

HUMAN RIGHTS PRACTICE REVIEWS

The Czech Republic

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1 Introduction

This human rights review covers the period of the last three years that is, from 2017 to 2019,¹ outlining the most relevant issues emerging in the Czech Republic. It is structured with an emphasis on the mandate of the Public Defender of Rights (hereinafter ‘the Ombudsperson’) and the inter-agency committee of experts for the execution of judgments of the European Court of Human Rights, the situation of general intolerance and its expressions as well as of concrete groups, namely the Roma, persons with disabilities, migrants, members of the LGBTI* community and women. Within each of the subsections, we introduce key problems, the current situation and development, focusing both on the international and domestic dimensions. Thus, following the review process of UN treaty bodies, especially the UN Committee on the Elimination of Racial Discrimination (hereinafter ‘the CERD’) and the UN Committee on the Rights of Persons with Disabilities (hereinafter ‘the CRPD’) as well as the jurisprudence of the European Court of Human Rights (hereinafter ‘the ECtHR’) and the European Committee of Social Rights (hereinafter ‘the ECSR’) monitoring compliance with the 1961 European Social Charter (hereinafter ‘the Social Charter’) as well as the case law of national courts, the Constitutional Court in particular, we introduce a complex overview explaining the situation in the Czech Republic and the major human rights challenges the country has been dealing within the past years.

2 The Ombudsperson and the Inter-agency Committee of Experts

During the reporting period, the Ombudsperson acquired new and important responsibilities and received public attention in respect of her activities. First, after longstanding criticism on both the national and international levels, a discussion was held over the creation of a National Human Rights Institution

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1 Including references to several important developments in the first half of 2020.

(NHRI) in line with the Paris Principles.² Whereas such institutional change in the Czech system of human rights protection does not seem to be achievable in the near future, still in 2018 the Ombudsperson's mandate was extended to monitor the rights of persons with disabilities as required by the UN CRPD.³ These responsibilities complement the Ombudsperson's mandate, ranging from protection against illegal conduct of public authorities and being a National Preventive Mechanism (NPM) under the UN OPCAT to being a national equality body pursuant to the law of the European Union. Discussions have also been held over affording the current Ombudsperson with the responsibilities and powers to effectively protect the rights of the child as required by Article 4 of the UN CRC and the relevant General Comment no. 2 of 2002.⁴ Yet, the government has recently proposed a draft law establishing the Child Ombudsperson, that is, a fully new institution.⁵

Finally, the end of the monitored period was marked by the end of the six-year office of the (former) Ombudsperson Šabatová and the upcoming election of her successor. Mainly due to Šabatová's active role in areas perceived by parts of the population as highly controversial, including her intervention in the 'headscarf affair' (see below) and her critical position towards systemic discrimination of members of the Roma community (be it with regard to their access to mainstream education or to accommodation), the election was broadly covered by the media and subject to rather a broad public discussion. On 12 February 2020, the Chamber of Deputies of the Parliament of the Czech Republic elected Stanislav Křeček as the new Ombudsperson.

It is finally worth noting that, besides the Ombudsperson, the committee of experts for the execution of judgments of the ECtHR and the implementation of the ECHR continued to provide an important platform for inter-agency dialogue on the matters of implementation of international human rights obligations at the national level,⁶ since in 2017, its mandate was extended to the law of the Social Charter of the UN core human rights treaties. It is composed of

- 2 See also above. To date, the Czech Republic does not have an NHRI accredited by Sub-committee on Accreditation (SCA) of the Global Alliance of NHRIs (GANHRI) according to the Paris Principles. See, in Czech, www.vlada.cz/cz/ppov/zmocnenkyne-vlady-pro-lidska-prava/aktuality/rada-pro-lidska-prava-doporucila-vlade-prijeti-kroku-nutnych-ke-zrozeni-lidskopravni-institute-177366/.
- 3 The extension of the mandate followed the ratification of the CRPD by the Czech Republic in September 2009 and the amendment of the Act on the Public Defender of Rights, no. 349/1999 Coll.
- 4 CRC General comment No. 2 (2002): The Role of Independent National Human Rights Institutions in the Promotion and Protection of the Rights of the Child, 15 November 2002, CRC/GC/2002/2.
- 5 At the time of preparation of this report, the bill was with the Chamber of Deputies of the Parliament of the Czech Republic.
- 6 The Committee was established under the auspices of the Ministry of Justice in 2015 as a follow-up to the obligation to reinforce the implementation of the Convention at the national level agreed by and between the Contracting Parties to the ECHR at the High-level Conference on the 'Implementation of the European Convention on Human Rights, our shared responsibility' of 27 March 2015 (also known as 'the Brussels Declaration'). More information in Czech at: www.justice.cz/web/msp/kolegium-expertu-k-vykonu-rozsudku-eslp.

