



Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Committee against Torture

Concluding observations on the combined fourth and fifth periodic reports of the Czech Republic^{*}

Addendum

Information received from the Czech Republic on follow-up to the concluding observations^{**}

[20 June 2013]

I. Introductory comments

1. The Committee against Torture considered the Czech Republic's fourth and fifth periodic reports on fulfilment of its obligations to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT/C/CZE/4-5) (hereinafter "Report" and "Convention") at its meeting held on 14th and 15th May 2012, and adopted its concluding observations (CAT/C/CZE/CO/4-5). In these concluding observations the Committee requested that the Czech Republic provide additional information related to:

- (1) Ensuring or improving legal guarantees for persons detained,
- (2) Conducting prompt, impartial and effective investigations, and
- (3) Prosecuting suspects and sanctioning perpetrators of torture and ill-treatment,

as raised in paragraphs 11, 14 and 21 of the Concluding Observations.

2. The text below contains the Czech Republic's additional information.

^{*} Adopted by the Committee at its fiftieth session (6–13 May 2013).

^{**} In accordance with the information transmitted to States parties regarding the processing of their reports, the present document has not been formally edited.

II. Replies to the issues raised in the concluding observations (CAT/C/CZE/CO/4-5)

Information on the recommendations contained in paragraph 11 of the concluding observations

3. The Czech Republic states that racist attacks are harshly punished according to the Czech law. Racist attacks against individuals or groups are prosecuted as crimes of violence against an individual or a group of people¹, dangerous threatening², stalking³, defamation of nation, race, ethnic or other groups of people⁴ and instigation of hatred towards a group of persons or of restriction of their rights and freedoms⁵. The most serious actions against national, ethnic, religious or other groups are punished as crimes against humanity such as genocide⁶, attack against humanity⁷, apartheid and discrimination against a group of people⁸, persecution of the population⁹, establishment, support and promotion of a movement seeking to suppress human rights and freedoms¹⁰ and expressions of sympathy for a movement seeking to suppress human rights and freedoms¹¹.

4. The racial motivation for many crimes is also directly included in the law as the so-called qualified merits of the case with increased sentences. These crimes include murder¹², bodily harm¹³, torture and other inhuman and cruel treatment¹⁴, illegal confinement and restraint¹⁵, abduction¹⁶, extortion¹⁷, damaging another person's property¹⁸ or abuse of powers of a public official¹⁹. Apart from these crimes, which directly punish racist attacks, the racial motive constitutes an aggravating circumstance for all other crimes, which justifies higher sentences for the perpetrator²⁰. This means that each crime based on racist or similar motives, will receive harsher punishment to underline its exceptional despicability.

5. The Criminal Code enables harsh and efficient punishment for racially motivated crimes against national and ethnic minorities. The victim's affiliation with a certain ethnic or other group does not have to be real; it is sufficient if the perpetrator considers the victim a member and motivates his or her crime accordingly. In practice there are often attacks motivated by the racial, ethnic, national or other affiliation with a group of persons, whereas the perpetrators conclude this affiliation due to the colour of the skin or other

¹ Art. 352 of the Criminal Code.

² Art. 353 of the Criminal Code.

³ Art. 354 of the Criminal Code.

⁴ Art. 355 of the Criminal Code.

⁵ Art. 356 of the Criminal Code.

⁶ Art. 400 of the Criminal Code.

⁷ Art. 401 of the Criminal Code.

⁸ Art. 402 of the Criminal Code.

⁹ Art. 413 of the Criminal Code.

¹⁰ Art. 403 of the Criminal Code.

¹¹ Art. 404 of the Criminal Code.

¹² Art. 140 of the Criminal Code.

¹³ Art. 145 and 146 of the Criminal Code.

¹⁴ Art. 149 of the Criminal Code. This criminal act is used to punish torture and cruel and inhuman treatment with discriminatory motives.

¹⁵ Art. 170 and 171 of the Criminal Code.

¹⁶ Art. 172 of the Criminal Code.

¹⁷ Art. 175 of the Criminal Code.

¹⁸ Art. 228 of the Criminal Code.

¹⁹ Art. 329 of the Criminal Code.

²⁰ Art. 42 b) of the Criminal Code.

appearance traits of the victim, without knowing the victim's real racial, ethnic, national or other affiliation with a group of persons. Therefore it is important to also punish attacks, which are motivated by the perpetrator's subjective surmise.

