

UNIVERSAL PERIODIC REVIEW – CZECH REPUBLIC

Joint submission of Czech National Disability Council (*Národní rada osob se zdravotním postižením ČR*) and *Liga lidských práv* for the 14th session of the UPR Working Group

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Submitting organizations:

The *Czech National Disability Council (CNDC)* is an umbrella organization with a countrywide province which unifies 115 member DPOs with a total membership base of more than 250,000 people with disabilities. CNDC was established in 2000. Its fundamental aim is to advocate, promote and meet the rights, interests and needs of persons with disabilities, regardless of the type or extent of their impairment. CNDC's work is orientated towards collaboration with state administration and local government at all levels and with organizations and institutions working in this field at both the national and regional level. CNDC is also part of the European and worldwide movements of people with disabilities (member of EDF, RI, DPI etc.). Besides policy and monitoring work CNDC specializes in commenting on individual laws and drawing up its own legislative proposals. CNDC is expert guarantor for various projects whose aim is to improve the situation of persons with disabilities, e.g. in the domain of employment, education, expert social consultancy etc. CNDC also works to raise public awareness of disability issues.

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

Liga Lidských Práv is a non-governmental organization based in the Czech Republic, which works towards the protection of human rights by working within the scope of the rights guaranteed by the Charter of Fundamental Rights and Freedoms, and other binding international conventions. Liga also promotes human rights with the aid of research and education in order to improve the quality of life for all, and by undertaking strategic cases in Court, producing innovative arguments and landmark solutions. We aim to enhance the rights of children in the Czech Republic, as well as the rights of victims within the Criminal Justice system. We also aim to significantly improved human rights within the health service and rights of people with disabilities (we cooperate with Hungarian non-governmental organization Mental Disability Advocacy Center). Our ultimate vision is to develop a society in which human rights are respected in daily life, and where citizens are able to defend and protect themselves easily and efficiently, and without hindrance, from encroachments and violations of their fundamental rights.

(Website: <http://www.llp.cz/en>)

Introduction:

Considering the socioeconomic level of the Czech Republic, the situation of persons with disabilities is comparable with other European countries. European law protecting persons with disabilities is implemented into the Czech legislation. The Czech Republic has ratified the UN Convention on the Rights of Persons with Disabilities – but without its Optional Protocol. Since 2009 the supports of persons with disabilities from public resources are being considerably reduced. This causes deterioration of their status in the society and of the exercise of their rights in all areas (access to employment, education, cultural activities etc.). In particular, cuts in the support led many families taking care of a person with a disability into a critical situation. In 2011, a new legislation reforming health and social care was adopted, which in practice makes the access of persons with disabilities to health care and social services much more difficult. An inadequate restriction of all the financial transfers for this group of citizens happens under the pretext of overcoming the crisis. The Czech Republic has not yet freed itself from some discriminatory provisions in the area of remuneration for work, access to education, accessibility of built environment etc.

The Czech Alternative Report for the UN Committee on the Rights of Persons with Disabilities (November 2011) has been used to create this submission and is sent as its annex. The submitting organizations were the co-authors of the Alternative Report.

RECOMMENDATIONS:

1. Definition of discrimination. Principle of reasonable accommodation

1.1. Principle of equality is generally regulated by Art. 3.1 of the Declaration of Basic Rights and Liberties. Concrete protection against discrimination is guaranteed in particular by the Anti-discrimination Act No. 198/2009 Coll. Crucial element in the protection against discrimination of persons with disabilities is the principle of reasonable accommodation. Anti-discrimination Act regulates this concept, but only in relation to employment of persons with disabilities. There is no legislation that protects persons with disabilities against discrimination in other areas of life. Anti-discrimination Act in § 3 sub. 2 states that indirect discrimination on ground of disability includes refusal or failure to take reasonable steps to ensure that a person with disability has access to a specific job, a working activity, functional or other progress in employment, career counseling services, vocational education or other employment-related services available to the public. Provision of reasonable accommodation is subject to the test of undue burden.

1.2. There are two worrying aspects of this legislation. First, it is a very narrowly conceived definition of reasonable accommodation that does not match the understanding of this concept according to Art. 5 of the UN Convention on the Rights of Persons with Disabilities (*CRPD*) ratified by the Czech Republic. And further, the undue burden, or assessing whether a particular action constitutes undue burden, is defined so broadly that it virtually prevents the application of the rule on the obligation of creating reasonable accommodation and measures.