representatives of all ministries, both chambers of parliament, the highest courts, the Office of the Prosecutor General, the Ombudsperson, academia and civil society and has enabled constructive discussions over various important areas, including topics covered by this report.

3 Intolerance, Discrimination, Hate Speech and Hate Crimes

Discrimination and other forms of intolerance, including hate speech and hate crimes, remained a problem during the monitored period. In its observations published in August 2019,⁷ the CERD criticized, among other issues, lack of statistics related to the socio-economic situation of ethnic and national minorities; grounds for discrimination due to 'colour' and 'descent' not being included among the grounds for discrimination listed in the relevant anti-discrimination legislation; the fact that the Ombudsperson cannot represent victims of racial discrimination in court; the particular situation of the Roma (see details below); the prevalence of hate speech directed towards minority groups, in particular asylum seekers, the Roma and Jews; and racially motivated (violent) crimes.

Although the CERD did not explicitly refer to anti-Muslim intolerance (faith and religion are not covered as grounds on which someone can be discriminated against under the UN CERD), Muslims, albeit constituting a very small minority in the country, were not exempted from intolerance and all its expressions, including discrimination and hate speech. The event that probably attracted the most attention was the so-called 'headscarf affair', that is, civil proceedings initiated in 2016 by a young female Muslim Somali student who claimed to have been subjected to indirect discrimination by her school's regulation banning her, on a blanket basis, from wearing a headscarf. While the lower courts ruled in favour of the school, in late 2019 the Supreme Court quashed their judgments,⁸ referring to the applicant's rights stemming from Article 9 of the ECHR and concluding that the school's ban pursued no legitimate aim. The latter judgment set a strong precedent for any similar situations in the future. Nevertheless, the applicant voluntarily withdrew from the proceedings due to continuous pressure, threats and discrimination she had faced since 2016 when she had filed the motion.⁹

In respect of hate crimes,¹⁰ the CERD recommended, in particular, to focus on the situation of hate crime victims, hate crime investigation, the inclusive recruitment mechanism within the police and judiciary and training for police, prosecutors and the judiciary and to improve the relevant recording and data

7 CERD/C/CZE/CO/12-13.

8 Judgment of the Supreme Court of the Czech Republic of 6 December 2019, no. 25 Cdo 348/2019.

9 See, in Czech, <https://zpravy.aktualne.cz/domaci/konec-sporu-o-dzihab-ve-skole-divka-zalobu-stahla-kvuli-nena/r~5f1c8938898911ea8972ac1f6b220ee8/>.

10 See the definition of hate crimes provided for by the OSCE Ministerial Council Decision 9/09 (Athens, 2009).

collection mechanisms.¹¹ These findings corroborated with the latest conclusions of the UN Committee against Torture (CAT),¹² which also expressed its concerns about, among other issues, xenophobic discourse supported by politicians, including members of parliament.

While there is undoubtedly room for improvement in the areas of legislation and its application, victim support and recording and data collection,¹³ it should be noted that the state authorities seem to have recognized the importance of the matter, having undertaken concrete steps to fight hate crime and hate speech. Close collaboration was established between the Czech Republic's Government Agent for Human Rights and the OSCE Office for Democratic Institutions and Human Rights (ODIHR) in 2018,¹⁴ and in April 2019 the OPG, the Judicial Academy and ODIHR entered an agreement on the implementation of ODIHR's Prosecutors and Hate Crimes Training (PAHCT) programme.¹⁵

The Ombudsperson addressed online hate speech through an expert conference, co-organized with the Constitutional Court and the OPG¹⁶ and analytical research¹⁷ and, finally, the Constitutional Court showed empathy for victims of hate crime and hate speech in a landmark judgment addressing their precarious position and limited rights within criminal proceedings and recognizing that serious harm can be caused to victims of online hate, too.¹⁸