6. The severity of these crimes is expressed in many ways in the legislation. Most of these crimes include the obligation of active prevention, which means that whenever anyone finds about their preparation he or she has to prevent the criminal act himself or immediately provide information to prosecution bodies. Otherwise he or she becomes a perpetrator himself²¹. The same applies if someone finds out that a crime has been committed and does not report it²². Another way of expressing the severity of the crime is the length of the expiration period for criminal liability, i.e. the time period within which it is necessary to start the prosecution of the crime and after its lapse it is not possible to prosecute the crime. Based on the sentence this period is at least 5 years and 10 – 15 and even 20 years²³ for more serious crimes. According to international treaties, the most serious crimes such as genocide, attack against humanity or apartheid do not have an expiration period and thus can be prosecuted any time after being committed²⁴. Similar rules apply to the expiration for the execution of the punishment for these crimes²⁵. Also the period for effacement of the conviction, after which the perpetrator is considered as never being convicted, has a minimum of 5 and a maximum of 15 years²⁶. The most serious forms of this criminal activity also have the sentence increased by 1/3²⁷ in case of relapse and the sentence will be served in a high-security prison²⁸. Furthermore the convicts can be released at the earliest after serving 2/3 of their sentence²⁹.

7. Racially motivated crimes entitle the prosecution bodies to use special methods in their investigation. This means for example wiretapping and recording telecommunications³⁰, police agents³¹, who can infiltrate the extremist environment and gather evidence of the criminal activity. More complex merits of the case provide the prosecution bodies with a longer period to investigate relevant circumstances³² and for the prosecution itself³³ (up to 6 months); they also have broader competencies for e.g. witness interrogation³⁴. Investigators of the Czech Police or other prosecution bodies together with public prosecutors receive special training for investigation of racially motivated crimes.

8. The investigation of racially motivated crimes is in practice often complicated by proving the racial motivation of the perpetrator. The perpetrator's motivation is above all a state of mind, which is expressed externally, but to convict him for a racially motivated crime it is necessary to prove this internal motivation. The perpetrator usually does not admit it. Therefore it is necessary to use indirect evidence, which however is not available in some cases in a sufficient amount and quality to lead to conviction. Even in the case of

²¹ Art. 367 of the Criminal Code.

²² Art. 368 of the Criminal Code.

²³ Art. 24 of the Criminal Code.

²⁴ Art. 35 of the Criminal Code.

²⁵ Art. 94 and 95 of the Criminal Code.

²⁶ Art. 105 of the Criminal Code.

²⁷ Art. 59 of the Criminal Code.

²⁸ Art. 56 of the Criminal Code

²⁹ Art. 88, par. 4 of the Criminal Code.

³⁰ Art. 88 of the Criminal Code.

³¹ Art. 158e of the Criminal Code.

³² Art. 159 of the Criminal Code.

³³ Art. 170 of the Criminal Code.

³⁴ Art. 169 of the Criminal Code.

racially motivated crimes it is necessary to observe the rules of fair trial³⁵, presumption of innocence³⁶ and the in dubio pro reo principle³⁷, however despicable these acts are. When supervising the investigation of crimes motivated by racial, national, religious or other hatred as well as crimes, where this motive isn't part of the merits of the case, the state prosecutors should pay increased attention that all actions necessary for ascertaining the perpetrator's motive have been performed³⁸. In October 2009 the Supreme Public Prosecutor's Office prepared a methodological guideline for crimes related to extremism, which had been sent to all prosecutor offices and has become a part of the education of prosecutors.

9. The Ministry of Interior and the Czech Police cooperate in combating racial-motivated crime. The specialists from the Unit for Investigation of Organized Crime performed a series of interventions against the top representatives of the extremist scene, which in turn paralyzed it severely. Other known racial-motivated attacks are primarily the following:

(1) The arson attack in Vítkov in northern Moravia of April 2009, which ended with a conviction of all four perpetrators for attempted murder with a racial motive. All were given extraordinary sentences from 20 to 25 years and also have to pay damages to the victim in the amount of 9.5 million CZK as well as the medical treatment costs in the amount of 7.5 million CZK;

(2) The arson attack on a Roma house in Býchory in central Bohemia in July 2011, with 4 perpetrators convicted of violence against a group of citizens and individual. They were given suspended sentences and they also have to pay 100 000 CZK to the victims;

(3) The arson attack on a Roma family in Krty in western Bohemia in August 2011 is being investigated as attempted common threat; however the case has been suspended as the perpetrator has not been found;

(4) The machete attack by Roma against guests in the local restaurant in Nový Bor is being investigated as attempted murder without a racial motive, the proceeding is ongoing.

10. Several other attacks are still being investigated or the criminal proceeding is ongoing for crimes from the above mentioned categories. In some of them the racial motive has not been proved. Special attention is given to those cases, where deaths have occurred. The cases of crimes committed by members of the Czech Police or other security corps are being newly investigated by the General Inspection of Security Forces, which is independent on the Czech Police and other security forces. Detailed statistics from annual reports on extremism are provided below:

³⁵ Article 36, par. 1 and Article 40 of the Charter of Fundamental Rights and Basic Freedoms, Article 3, par. 1 and 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms and Article 14 par. 1 and 3 of the International Covenant on Civil and Political Rights.