1.3. RECOMMENDATION:

- to urgently revise anti-discrimination legislation to ensure that persons with disabilities are protected against discrimination in access to goods and services, information, transportation, justice, education and participation in political life**
- to bring Anti-discrimination act into compliance with the UN CRPD by providing for a more comprehensive definition of reasonable accommodation and clarifying the definition of undue burden**

2. Independent living and inclusion in the community

2.1. The law does not recognize the obligation for de-institutionalization or the obligation to provide services and support in the least restrictive environment. Although the Act on Social Services is built on the requirement of autonomy, independence and inclusion of disabled people into society and with regard to Article 19 of the CRPD, the residential social care services are mostly provided in an institutional form, without due respect to the CRPD standards. It is apparent that in isolated institutions for people with disabilities, where support and care is provided to tens, hundreds, or in some cases thousands or persons, these standards cannot be met.

2.2. We found the lack of a comprehensive strategy for transformation of institutional services for all people with disabilities into residential ones. Most striking is the absence of any plans for transformation of psychiatric care which is currently provided mainly in institutional facilities that hold more than a thousand beds. The Czech Republic also lacks a conception of institutional facilities for senior citizens. On the contrary, the number of beds in such institutions, including the ones with more than a hundred beds, is rising in a number of regions. Another problem is the division of authorities and the absence of statistics concerning children with disabilities placed in institutions.

2.3. Another problematic issue is the conditions in residential social care facilities. Clients are dependent on the staff that is often not sufficiently trained to provide them with adequate support in independent development. Currently, some of the institutions have a sterile medicinal feel; they lack interactive methods of work and appropriate tools. We can conclude that a reasonable number of clients of residential social care services are subject to ill treatment and their rights, such as the right to privacy or free movement, are violated. Furthermore, the current system of social and psychiatric care, which is based on mass institutionalization, enables the occurrence of ill-treatment.

2.4. We find it especially problematic that in the Czech Republic, surgical castrations are carried out on persons deprived of liberty. Surgical castration is a non-reversible treatment which has a great impact on the physical integrity of a person. The European Committee for Prevention of Torture and Inhuman or Degrading Treatment (CPT) expressed its stand on this issue several times when it emphasized in its report that the surgical castration of the perpetrators of sexual crimes, who are deprived of liberty, constitutes degrading treatment. It also repeatedly called upon the Czech government to suspend the practice of surgical castration as a treatment for sexual delinquents.

2.5. Disabled Persons' Organizations (DPOs) and other bodies point out the cases of inadequate use of restraints in health care facilities in the Czech Republic. The Public Defender of Rights highlighted the continual lack of respect for the rights of patients in his report from 15th June 2010, where he stated: "long-term deficiencies in the use of restrictive measures, degrading treatment of the patients, problems with abiding by the time for restrictions of liberty of patients and absence of informed consent resulting in insufficient information on the treatment." From this point of view the most problematic aspect is the continuous *use of caged beds in psychiatric hospitals*, whereby patients are drugged, tied to beds and kept in solitary confinement with minimal contact with the staff. The use of cage beds has been raised in the previous UPR of the Czech Republic and criticized by experts and its use is considered a degrading treatment (see e.g. Concluding recommendation of the Human Right Committee, 2007, Report for the Czech Republic on the visits of CPT, 2002 and 2006).

2.6. RECOMMENDATION:

- **to take immediate and effective measures to monitor the respect of rights and dignity of persons with disabilities in closed institutions, such as psychiatric hospitals and prisons. Every instance of use of caged beds must be thoroughly investigated.**
- **to abolish the use of surgical castration of persons deprived of liberty**
- **to adopt comprehensive policy on transition from institutional to community-based care of all persons with disabilities with the view to complete closure of residential institutions**
- **to ensure equal access to affordable community-based services of high quality to all persons with disabilities**

3. Liberty and security of the person

3.1. People with disabilities can be deprived of their liberty in the Czech Republic for three reasons. The first case concerns *involuntary hospitalization of people with mental disabilities* who are a danger to themselves or others. Secondly, people with disabilities can be *placed in social care institution* without their consent in certain cases. Lastly, persons with disabilities can be deprived of liberty by means of the *protective treatment* ordered in criminal proceedings.

3.2. Involuntary hospitalizations

Involuntary hospitalizations are a common phenomenon in the Czech Republic, as the intervention of social services that could prevent them is almost nonexistent in the Czech Republic. The law does not require the use of less restrictive measures prior to hospitalization. The proceedings on the involuntary hospitalization are regulated in the Czech Republic by § 191et seq. of the Act no. 99/1963 Coll., Code of Civil Procedure. Persons can be hospitalized without their consent if they show signs of a mental illness and are dangerous to themselves or others. Within 24 hours of admission, every involuntary hospitalization must be announced to the respective court, which must subsequently decide on the lawfulness of this admission.