4 The Situation of the Roma

The situation of the Roma has long been one of the major human rights issues in the Czech Republic. Beyond the general climate of intolerance, including instances of hate speech and hate crime as reported above, the main areas of concern included the right to education and housing, and large-scale institutionalization of children, for which the country has been repeatedly criticized by various human rights bodies. In the relevant period, we can underline several developments and key challenges, in particular in relation to the

11 Paras. 13-14 of the CERD Concluding observations.

12 Concluding observations on the sixth periodic report of Czech Republic, 6 June 2019, CAT/C/CZE/CO/6, points 26-27.

13 See also: Lifecycle of a Hate Crime. National Report – Czech Republic, Václav Walach, Klára Kalibová, Vendula Divišová, Petr Kupka. Praha: In IUSTITIA, 2017. OSCE/ODIHR's Hate Crime reporting at <http://hatecrime.osce.org/czech-republic>. Or, European Commission against Racism and Intolerance (ECRI) Report on the Czech Republic (fifth monitoring cycle) adopted on 16 June 2015, CRI(2015)35, points 27-28.

14 See www.osce.org/odihhr/406352.

15 See www.osce.org/odihhr/417224.

16 See www.romea.cz/en/news/czech/roma-are-most-frequently-targeted-by-hatred-on-the-czech-internet-experts-say-the-law-applies-online-too.

17 In particular, the Ombudsperson's Office conducted an in-depth analytical research of the Czech courts' case law on hate speech online; see www.ochrance.cz/fileadmin/user_upload/DISKRIMINACE/Vyzkum/47-2019-DIS-vyzkum_nenavist.pdf.

18 See Judgment of the Constitutional Court of 2 April 2019, no. III. ÚS 3439/17. The Constitutional Court implicitly introduced an analogy between hateful messages on a person's Facebook wall and anti-Semitic inscriptions on Jewish shops during the Kristallnacht events.

right to education, the institutionalization of young children below the age of three and the right to housing.

Since the adoption of a ground-breaking judgment of the ECtHR in the case of *D.H. and Others* in 2007,¹⁹ the country has been trying to change the pattern of segregation in its educational system under the supervision of the Committee of Ministers. In its most recent decisions on the execution of the judgment,²⁰ the Committee of Ministers welcomed the commitment of the Czech authorities in the adoption of educational reform and promoting inclusive education as a priority and noted with interest the increased funding for inclusive education. However, the committee also expressed its concern that despite all these reforms, there has not been a significant decrease in the number of Roma children educated under programmes for children with mild mental disabilities. The Ministry of Education referred in its responses to submissions from the Public Defender of Rights²¹ and by non-governmental organizations²² from 2019 that the education under the Annex to the Framework Educational Programme for Primary Education for pupils with mild mental disabilities would no longer be possible from 1 September 2020 and that it would be completely replaced by adjusted outputs which should allow for a more individualized approach.

In relation to the right to housing, the major issues relate to the question of social housing and territorial segregation. In 2017, the CoE Committee of Ministers adopted a resolution (CM/ResChS(2017)2) concerning the collective complaint lodged with the ECSR.²³ In this case, the ECSR found a violation of Article 16 of the Social Charter on the ground of insufficient access to housing, poor housing conditions, territorial segregation and forced evictions. The government informed the Committee of Ministers about the adoption of the Social Housing Policy, which does not explicitly target the Roma, but more generally encompasses vulnerable groups and ethnic minorities and provides an important and detailed background for improving access to housing by these groups. This policy, according to the government, created a background for the new Law on Social Housing. However, the law has not yet been adopted, which was also criticized in 2019 by the CERD,²⁴ and is again a subject matter of a collective complaint submitted against the Czech Republic with the ECSR.²⁵

Further, since 2017, the Constitutional Court has been reviewing legislation concerning the right to housing that indirectly affects, in particular, those living in poverty, including the Roma.²⁶ Namely, under Section 33(d) of Act no.