³⁶ Article 40, par. 2 of the Charter of Fundamental Rights and Basic Freedoms, Article 6, par. 2 of the Convention for the Protection of Human Rights and Fundamental Freedoms and Article 14 par. 2 of the International Covenant on Civil and Political Rights. Similarly see Art. 2, par. 2 of the Criminal Code.

³⁷ Art. 2, par. 5 of the Criminal Code.

³⁸ Article 73 of the General Instruction of the Supreme Public Prosecutor No. 8/2009, on Criminal Proceedings.

Table 1
Number of extremist crimes motivated by the affiliation of the victim with a certain ethnic, racial or other group or the propagation of national or racial hatred in 2007-2012 according to the types of crime (source: Ministry of Interior)

<i>Crime</i>	2007	2008	2009	2010	2011	2012
Violence against an individual or a group of people	18	25	23	43	40	20
Defamation of nation, race, ethnic or other groups of people	28	41	25	43	33	33
Instigation of hatred towards a group of persons or of restriction of their rights and freedoms	13	11	16	15	15	5
Racially motivated murder	1	1	1	1	0	0
Racially motivated bodily harm	7	4	2	9	17	11
Racially motivated grievous bodily harm	4	2	2	1	0	3
Racially motivated extortion	0	2	1	0	0	2
Racially motivated damaging another person's property	2	1	6	2	7	16
Establishment, support and promotion of a movement seeking to suppress human rights and freedoms	47	42	92	35	21	6
Expressions of sympathy for a movement seeking to suppress human rights and freedoms	63	68	72	74	70	65

Table 2
Number of prosecuted and accused persons for crimes motivated by a racial, national or other hatred in 2007 – 2012 (source: Supreme Prosecutor's Office)

<i>Crime</i>	<i>State of process</i>	2007	2008	2009	2010	2011	2012
Violence against an individual or a group of people	Prosecuted	33	31	39	86	79	70
	Accused	31	30	38	81	76	68
Defamation of nation, race, ethnic or other groups of people	Prosecuted	37	36	19	39	35	34
	Accused	35	35	19	38	35	31
Instigation of hatred towards a group of persons or of restriction of their rights and freedoms	Prosecuted	24	7	7	6	5	8
	Accused	24	7	4	4	5	7
Racially motivated murder	Prosecuted	0	1	0	0	1	0
	Accused	0	1	0	0	1	0

<i>Crime</i>	<i>State of process</i>	2007	2008	2009	2010	2011	2012
Racially motivated bodily harm	Prosecuted	24	5	19	7	17	23
	Accused	24	5	19	7	16	22
Racially motivated grievous bodily harm	Prosecuted	3	9	21	1	0	2
	Accused	3	9	21	1	0	2
Racially motivated extortion	Prosecuted	0	0	0	1	0	2
	Accused	0	0	0	0	0	2
Racially motivated damaging another person's property	Prosecuted	5	2	1	1	0	1
	Accused	5	2	1	1	0	0
Establishment, support and promotion of a movement seeking to suppress human rights and freedoms	Prosecuted	14	29	25	39	15	27
	Accused	12	29	24	38	15	27
Expressions of sympathy for a movement seeking to suppress human rights and freedoms	Prosecuted	63	72	66	42	62	52
	Accused	62	61	60	40	57	49

Table 3
Number of convicted persons for racially motivated crimes in 2009 – 12 (source: Ministry of Justice)

<i>Crime</i>	2009	2010	2011	2012
Violence against an individual or a group of people	30	17	23	17
Defamation of nation, race, ethnic or other groups of people	20	21	21	30
Instigation of hatred towards a group of persons or of restriction of their rights and freedoms	1	8	8	4
Racially motivated murder	0	0	0	0
Racially motivated bodily harm	7	2	16	3
Racially motivated grievous bodily harm	4	1	7	0
Racially motivated extortion	1	0	1	1
Racially motivated damaging another person's property	0	1	11	5
Establishment, support and promotion of a movement seeking to suppress human rights and freedoms	40	56	51	37
Racially motivated disorderly conduct	60	41	68	37
Racially motivated violence against a public official	2	7	2	0
Racially motivated dangerous threatening	4	0	0	5

<i>Crime</i>	<i>2009</i>	<i>2010</i>	<i>2011</i>	<i>2012</i>
Racially motivated theft	2	1	3	1
Racially motivated breaking and entering of a home	2	3	2	6

11. The government also acts preventively against racial and extremist criminal activity. Part of the prevention is also the expression of contempt for any racial or extremist motivated violence or its enticing by anyone. These activities are primarily in the competence of the Government Commissioner for Human Rights, who is the main person empowered by the government to execute its policies in the field of human rights, including the rights of the Roma and other ethnic minorities. The Commissioner in her press releases and media appearances always condemns any verbal or physical manifestations of racism or intolerance and encourages state authorities to act harshly against their perpetrators. She always points out that hate and violence never lead to solutions of problems, but instead intensify them. Together with her colleagues she also takes part in the local prevention of extremist activities and coordinates the activities of relevant actors. At the government level she coordinates a special working group for solving crises, including racist and extremist unrests and has prepared a joint plan for immediate intervention by state bodies, among other also in the area of prevention of crime and extremist activities.