3.3. The detention proceedings are often formal and suffer from procedural flaws. As apparent from the statistics, the courts declare the admission lawful in almost 100% of cases. For instance in 2006, the courts presided over 9332 cases and they stated that the detention was unlawful only in 6 of the cases. Although the law requires for the person to be represented in the proceedings, the representation is not effective in most cases. As apparent from the statistics, the

representation is often merely formal, in most cases legal representatives do not even appeal against the decision on the lawfulness of the admission. For instance in 2009, from 9332 cases only 110 appeals were submitted, i.e. only in 1% of the cases. This practice shows that in most cases, the appointed attorneys do not appeal against the decisions.

3.4. Another issue is the state of the proceedings in cases when the person who was involuntarily hospitalized agrees subsequently with the hospitalization or is released before the decision of the court. In cases where the person is released, the court does not assess the lawfulness of the initial admission. This practice is very common, the courts do not decide on the unlawfulness of the deprivation of liberty and thus the person concerned is not able to claim any damages for the hospitalization. A further problematic issue is the lack of procedural guarantees for the person involuntarily hospitalized.

3.5. Placement in the social care facility

Social care services are provided on a contractual basis. This means that the parties – the provider of a social care service and the client – are familiar and agree with the content of the contract for social care services. However, in some instances this principle is disrupted, especially when a person is deprived of or limited in legal capacity, or he or she is unable to give consent. When the person is deprived of or limited in legal capacity, the contract is signed by the guardian. Often the social care services are provided in an institution. The contract for a social care service is thus a very important step for a person with disabilities, especially if he or she is forced to subordinate to the institutional regime, e.g. in eating, hygiene or privacy. Despite this, the law does not require the person deprived of legal capacity to be consulted or even present when negotiating the contract. The person deemed by the treating doctor ‘unable to act’ is not required to be presented at the signing of the social care service contract either. In this case the contract can be signed by the local authority. The law does not provide any procedural guarantees, e.g. by means of a court review.

3.6. Protective treatment in a psychiatry hospital

The protective treatment is ordered in criminal proceedings to perpetrators who were of unsound mind while committing the act or who acted under diminished responsibility and whose release is dangerous for society. The biggest problem is the length and reasons for protective treatment and the insufficient regulation of the condition of the protective treatment. There are no objective methods used for assessment of the need to continue the protective treatment. This is contrary to the wording of the art. 14 of the CRPD, which prohibits the deprivation of liberty on grounds of disability.

3.7. During involuntary hospitalization or protective treatment, the law does not make a distinction between the deprivation of liberty and compromising of one’s physical integrity by means of forced treatment. A person in protective treatment does not have the possibility to give informed consent or object to treatment. This also means that in most cases, people in protective treatment are not sufficiently informed about the nature and consequences of the treatment and not able to choose from other alternatives.

3.8. RECOMMENDATION:

- to ensure prompt and transparent proceedings for reviewing all cases of involuntary hospitalization with active participation of the person concerned; to review the legality of hospitalization of persons who had already been released

- to ensure that the contract for social care services is signed by the person concerned assisted, whenever necessary, by a supporting person
- to ensure that legislation clearly sets forth the purpose of protective treatment in criminal proceedings, that is based on objective arguments and is disability-neutral
- to make the informed consent of the person concern an absolute requirement for procedures performed during the protected treatment and hospitalization

4. Education

4.1. The concept of “inclusive education” is not present in the Czech legislation. The law only recognizes the right to equal access to education for all persons, and to consideration of individual needs of every person, and it also prefers the so-called individual integration, i.e. integration of individual children with disabilities into normal schools or in special classes, schools for children with a different disability. The second part of the provision concerning “individual integration” is problematic, as it also includes education in special classes. This provision is in total contradiction to Article 24 of the CRPD.

4.2. In spite of the possibility of individual integration, the education of children and adults with disabilities is mostly done in special schools outside mainstream education. Only half of children with disabilities or disadvantaged children are individually integrated in normal classes in normal schools, moreover, the majority of individually integrated children suffer from development disorders; whereas only 1,119 children with mental disabilities go to normal schools, and the statistics of the Ministry of Education do not contain the total number of children with mental disabilities in schools.