19 ECtHR, *D.H. and Others v. the Czech Republic*, application no. 57325/00, GC judgment of 13 November 2007.

20 CM/Del/Dec(2019)1355/H46-7.

21 Available at: <https://rm.coe.int/1355th-meeting-september-2019-dh-rule-9-6-reply-from-the-authorities-1/168094ee95>.

22 Available at: https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=090000168096f661.

23 ECSR, *European Roma and Travellers Forum (ERTF) against the Czech Republic*, no. 104/2014.

24 UN CERD/C/CZE/CO/12-13, Para. 16(a).

25 ECSR, *European Federation of Organisations Working with the Homeless (FEANTSA) v. the Czech Republic*, no. 191/2020.

26 See no. Pl. ÚS 40/17.

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111/2006 Coll., on Assistance for Those in Material Need, municipalities are entitled to designate a certain area as an ‘area with increased occurrence of socially undesirable phenomena’. Such a measure directly affects entitlement of housing benefits. Under Section 33(9) of Act no. 111/2006, the entitlement to receive a housing supplement, which is one of the benefits ensuring the right to housing for those in material need, does not originate if the apartment or other housing is located in an area designated as an area with increased occurrence of socially undesirable phenomena. In their constitutional complaint, a group of members of parliament argued that these provisions affect those living in poverty. Others, such as FEANTSA in its collective complaint submitted against the Czech Republic with the ECSR, argued that the measure was designed to specifically target the most vulnerable, including the Roma.²⁷ Despite the urgency of the matter, the Constitutional Court has not yet adopted any decision.

5 Rights of Persons with Disabilities

Since 2010, when the Czech Republic ratified the UN CRPD, the rights of persons with disabilities have gained significant attention. Issues typically invisible in the past, such as guardianship (reformed in 2014 by the new Civil Code no. 89/2012), inclusive education (see the reform described above), deinstitutionalization and involuntary placements in psychiatric hospitals (pending reform of psychiatric care) have become some of the major topics for relevant human rights authorities both in the Czech Republic and in Geneva and Strasbourg. Considering the complexity of these issues and the limited space for this review, we can discuss only key and recent developments, in particular those in the field of psychiatric care and childcare.

Currently, the Czech Republic is implementing a paradigmatic reform of mental health care with an aim to create an available and accessible network of community-based services and abandoning institutional care, which is the dominant form of care at present.²⁸ This multipart process has different distinct levels, and over the course of time various human rights developments can be identified. One of the oldest issues concerns the unlawfulness of the deprivation of liberty in both psychiatric hospitals and social care institutions in the cases of individuals under guardianship. In such situations, mental health care and social care providers did not ask for the consent of the person with disabilities and satisfied themselves only with the consent of the guardian. The person could have been *de facto* deprived of liberty by non-acceptance of their placement; however, the law treated them as a voluntary patient or social care user.²⁹ The problem was especially urgent in social care institutions because Social Services Act no. 108/2006 did not contain any substantive provision on the deprivation of liberty and no procedural safeguards were in place. Thus, unsurprisingly, in 2016, the

27 ECSR, *European Federation of Organisations Working with the Homeless (FEANTSA) v. the Czech Republic*, no. 191/2020.

28 Information available in Czech at: www.reformapsychiatrie.cz.

29 ECtHR, *Sjkora v. the Czech Republic*, no. 23419/07, 22 November 2012.

ECtHR found a violation of the right to liberty under Article 5 of the ECHR in the case of *Červenka v. Czech Republic*.³⁰ Meanwhile, the government also adopted significant changes to the Social Services Act and introduced provisions governing deprivation of liberty in social care institutions in a similar fashion, as in psychiatric hospitals.

This improvement has the ability to facilitate the transition from prevalent institutional care to community-based services, as required by Article 19 CRPD, especially if accompanied with identified positive obligations. This happened in 2018, when the Constitutional Court adopted a judgment concerning a young man with autism and special needs, who had been repeatedly denied social services on the ground of their unavailability.³¹ The Constitutional Court, also relying on Article 19 CRPD, emphasized the positive obligation of state authorities to ensure that all persons with disabilities, regardless of their needs, can benefit from available and accessible social care services provided in the least restrictive environment possible.

Another issue concerns the condition of mental health care in psychiatric hospitals and the use of restrictive measures in particular. The Czech Republic has been criticized for the use of netted cage beds inside psychiatric establishments for decades; however, no systemic change has been yet adopted.³² In 2019, the ECSR registered the new collective complaint *Validity v. Czech Republic*, which precisely targets the use of netted cage beds and argues that they are in violation of the right to health under the Social Charter.³³ As it appears from the government's latest position on their admissibility, the case is not inadmissible and the ESRC should address the merits soon. In a meantime, the Ministry of Health has drafted a complex amendment to Health Care Act no. 373/2011, defining new community mental health care services and banning the use of netted cage beds. The amendment is currently being discussed among government authorities.