12. Apart from educating police officers and other public officials the government is also preparing a campaign against racism and hate violence, coordinated by the Commissioner for Human Rights and the Agency for Social Inclusion. The campaign is targeted on young people and will use mainly modern communication tools such as the internet, social networks and communities. The goal is to create an active community of people who will combat racism in a creative and educative way. The accompanying activities will be aimed at education at schools in the problematic regions and education among state bodies. The campaign will also focus on disseminating examples of good practices. The start of the campaign is planned for 2013.

Information on the recommendations contained in paragraph 14 of the concluding observations

13. The Czech Republic would like to state first that although it considers equal opportunities in education as one of the fundamental rights guaranteed by the Charter of Fundamental Rights and Basic Freedoms, which is a part of the Constitution, and international agreements, to which it is a party, and that it takes measures to fulfil its obligations from these agreements including the binding judgments of the European Court for Human Rights, it does not view a breach of this right as an act of torture, inhuman, cruel or degrading treatment or punishment within the meaning of the Convention. The placement of Roma or other children into practical schools does not involve any intentional infliction of severe pain or suffering, whether physical or mental³⁹, which would achieve the intensity described by the Convention. Also, the term discrimination in Article 1 of the Convention is related to the already mentioned intentional infliction of severe pain or suffering, as it concerns the infliction of severe pain or suffering motivated by discriminatory reasons, not any form of discrimination, which other international agreements within the UN system forbid and punish⁴⁰. The European Court for Human

³⁹ Article 1 par. 1 of the Convention

⁴⁰ E.g. the Article 2, par. 1 and Article 26 of the International Covenant on Civil and Political Rights, Article 2, pr. 2 of the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention

Rights, which evaluates the fulfilment of the European Convention for the Protection of Human Rights and Fundamental Freedoms, which also regulates the prohibition of torture and inhuman, cruel or degrading treatment or punishment⁴¹, in the case of *D.H. and others v. the Czech Republic*⁴², which dealt with the excessive placement of Roma children into schools meant for children with light mental disability, found a violation of the prohibition of discrimination⁴³ in the right to access to education⁴⁴, not a violation of the prohibition of torture or inhuman, cruel or degrading treatment. The same applies for other similar cases in other European countries⁴⁵. The Czech Republic therefore naturally accepts the principle of equal treatment and the obligation to provide equal protection against torture or inhuman, cruel or degrading treatment or punishment as well as other fundamental rights and freedoms, including the right to education⁴⁶. However the Czech Republic is not of the opinion that equal access to education for Roma children in the Czech Republic and related issues would be a subject of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

14. Despite the statement above the Czech Republic presents the Committee with brief information about the guarantee of equal access to education for all children. In autumn 2012 the Czech Republic adopted a plan of measures related to the fulfilment of the judgement of the European Court for Human Rights in the case *D.H. and others v. the Czech Republic*, which had been also presented to the Committee of Ministers of the Council of Europe, which reacted positively to it⁴⁷. Amendments to the Education Act have been prepared regarding pedagogic-psychological counselling and education of children with special educational needs. The first regulation⁴⁸ defines rules for providing counselling services. The recommendation to place a pupil in a school or educational programme for

on the Elimination of All Forms of Discrimination against Women, Article 2, par. 1 of the Convention on the Rights of the Child or Article 5 of the Convention on the Rights of Persons with Disabilities.

⁴¹ Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms states: “No one shall be subjected to torture or to inhuman or degrading treatment or punishment.” The European Court for Human Rights also evaluates whether the contested behaviour reached the intensity prohibited by Article 3. See e.g. judgment in the case *Ireland v. The United Kingdom* of 18th January 1978, Application No. 5310/71. A25; *Soering v. The United Kingdom* of 7th July 1989, Application No. 14038/88, A161; *Selmouni v. France* of 28th July 1998, Application No. 25803/94, Reports of Judgments and Decisions 1999-V; *Labita v. Italy* of 6th April 2000, Application No. 26772/95, Reports of Judgments and Decisions 2000-IV; *Keenan v. The United Kingdom* of 3rd April 2001, Application No. 27229/95, Reports of Judgments and Decisions 2001-III and many others.

⁴² Judgement of the Grand Chamber in the case *D.H. and others v. The Czech Republic* of 13th November 2007, Application No. 57325/00, Reports of Judgments and Decisions 2007-IV

⁴³ Article 14 of the Convention

⁴⁴ Article 2 of the Protocol No. 1 to the Convention

⁴⁵ E.g. judgements in cases *Sampaniz and others v. Greece* of 5th June 2008, Application No. 32526/05; *Oršuš and others v. Croatia* of 16th March 2010, Application No. 15766/03, Reports of Judgments and Decisions 2010 or *Horváth and Kiss v. Hungary* of 29th January 2013, Application No. 11146/11.