4.3. Although children are supposed to go to a school in the neighborhood of their home, unless their legal representative decides otherwise, the head teachers often refuse to take children with disabilities in normal schools with reference to the provision which enables them to refuse a pupil on the grounds of a full capacity or unsuitable conditions.

4.4. Another problematic issue is the integration and classification of students “with special educational needs”. This does not comply with the definition of disability according to Article 1 of the CRPD. The law does not recognize some types of disabilities, such as internal disability and intellectual disability (oncological diseases, severe epilepsy, metabolic disorders, severe diabetes, etc., and psychiatric diagnoses). Children who have such disabilities are classified as disadvantaged students and the schools do not get the necessary financial means for the support of these students. Additional financial means are provided to schools only for those types of disabilities that are defined in the Education Act.

4.5. The law does not contain any definition of a reasonable measure in education. Neither does it define the right of the child to support or to adequate provision in education. Support measures that are provided to children with disabilities are defined only vaguely. The regulation lacks the definition of any particular support measures (methodical, didactic, re-educative, organizational, etc.), which would be aimed at individual groups of children with disabilities.

4.6. The method of education of children with severe mental disabilities is only very vaguely defined in § 42 of the Education Act. The method of education is decided individually by each regional authority. Organization and time schedule of the education as well as the method of

evaluation of the children's work in class is not legally defined. In practice, education of these children is often reduced to irregular visits of special teachers from schools or counseling centers. Very often these visits are executed once in a year or even less. Therefore there is no possibility for organized education of acceptable quality, which should be provided to these children.

4.7. RECOMMENDATION:

- **to amend legislation to include the principle of inclusive education based on Article 24 of the UN CRPD ratified by the Czech Republic; to ensure that inclusive education in mainstream classes is available to all children;**
- **to ensure that no child with a disability is excluded from accessing mainstream education or benefiting reasonable accommodation and support in education; to abolish the division of children based on their disability or disadvantage and focus on the degree of support that each child needs, using the degree of required support to establish the amount of financial support awarded to the child**

5. Work and employment

5.1. The third part of the Act No. 435/2004 Coll., the Employment Act is dedicated to the regulation of employment of persons with disabilities. We consider the problem resulting from § 25 of the Employment Act as the biggest, which says that a person "in the third degree of invalidity" can only apply for employment in extraordinary conditions. Extraordinary conditions are defined by § 6 of the Decree on the assessment of disability as "a major modification of working conditions, acquisition and use of special equipment of the workplace, special modifications to existing machines, tools, use of special equipment or everyday support or assistance in the workplace in the form of reading services, interpretation services or employment assistance." These terms are most financially demanding for most employers and often unaffordable and thus discriminate persons in the third degree of disablement. Employers often prefer to employ people in the first and second degree of disability, whose employment is not associated with the creation of extraordinary conditions. Employers are obliged, according to Act no. 198/2009 Coll. on equal treatment and legal means of protection against discrimination (Antidiscrimination Act), to take reasonable accommodation measures for persons with disabilities to access specific employment, performance of work or functioning, or other promotion, to use services for the public. Failure to take reasonable accommodation measures, as defined in § 3 of the Antidiscrimination Act, is considered indirect discrimination, unless such measures constitute disproportionate burden. In deciding whether the measure constitutes disproportionate burden, it is necessary to take into account the level of benefit for the person with disabilities from the implementation of the measures, the financial resistance of the measures for the natural or legal person, who has to implement the measures, the availability of financial and other assistance to implement measures and eligibility of the alternative measures to satisfy the needs of persons with disabilities.

5.2. The issue of reasonable measures and the extraordinary conditions in the context of the employment of persons with disabilities is quite vague in the Czech legal system, and it is not entirely clear under which conditions people in the third degree of invalidity can be employed and so they're virtually excluded from the labour market. Persons in the third degree of invalidity are not registered jobseekers (§ 25 of the Employment Act).

5.3. The lack of jobs for people with disabilities leads in some cases to gross violations of labour legislation by some employers and discrimination of persons with disabilities in the field of remuneration. The Czech National Disability Council has noticed that, in addition to the legal reduction of the minimum wage, there has also been a reduction of the minimum wage scales, up to 50% from the basic rate valid for other employees; also there have been cases of illegal reductions of the income of workers with disabilities and the transfer of funds to the employer.