And finally, another recent development concerns early childhood institutional care, where Romani children, in particular, and children with disabilities are institutionalized. In the Czech Republic, children under the age of three with special needs or in a specific situation where alternative care is not available can be placed into early childhood medical care institutions. According to available official data,³⁴ since 2010, the number of places in these institutions has gradually decreased. However, at the same time, the number of institutionalized Romani children remained almost the same: 433 in 2010, compared to 406 in 2015. The same applies to children with disabilities: 710 in 2011, compared to 694 in 2015. Moreover, reasons for admission show that the

30 ECtHR, *Červenka v. the Czech Republic*, no. 62507/12, 13 October 2016.

31 The judgment no. I. ÚS 2637/17 of 23 January 2018.

32 The most recent criticism can be found in the 2018 CAT Concluding Observations (CAT/C/CZE/CO/6) and 2019 CPT Country Report (CPT/Inf (2019) 23).

33 ECSR, *Validity v. the Czech Republic*, no. 188/2019.

34 Data collected by the Institute of Health Information and Statistics of the Czech Republic. Official Government data are also available online at: www.uzis.cz/res/f/008303/nzis-rep-2019-k33-a410-detske-domovy-pro-deti-do-3-let-veku-a-detska-centra-2018.pdf.

vast majority of children are admitted either for health reasons (958 in 2011, decreasing to 567 in 2015) or for social reasons (954 in 2010, decreasing to 568 in 2015). In 2018, out of 1,474 children in total admitted to these institutions, 570 children were admitted on the basis of health reasons alone and 420 both on health and social reasons.

Considering the data from the perspective of ethnicity and disability, Romani children consistently make up approximately 24% of all children placed in these early childhood care institutions. Considering that approximately 1.4-2.8%³⁵ of the population in the Czech Republic is Romani, this represents a significantly disproportionate number. For children with disabilities, who consistently make up approximately 40% of the children in these institutions, the disproportionate representation appears to be even higher – children born with disabilities constitute approximately 4% of all children born in the Czech Republic.³⁶

Unsurprisingly, this situation has been raising human rights concerns. In 2017, the ECSR registered the collective complaint *ERRC and MDAC v. Czech Republic*, which addressed the issue from the perspective of Article 17 of the Social Charter. The case was found admissible and publication of the decision on its merits should be available soon.³⁷ In the meantime, the government prepared key legislative changes introducing new services especially for children with severe disabilities and contained in the complex amendment to Health Care Act no. 373/2011 discussed above.

6 Gender Equality

In the area of gender equality, the monitored period was marked by the ECSR assessment of the collective complaint *University Women of Europe (UWE) v. Czech Republic* lodged simultaneously against 14 other European states³⁸ and concerning the right to equal pay and the right to equal opportunities in the workplace (the issue of the ‘gender pay gap’), on the one hand, and the alleged under-representation of women in decision-making positions within private companies, on the other.

In its decision on the merits of the case,³⁹ the ECSR assessed the UWE’s allegation through the lens of Articles 4§3 of the Social Charter and Article 1.c of

35 The unofficial data from: Minister for Human Rights, *The Roma Integration Concept 2010-2013*, available at: http://ec.europa.eu/justice/discrimination/files/roma_czech_republic_strategy_en.pdf. See also European Commission, *An EU Framework for National Roma Integration Strategies up to 2020, Annex*: available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0173:FIN:EN:PDF>.

36 The statistics are available online in Czech: <http://vozickar.com/statistici-pres-milion-lidi-veske-republice-ma-zdravotni-postizeni/>.

37 ECSR, *European Roma Rights Centre (ERRC) and Mental Disability Advocacy Center (MDAC) v. the Czech Republic*, no. 157/2017.

38 In particular, against Belgium, Bulgaria, Croatia, Cyprus, Finland, France, Greece, Ireland, Italy, the Netherlands, Norway, Portugal, Slovenia and Sweden.