⁴⁶ Article 1 of the Charter of Fundamental Rights and Basic Freedoms guarantees equality in dignity and rights and Article 3, par. 1 of the Charter guarantees equal protection of fundamental rights and freedoms, including protection against torture and inhuman, cruel or degrading treatment or punishment, the prohibition of which is regulated by the Article 8 of the Bill, similarly the right to education is regulated by the Article 33 of the Bill.

⁴⁷ Available at [https://wcd.coe.int/ViewDoc.jsp?Ref=DH-DD\(2012\)1074&Language=lanEnglish&Site=CM](https://wcd.coe.int/ViewDoc.jsp?Ref=DH-DD(2012)1074&Language=lanEnglish&Site=CM)

⁴⁸ Regulation No. 72/2005 Coll., on Providing Counselling Services at Schools and School Counselling Facilities as amended by Regulation No. 116/2011 Coll., effective since 1st September 2011

pupils with disabilities can be issued for a maximum period of 1 year⁴⁹. The recommendation containing proposals for changes in the pupil's education is discussed with his or her legal representative so that he or she would understand its nature and contents and could apply his or her objections to it. Pupils and their parents must be informed about the right to request additional counsel at any time.

15. The regulation on education of children with special educational needs⁵⁰ implements compensatory measures for pupils with health or social disadvantages⁵¹, which should serve to compensate their disadvantages so that they could be educated at mainstream schools and classes⁵². It also defines supportive measures for pupils with disabilities⁵³. The conditions for placing a pupil into special education are the recommendation of a school counselling facility together with a proposal of concrete supportive measures, discussing this request with the pupil and his or her parents while providing comprehensible information and an informed consent of the parent⁵⁴. Education will always be provided based on the expert evaluation of the pupil's needs and an informed consent of his or her legal representatives. A pupil without disability is not educated according to an education programme, which is adapted to the needs of pupils with disabilities. A pupil without disability, who is physically or socially disadvantaged, and who has long-term problems to cope with the mainstream education even with the use of compensatory measures, might be temporarily educated in a class established for pupils with physical disabilities, albeit according to the standard education programme of a mainstream school⁵⁵. His or her stay in this class is limited to 5 months, whereas he or she remains a pupil of his or her former school and is under the supervision of a pedagogic-psychological counselling facility, which recommends further action in his or her education and monitors, whether the reasons for the special regime remain. In future even this temporary stay of children without disabilities in classes for children with disabilities will be abolished and the child will be diagnostically monitored in his or her original educational environment. Similarly any other placement of healthy children into classes for children with disabilities will be abolished. Therefore each child will be educated in an environment and programme, which is the most suitable for him or her.

⁴⁹ The amended regulation shifts the core of counselling services from reports, i.e. diagnostic activities to recommendations, i.e. counselling activities, which should take into account special educational needs of the pupil

⁵⁰ Regulation No. 73/2005 Coll., on Education of Children, Pupils and Students with Special Educational Needs and Extraordinarily Talented Children, Pupils and Students, as amended by Regulation No. 147/2011 Coll., effective since 1st September 2011.

⁵¹ For the purpose of the use of compensatory measures a socially disadvantaged student is understood to be primarily a pupil from an environment, where he or she does not receive enough support for regular educational process, including the cooperation of legal representatives with the school and a pupil disadvantaged by insufficient command of the education language. See Art.1 par. 6 of the Regulation No. 73/2005 Coll.

⁵² Mainly the use of pedagogic and special pedagogic methods and procedures, provision of individual support within education and preparation for education, use of counselling services of the school and school counselling facilities, individual education plan or the services of a teacher assistant.

⁵³ The use of special education methods, procedures, forms and tools, compensatory, rehabilitation and educational tools, special textbooks and didactic materials, inclusion of subjects of special pedagogic care, provision of pedagogic-psychological services, providing teacher assistant services, reduction of the number of pupils in classes or study groups or other changes in the organization of education, which reflect the pupil's special educational needs.

⁵⁴ Art.9 par. 1 of the Regulation No. 73/2005 Coll.

⁵⁵ Art.3 par. 5 of the Regulation No. 73/2005 Coll.

16. Support is also aimed at early care for socially disadvantaged children and their families in kindergartens and their access to pre-school education. The goal is to systematically develop all skills of the children and guarantee subsequent success at school education. The support is provided in the form of preparatory classes, increased capacity of kindergartens and development of teachers' expert competencies for working with pupils with different educational needs. In the school year 2011/12 a total of 189 preparatory classes were established, where the parents pay no fees. The headmasters of kindergartens have an obligation to create conditions for education of children with special educational needs according to their specific demands. The last year of the kindergarten is free of charge and children from low-income families may be exempted from all kindergarten fees. Support is also provided for teacher assistants for socially disadvantaged pupils⁵⁶. In the 2011/12 school year there have been a total of 458 teacher assistants.

