactment of legislation to ensure that persons with disabilities have the right to vote, including safeguards for its exercise, including secrecy of vote. In this line, the denial of the right to vote when legally declared "incapable" or "limited mental ability" (Costa Rica⁷², Hungary⁷³, Azerbaijan⁷⁴, Argentina⁷⁵, Paraguay⁷⁶) is completely against the fundamental rights established in the Convention. Moreover, in order to ensure the effective exercise of this right by persons with disabilities it is important that voting information is provided in all accessible formats (Austria⁷⁷, Sweden⁷⁸) and that assistance, material and facilities are provided, ensuring accessibility to vote (Costa Rica⁷⁹, Sweden⁸⁰). In addition, the Committee has recommended that States to undertake measures to promote the participation of persons with disabilities in elected bodies.

28. In the Czech Republic, since the amendment to the election codes provided by law no. 58/2014 which came into force on 7th April 2014, general courts can decide in legal capacity proceeding to restrict the right to vote and stand for elections. In concrete, this individualised assessment of capacity to vote is provided by Article 2(b) Law no. 247/1995 Coll., on Parliamentary elections; Article 2(b) Law no. 62/2003 Coll., on European Parliament elections; Article 5(2)(b) and Article 6(1) Law no. 130/2000 Coll., on Regional Council elections; Article 4(2)(b) and Article 5(1) Law no. 491/2001 Coll., on Municipal Council elections; Article 4(2)(b) and Article 5(1) Law no. 272/2012 Coll., on Presidential elections. These provisions are clearly in violation of Article 29 of the CRPD.⁸¹

⁷¹ Available at: https://portal.mpsv.cz/sz/obecne/prav_predpisy/akt_zneni/zoz_od_1-4-2012_en.pdf

⁷² Concluding observations on the initial report of Costa Rica, para 60

⁷³ Concluding observations on the initial periodic report of Hungary, para 46

⁷⁴ Concluding observations on the initial periodic report of Azerbaijan, para 45

⁷⁵ Concluding observations on the initial report of Argentina, para 48

⁷⁶ Concluding observations on the initial report of Paraguay, para 70

⁷⁷ Concluding observations on the initial report of Austria, para 49

⁷⁸ Concluding observations on the initial report of Sweden, para 46

⁷⁹ Concluding observations on the initial report of Costa Rica, para 60

⁸⁰ Concluding observations on the initial report of Sweden, para 52

Questions:

- **When will the Government totally abolish discriminatory legal impediments to the right to vote and stand for elections based on the restriction of legal capacity?**
- **What concrete measures does the Government plan to adopt to ensure accessibility of voting for all persons with disabilities?**

⁸¹ In the case of *Zsolt Bujdosó v Hungary* the Committee said that the individual assessment is discriminatory. „*Having found the assessment of individuals' capacity to be discriminatory in nature, the Committee holds that this measure cannot be purported to be legitimate.*“(para 9.6)