39 Adopted by the ECSR on 5 and 6 December 2019 and became public on 29 June 2020.

the 1988 Additional Protocol and concluded that the Czech legislation⁴⁰ provides an adequate legal basis for equal pay in the legislation, and that despite certain obstacles, the right to effective remedies is also secured. It also found that the obligation to maintain an effective equality body with a view to guaranteeing the right to equal pay was satisfied, since the mandate of the Public Defender of Rights enables monitoring and promoting equal treatment, including equal pay, especially by providing discrimination victims with assistance and support. The Ombudsperson's Office has also significantly engaged in raising awareness of equal pay issues across society.

However, it found that the state's obligation, set forth by Article 4§3 and Article 1.c of the 1988 Additional Protocol, of ensuring pay transparency and enabling job comparisons was violated. In particular, the ECSR did not find it satisfactory that individual workers' data concerning remuneration cannot be disclosed in judicial proceedings, since access to general statistics is not sufficient for an individual to identify a possible breach of the equal pay principle before a court. Furthermore, the scope of comparisons in the private sector is restricted to a single enterprise and does not extend to companies owned by the same person or controlled by a holding or a conglomerate. The ECSR further criticized how no real measurable progress has been achieved with respect to lowering the gender pay gap;⁴¹ thus, the respective obligation set forth by Article 1.c of the 1988 Additional Protocol was violated.

Regarding the complaint on the under-representation of women in decision-making bodies within private companies, the ECSR concluded on a violation of Article 1.d of the 1988 Additional Protocol. Despite certain progress made in promoting the representation of women in decision-making positions in private companies, no binding regulation was adopted in that respect,⁴² the representation remains low and, therefore, the measures that have already been implemented were insufficient.

40 Art. 110 of the Labour Code provides that all employees are entitled to receive equal pay for the same work or for work of equal value; Art. 5§1 of the Anti-Discrimination Act further defines the concept of equal pay, using the term remuneration, which "shall mean any performance, whether monetary or non-monetary, recurring or one-off, which is directly or indirectly provided to a person in paid employment".

41 In particular, the Committee noted that the gender pay gap stood at 21.6% in 2010, 22.5% in 2015, 21.8% in 2016 and 21.1% in 2017. The EU average in 2017 stood at 16.0%. See the Decision at Para. 209.

42 Far better results were achieved in countries with binding legislative measures where the proportion of women on management boards of the largest publicly listed companies has risen from an average of 9.8% in 2010 to 37.5% in 2018. Furthermore, while in 2010 there were 12.2% of women on boards of Czech largest listed companies, in 2016, the rate fell to 10.1%, whereas the EU average stood at 23.3%. In 2019, these figures stood at 18.5% (CZE) and 27.8% (EU), respectively. See the Decision at 235 and 239.

7 Rights of Trans and Non-binary Persons

In May 2018, the ECSR adopted decision on the merits in the collective complaint *Transgender Europe and ILGA-Europe v. Czech Republic* concerning the alleged violation of the right to health.⁴³ The allegations raised relate to Article 11§1 of the Social Charter, which encompasses the right to health. In essence, the violation concerned a requirement contained in the 2014 Civil Code and the 2011 Act on Specific Health Services requiring that, in order for a transgender person to have their gender identity recognized, they are required to undergo medical sterilization. Without this surgical and medical intervention, they cannot have their gender formally altered, including on identity documents. Those who do not wish or are not advised for health or other reasons to undergo gender reassignment surgery are unable to have their identity documents changed to reflect their gender. The ECSR concluded, as expressed in the 2018 Committee of Ministers' resolution,⁴⁴ that gender reassignment surgery as required in the Czech Republic for a change of gender identity is not necessary for the protection of health. Obliging an individual to undergo such a serious surgery, which could in fact be harmful to health, cannot be considered as being consistent with the obligation that the state refrain from interfering with the enjoyment of the right to health and is contrary to Article 11 of the Social Charter.⁴⁵ The condition attached to the recognition of a transgender person's gender identity vitiates free consent, and therefore such a requirement violates physical integrity, operates contrary to the notion of human dignity and, consequently, cannot be considered as compatible with the right to health.