17. The Ministry of Education, Youth and Sports tries to support the presented changes by methodological and educational guidance of teachers, headmasters, psychologists and other pedagogic staff in counselling facilities⁵⁷. In 2011 and 2012 it organized several conferences and round tables about inclusive education in individual regions together with seminars for teachers. The Ministry also published commentaries to the new regulations on its website. In 2010 it published a Methodological Recommendation for Providing Equal Opportunities in Education of Socially Disadvantaged Children, which is based on the analysis of diagnostic tools and contains a set of concrete recommendations for elementary schools and kindergartens on how to support educational success of socially disadvantaged children and create an environment, which would be open for these children as well. In the field of diagnostics it recommends specific processes, which eliminate the risk of skewed results in cases of socially disadvantaged children. The diagnostic tools will be subjected to revision in the future and counsellors and teachers will be educated in new methods and processes. The diagnostics will be also methodologically directed by the Czech School Inspectorate and the Ministry of Education, Youth and Sports.

18. Thanks to the Centre for Support of Inclusive Education project and its regional centres more than 200 schools were supported. In the school year 2011/12 130 schools participated in the project, where school psychologists and special teachers help pupils with the integration into mainstream education. In the second phase of the project new methodological materials will be created covering the cooperation of the teacher and the teacher assistant, internal and external tutoring, individual education plans taking into account balancing measures, forms of cooperation with the family based on principles of social work, work with the class and development of cooperation with other subjects. The Framework Education Programme Elementary Education – Appendix for Pupils with Light Mental Disability will be revised. A sufficient registry of pupils educated according to various educational programmes will be also established. The ethnic ratios of pupils educated in specific programmes shall be monitored as well to ensure prevention of possible discrimination. All measures will be prepared in cooperation with experts from the academic and civic sector.

⁵⁶ Support is provided mainly via the grant programmes "Support of Education in the Languages of Minorities and Multicultural Education" and "Programme of the Ministry of Education, Youth and Sports for Support of Integration of the Roma Community", which are funded from the state budget and from the European Social Fund

⁵⁷ http://www.msmt.cz/file/1549_1_1/, http://www.vuppraha.cz/wp-content/uploads/2009/12/pripravna_trida.pdf, www.inkluzivniskola.cz.

Information on the recommendations contained in paragraph 21 of the concluding observations

19. The Czech Republic would like to state that the protection of personal liberty, physical integrity and human personality is one of the bases of the Czech legal system, as follows e.g. from the Charter of Fundamental Rights and Basic Freedoms⁵⁸. The law regulates the competence of a court as a guarantor of protection of fundamental rights and freedoms⁵⁹ to decide whether it is admissible to hospitalize someone without his or her consent⁶⁰. The Act on Providing Health Services stipulates the basic rule in relation to the international agreements⁶¹, that performance of medical treatment together with the hospitalization itself is conditioned by the patient's free and informed consent⁶². Free consent excludes any forms of coercion. Informed consent means that the patient is provided all information about the cause and origin of the illness, if they are known, its stage and expected development, the purpose, nature, expected benefit, possible effects and risks of the proposed treatment, other treatment possibilities, their suitability, benefits and risks, other necessary treatments and limitations and recommendations concerning the life style with regard to the medical condition⁶³. Exceptions are possible only in cases defined by the law, when the patient's consent cannot be obtained and at the same time it is necessary to protect the life or health of the patient or other persons or another important public interest⁶⁴.

20. If the patient is hospitalized without his or her consent, the appropriate medical facility must report this to the court within 24 hours⁶⁵. In case of a patient with limited legal capacity the consent of his or her caretaker does not substitute his or her own consent⁶⁶. The court then decides within 7 days about the admissibility of the hospitalization⁶⁷. If the hospitalization was not admissible or if it ceased to be admissible in the meantime, the court will order to release the patient. If the hospitalization remains admissible, the court decides within 3 months about the admissibility of its further duration and that for a maximum of 1 year⁶⁸. The court also appoints an independent expert to evaluate the patient's condition and whether his or her further hospitalization is necessary⁶⁹. The court decides similarly in case when it is necessary to provide immediate medical treatment to a person, who due to his or her condition cannot grant consent⁷⁰. In all the listed cases the patient participates in the proceeding, has the right to be heard, if his or her condition allows it, to propose other witnesses and evidence and make other procedural acts; the court provides the patient information regarding his or her rights. The patient also has the right to choose his or her own representative; should he or she fail to do so, the court will appoint

⁵⁸ Article 7,8 and 10 of the Charter of Fundamental Rights and Basic Freedoms

⁵⁹ Article 4 of the Constitution

⁶⁰ Article 8, par. 6 of the Charter of Fundamental Rights and Basic Freedoms

⁶¹ Among others the Convention on Human Rights and Biomedicine (96/2001 Coll.)