5.4. The regulation of the Government of 6 December 2006 on the minimum wage, as amended by Government Regulation no. 249/2007 Coll. and no. 452/2009 Coll., reduced the base rate of the minimum wage and other rates of guaranteed wages of the employee who is a recipient of the disability pension in the third degree of disability by 50% of the amount that applies to other employees. Employers who employ disabled persons, abuse this regulation in many cases, and pay the persons with disabilities the lowest possible wages regardless of their work performance. For the employee, who is the recipient of the disability pension for disability in the first or second degree, the basic rate of the minimum wage and the lowest level of the guaranteed wage was reduced to 75% of the amounts that apply to other employees. This is based on the prejudice that being a recipient of an invalidity pension limits the work of the employee. The application of this legislation by employers leads to violations of the right to equal remuneration and discriminates against a substantial group of persons who are considered as persons with disabilities according to the Czech legislation.

5.5. The tendency of lawmakers to remove people indicated by law as health disadvantaged from the group of people with disabilities (§ 67.2 of the Employment Act) is also problematic. This intention was originally included in the forthcoming amendment of this law from 2011, with effect from the 1 January 2012, but was postponed after the insistence of the organizations representing persons with disabilities. Health disadvantaged persons are not entitled to an invalidity pension, but they are not able to exercise employment under normal conditions, and therefore they clearly belong to the group which should be protected.

5.6. The Employment Act requires all employers who employ more than 25 employees to employ 4% of employees with disabilities. However, the law allows employers to fulfill this obligation in other ways – by payment to the state budget or purchasing products from employers who employ more than 50% of employees who are persons with disabilities. Currently, in the Czech Republic, most employers prefer the payment to the state budget. The performance of legal obligations other than employment of people with disabilities may not be the most economical solution, not to mention the benefits related to the employment of people with disabilities (loyal and conscientious employees, social recognition, etc.).

5.7. There is a functional tool in the Czech Republic – work rehabilitation, which makes it possible to provide support to people with disabilities in finding, obtaining and maintaining employment. The Labour Office of the Czech Republic secures and pays the work rehabilitation. The number of persons with disabilities who used the work rehabilitation in the year 2010 increased compared to the year 2009, but is still not sufficient. In 2010, 120 persons with disabilities used work rehabilitation, which incurred costs of 3 594 000 CZK (146 100 EUR). On 31 December 2010, 69.5 thousand job seekers with disabilities were registered by labour offices; the amount of work rehabilitation provided is very low. From the experience – from the representatives of the agencies supporting employment – it is evident that the branches of the Labour Office of the Czech Republic (with a few exceptions) do not offer and provide work rehabilitation actively.

5.8. RECOMMENDATION:

- to make sure that the law does not exclude persons with the third degree of disability from the labour market; to encourage employers to employ people with disabilities by creating favourable conditions such as special fund for provision of reasonable accommodation
- to prohibit discrimination against persons with disabilities in remuneration for their work and monitor the application of the law in practice.
- to include people with health disadvantages in the scope of disability-specific legislation
- to encourage employers to employ people with disabilities rather than pursue other avenues available to fulfill their legal obligations (such as paying the fine into the state budget)
- to improve the availability of work rehabilitation services to people with disabilities

6. Implementation of Article 33.2 of the UN CRPD

6.1. Having ratified the UN CRPD, the Czech Republic is under obligation under its Article 33.2 to establish a framework for monitoring the implementation of the Convention in the country. The Ministry of Social Affairs had drafted a proposal; however this was without proper consultations with civil society contrary to the CRPD requirements. Various comments and amendments were discussed before the Government's committee for persons with disabilities, which is an official body linked through financial and personal means directly with the government of the Czech Republic. Though the Czech National Disability Council as umbrella organization was invited, the hearings were not public and wider civil society could not participate. According to the information provided by the Ministry of Social Affairs, the monitoring body should consist of representatives of particular government bodies, social partners and representatives of organizations representing persons with disabilities. We are confident that the monitoring body in this constellation would not satisfy the Paris Principles' requirements and the purpose and meaning of Article 33.2 CRPD, especially due to the fact that the government's representatives are planned to be involved directly as a coherent part of the monitoring body. Following the pressure from the Czech disability movement, the original proposal has been abandoned, and currently a new proposal of the monitoring body is being drafted.

6.2. RECOMMENDATION:

- to put in place an independent monitoring body which will monitor implementation of CRPD. The monitoring body should be fully in compliance with the Paris Principles, according to article 33.2 CRPD.
- to invite the civil society, especially organizations of persons with disabilities and organizations promoting rights of persons with disabilities, to take part in all meetings regarding designation or establishment of the monitoring body and they must have opportunity to comment upon the proposal in all preparatory stages.