In 2018, the Czech Government informed the Committee of Ministers that the Ministry of Justice, after consultation with interested parties, submitted a draft amendment of the acts concerned for an inter-ministerial consultation process in order to bring the legal regulation of the recognition of sexual identity into conformity with the Charter and the ECHR.⁴⁶ However, despite these statements, until 2020 no amendment has been adopted and the situation remains unchanged. In 2020, the Constitutional Court accepted the case of a trans-woman who has been challenging the respective provisions of the Civil Code and the Act on Specific Health Services for its plenary consideration.⁴⁷

8 Detention Conditions and Ill Treatment

In July 2019, the CPT published its findings following a periodic visit to the Czech Republic.⁴⁸ Besides several concerns over the regimes for juvenile prisoners

43 ECSR, *Transgender Europe and ILGA-Europe v. Czech Republic*, no. 117/2015.

44 See CM/ResChS(2018)9.

45 See also the ECtHR judgment in the case of *A.P., Garçon and Nicot v. France*, application nos. 79885/12 52471/13 52596/13, judgment of 6 April 2017.

46 CM/ResChS(2018)9.

47 See, Pl. ÚS 2/20.

48 CPT/Inf (2019) 23, published on 4 July 2019.

was a high-security regime, where inmates spent up to 23 hours a day inside their cells. In addition to the practice of applying hand and ankle cuffs to prisoners during medical consultations in outside health care facilities and the length of solitary confinement, it criticized the presence of the police during medical examination of persons held in police custody, and – referring to its earlier recommendation – the fact that the requests of detained persons to notify a third person are not always granted. It also recommended that an effective system of free legal aid be put in place for all detained criminal suspects. While material conditions seemed to be, in general, in line with the relevant standards, the CPT expressed its concerns over the practice of handcuffing detained persons to fixed objects, including to metal loops with which some police cells remain equipped.

We find it important to note that the use of metal loops in police cells was the subject matter of the judgment in the case *Kummer v. the Czech Republic*,⁴⁹ adjudicated by the ECtHR in 2013, where the court found a violation of Article 3 ECHR. While the presence of metal loops in the police cells was criticized by the CPT as early as after its visit in 2006⁵⁰ and although the government obliged itself to dismantle the loops in 2007,⁵¹ after 13 years the metal loops are still present. Moreover, albeit rarely, they are used in practice. Along with attaching detainees to fixed objects in police cells, strip searches in police custody and forcing undressed detainees to perform squats also remain an issue, although such practice was also criticized earlier by the Czech Public Defender of Rights. The latter found particularly problematic that there was no internal police regulation on personal searches and recommended adopting such.⁵²

9 Rights of Migrants, Asylum Seekers and Stateless Persons

Concerning the rights of migrants, asylum seekers and stateless persons, two persistent issues can be emphasized. The first concerns the immigration detention of families with children in irregular positions as well as unaccompanied migrant children in closed immigration detention centres, which has been assessed by various UN treaty bodies.⁵³ The criticism namely relates to provisions allowing detention of minors older than 15 years for immigration

49 ECtHR, *Kummer v. the Czech Republic*, no. 32133/11, 27 March 2014, at 67-73.

50 See CPT (2006) 37, published on 2 August 2006.

51 See, in Czech, www.vlada.cz/assets/ppov/rlp/dokumenty/zpravy-plneni-mezin-umluv/Vyj_d_en_RkeZpr_v_CPT-2007-cz.pdf.

52 See, in Czech, www.ochrance.cz/fileadmin/user_upload/ESO/22-2017-NZ_Souhrnna_zprava_Policejni_cely_2017_CZ.pdf.

53 UN CRC, Concluding observations: Czech Republic, 4 August 2011, CRC/C/CZE/CO/3-4, § 64; CERD, Concluding observations on the combined tenth and eleventh periodic reports of the Czech Republic, 25 September 2015, CERD/C/CZE/CO/10-11, §§ 25-26; CEDAW, Concluding observations on the sixth periodic report of the Czech Republic, 14 March 2016, CEDAW/C/CZE/CO/6, §§ 38-39; CAT, Concluding observations on the sixth periodic report of Czechia, 6 June 2018, CAT/C/CZE/CO/6, § 21.

purposes and both accompanied and unaccompanied children may be detained⁵⁴ for up to 90 days.⁵⁵ Unaccompanied minors can be placed in a detention centre until their age is determined,⁵⁶ and children under 15 years of age who are accompanied by their family members are formally not detained but are ‘accommodated’ in the detention centre together with their parents.⁵⁷ In 2017, the Constitutional Court had a chance to review a situation of a migrant family from Kosovo that was detained in immigration detention for almost two months.⁵⁸ The court found a violation of the right to family life and the right to liberty on account of an insufficient legal basis at the time of their detention. In the meantime, the government adopted the absent norm and the judgment had only a limited impact on the continuing practice of immigration detention.