⁶² Art. 28 par. 1 of the Act No. 372/2011 Coll., on Health Services, as amended

⁶³ Art. 34 par. 1 and 31 of the Act on Health Services

⁶⁴ Art. 38 of the Act on Health Services. This includes e.g. a patient with a decreased self-control significantly threatening his surroundings, a patient with a limited ability to grant consent with a crucial medical procedure, a patient in protective care, isolation or quarantine.

⁶⁵ Art. 40 of the Act on Health Services, Art. 191a of the Civil Procedure Code

⁶⁶ Art. 191b par. 1 of the Civil Procedure Code.

⁶⁷ Art. 191b of the Civil Procedure Code

⁶⁸ Art. 191d and Art. 191e of the Civil Procedure Code

⁶⁹ Art. 191d par. 2 of the Civil Procedure Code

⁷⁰ Art. 191h of the Civil Procedure Code

an attorney or a close person as a caretaker⁷¹. The patient has the right to be informed about the judgement in his or her case, whether by mail or any other suitable way⁷². During the whole duration of hospitalization the patient, his or her representative, caretaker and his or her close persons may ask the court to evaluate the justification of the hospitalization⁷³.

21. The Act on Health Services also regulates the use of tools that restrain the patient's free movement. Cage beds are not among these tools, only net beds⁷⁴. According to the law restraints can only be used in order to avert immediate threat to life, health or safety of the patient or other persons and only for a period that is absolutely necessary for their protection. A restraint can only be used with the doctor's approval. In acute cases requiring immediate solution the use of restraints can also be sanctioned by other medical personnel; however the doctor must be immediately notified about it and confirm the justification of the restraints. The use of restraints, similarly to forced hospitalization, is a limitation of the patient's personal liberty and therefore it is also being approved by the court, if its duration exceeds 24 hours or if the patient did not provide his or her consent within this period⁷⁵. When using restraints it is necessary that their use is explained to the patient comprehensibly with regard to his or her condition and that his or her legal representative is notified about their use without delay. During the use of restraints the patient must be under appropriate medical supervision and his or her health must be protected. Each use of restraints must be noted in the patient's medical file together with potential informing of the legal representative and also in a special registry of the medical facility.

22. In case of violation of the listed rules the patient has the right to file a complaint⁷⁶. The complaint can also be filed by his or her legal representative, attorney or close person. The complaint is filed directly to the provider of health services and its filing must not be to the detriment of the complainant. The complainant has the right to the hearing of the complaint, access to information in the complaint file and handling the complaint within 30 days, in complicated cases up to 60 days. Medical facilities, where hospitalization is performed, must have a binding procedure for complaint handling, which must be published and be accessible directly in the given facility together with the information about the possibility to file a complaint. Each patient must be informed about his or her right to file a complaint and how this complaint should be handled. If the patient does not agree with the handling, he or she can file a complaint to the administrative body, which granted the facility the right to provide health services. This information must also be provided to the patient. The administrative body evaluates the complaint and if it finds any violation of the rules for providing health services or other failings, it will impose corrective measures to the provider and it also may file a motion to another administrative body or the appropriate professional chamber of medical personnel⁷⁷.

⁷¹ Art. 191b par. 3, Art. 191d par. 3 and Art. 191h par. 2 and 3 of the Civil Procedure Code.

⁷² Art. 191c par. 1 of the Civil Procedure Code.

⁷³ Art. 191f of the Civil Procedure Code.

⁷⁴ Art. 39 of the Act on Health Services, namely.

- a) A grip by medical personnel or other designated persons;
- b) A restriction of movement by using protective belts or harnesses;
- c) A placement into a net bed;
- d) A placement into a room designated for safe stay;
- e) A protective vest restricting the movement of upper limbs;
- f) Psychopharmaca and other curatives, which are suitable for restricting free movement.

⁷⁵ Art. 40 par. 1 b), Art. 191a par. 2 of the Civil Procedure Code.

⁷⁶ Art. 93 of the Act on Health Services.

⁷⁷ Art. 96 of the Act on Health Services.

23. The administrative body will evaluate the complaint itself or will invite an independent expert or establish an independent commission to evaluate the procedure of providing medical services, particularly if the patient suffered harm or death⁷⁸. The commission is composed of representatives of the administrative body and medical personnel in the given field, a lawyer is invited and the complainant may also take part in the discussion, should he or she request it. The Commission members must be unbiased and independent. The committee will evaluate the case and provide a statement, whether or not the necessary procedures were observed and if by not observing it the patient came to harm or died. Then the commission will propose remedial measures⁷⁹.

24. A forcefully hospitalized patient or a patient, who has been administrated medical services without his or her consent or has been otherwise harmed by provided medical services, may also turn to the court with an action for compensation of damages to health or interference with personal rights, for which the patient may claim pecuniary or non-pecuniary damages⁸⁰. After his or her death the compensation can be claimed by his or her relatives. The dispute is then decided within a regular civil proceeding.

25. The supervision over psychiatric sanatoria is performed by the Ministry of Health or the Czech Medical Chamber. These bodies are entitled to impose remedial measures to remove discovered shortcomings and monitor their fulfilment⁸¹. The supervision over psychiatric sanatoria is also performed by the Ombudsman as a part of his mandate as the national preventive mechanism according to the Optional Protocol to the Convention. The Ombudsman may visit the facilities and based on his observations he may formulate conclusions and issue recommendations, which the facilities are bound to fulfil. If they fail to do so, the Ombudsman will inform their founders or responsible bodies or even the public. Since the mechanism's establishment in 2006 the Ombudsman visited a total of 12 psychiatric sanatoria. In his reports he recommends to improve material conditions in the sanatoria and their funding, cooperation of the state and local authorities in solving the social situation of people in these sanatoria and create a long-term conception of psychiatric care and its funding.

26. Cases of deaths or ill-treatment in psychiatric sanatoria are always thoroughly investigated both in professional capacity, whether the medical facility violated its duties, and by criminal prosecution bodies, whether a crime has been committed. The mentioned cases of Věra Musilová of 2006 and the woman from the psychiatric sanatorium Dobřany of 2012 were thoroughly investigated both by the Ministry of Health, which established an expert commission for this purpose, and the Czech Police and the Ombudsman.

27. The investigation of the case of Věra Musilová conducted by the Ministry of Health in 2006 did not find any failing of the medical personnel of the Bohnice Psychiatric Sanatorium. The sanatorium observed appropriate legal rules, had its own directives on the use of restraints and standards of care for patients in net beds. The patient was placed in the bed due to the risk of self-harm, aspiration of food and other things and destruction of surrounding objects, whereas her mother as her caretaker provided consent with this placement. The Ombudsman on the other hand found some shortcomings in the case of the death of Věra Musilová, most of them caused by wrong communication with the mother and caretaker of Věra Musilová. According to his findings and opinion the sanatorium's

⁷⁸ Art. 94 of the Act on Health Services.

⁷⁹ Art. 95 of the Act on Health Services.

⁸⁰ Art. 11, 13 and 444 of the Civil Code

⁸¹ Art. 107 and following of the Act on Health Services.

personnel did not provide sufficient information to the mother and did not explain the use of restraints. The personnel were also at fault by not examining the causes of rapid deterioration of patient's condition and did not strive for a satisfactory solution not only at the level of sedatives and restraints. According to the Ombudsman's findings the patient had been placed in the net bed for longer periods than necessary, which had been in contradiction to the purpose of the net bed as an extraordinary tool used for calming acute states and on the contrary it had been interchanged for a common treatment method. The Bohnice sanatorium did not agree with the investigation's results. The mother of Věra Musilová filed an action for protection of personal rights against the sanatorium in 2010 and the court decided that the sanatorium has to apologize to the mother for shortcomings in their care for Věra Musilová. This judgement is not effective yet.

28. The case of the death of a woman in the Dobřany sanatorium has been investigated by the Ministry of Health within their visits, which monitored the level of provided medical services in psychiatric sanatoria. The expert supervision commission did not find any faults or negligence by the personnel. The provided medical care and assigned personnel were found to be sufficient and even exceeded the required legal levels. Despite all effort it is not possible to entirely prevent undesirable events when providing medical services in psychiatric sanatoria or other facilities, including self-harm attempts of hospitalized patients. The sanatorium implemented organizational, personal and systemic measures to reduce the possibility of reoccurrence of extraordinary, undesirable and tragic events. The bed capacity in the ward has been reduced and personal supervision of restricted patients has been ensured as well as their monitoring by a camera system. Each restricted patient is also monitored by medical staff. The staff of the sanatorium has been repeatedly trained in the use of restraints in accordance with the law and newly issued internal rules and in patient supervision. The psychiatric sanatorium continues to work to improve the situation in patient care and monitoring. The Czech Police also did not find any facts which would provide a reason to start a criminal proceeding. The case is still being investigated by the Public Defender of Rights. In 2012 the sanatorium used two net beds; however since 1st January 2013 the sanatorium ceased to use the net beds altogether.

29. The Czech Republic is aware of the problems in the field of psychiatric care and prepares its complex systemic reform and modernization. The goal is to improve the quality of the care for patients and to transfer the treatment from large institutions into smaller community centres. The reform of psychiatric care is based on the strategy of the World Health Organization, which primarily supports the development of community and semimural care, strengthening of the role of primary care and general hospitals, transformation of psychiatric sanatoria and education of specialists. An absolutely crucial part of the reformatory effort in the Czech Republic is the shift to a humane and sustainable way of treatment provided as much as possible in a natural environment. The concrete form of the reform is currently a subject of debate between the Ministry of Health and other representatives of the state administration, doctors, health insurance companies, patient organizations and NGOs. The transformation should start in 2014.