It should be recognized, however, that despite the gaps identified in domestic practice, the Czech government has contributed significantly to the development of international standards, practice and cooperation in the area of detention of migrant children. Under its chairmanship in the Committee of Ministers of the Council of Europe, it organized the two-day international expert conference ‘Immigration Detention of Children: Coming to a Close?’⁵⁹ to provide a platform for exchanging knowledge about the immigration detention of children and alternatives to detention and current actions promoting an end to the immigration detention of children; efforts, good practices and lessons learnt in implementing effective alternatives to immigration detention; and other relevant experiences gained from the field. It brought together a number of key stakeholders with extensive legal and practical expertise, including representatives of international organizations, judges, policymakers, governmental experts and civil society representatives and contributed to the relevant ongoing work in the Council of Europe on these issues.⁶⁰

Further important developments concern stateless persons. Up until recently, there was no procedure in the Czech Republic to determine stateless status, and these persons could have been left in legal limbo for several years. As of 2018, Asylum Act no. 325/1999 introduced the new competence of the

54 Sections 124(1)(6), 124b(1), 129(1)(5), Act No. 326/1999 Coll., Act on the Residence of Foreign Nationals in the Czech Republic.

55 Section 125(1), Act No. 326/1999 Coll., Act on the Residence of Foreign Nationals in the Czech Republic.

56 Section 124(6), 129(5), Act No. 326/1999 Coll., Act on the Residence of Foreign Nationals in the Czech Republic.

57 Section 140(1), Act No. 326/1999 Coll., Act on the Residence of Foreign Nationals in the Czech Republic.

58 Constitutional Court, file no. III. US 3289/14, judgment of 10 May 2017.

59 Prague, 25-26 September 2017. See the Conference Report at <https://rm.coe.int/immigration-detention-of-children-coming-to-a-close-prague-25-26-septe/16807b8841>.

60 Namely the work of the CoE Steering Committee for Human Rights (CDDH) on the codification of existing international standards relating to the immigration detention³⁵ and on the legal and practical aspects of alternatives to detention in the context of migration [CDDH(2017)R88add2]. See also www.coe.int/en/web/human-rights-intergovernmental-cooperation/human-rights-development-cddh/migration.

Ministry of Interior to consider applications for a statelessness status.⁶¹ However, due to a lack of additional provisions, especially concerning formal recognition of their specific status, stateless persons had to seek clarification before the administrative courts. In early 2019, the Supreme Administrative Court issued two judgments, according to which the Ministry of the Interior is obliged to issue identity documents to all applicants for statelessness status that would be analogous to documents issued to asylum seekers.⁶² Following these judgments, the Ministry of the Interior started to issue specific identity documents to applicants for statelessness status, but concerns about the efficiency of these procedure remain.

10 Conclusion

Mapping the overall human rights situation in the Czech Republic during a three-year period would certainly exceed the space afforded in this review. Difficult choices thus had to be made. We decided to cover issues that, in our opinion, both constitute the key challenges for the state and were shed light on by key international monitoring and judicial authorities. These were the particularly worrisome level of intolerance against particular communities such as the Roma, Muslims or migrants and refugees, and the gaps in the state's response to hate speech and hate crimes, as well as the particularly precarious situation of the members of the Roma community in their access to mainstream education or housing. After more than 12 years, the *D.H. and others* ECtHR Grand Chamber judgment is yet to be implemented. Despite important improvements in the area of persons with disabilities, the state is yet to rectify the collision between national legislation and the ECtHR's and ECSR's case law on the rights of trans and non-binary persons. There is finally enough room in the Czech Republic to fight gender inequality, improve detention conditions and eradicate ill treatment by police. A particularly positive observation is that, in recent years, the state has managed to address many human rights challenges domestically, namely through the case law of its highest judicial instances and legislation. Finally, the Ombudsperson's Office, under the lead of its former head, ensured both continuous monitoring and timely intervention in all the areas covered by its mandate and has acquired new and important responsibilities. The establishment of an NHRI is yet an issue that remains to be resolved by future governments.

61 Section 8d, Act No. 325/1999 Coll., Asylum Act.

62 Supreme Administrative Court, file no. 4 Azs 365/2018, judgment of 12 March 2019, and file no. 7 Azs 488/2018, judgment 9 April 2019.