

**FORUM**

Human Rights

**NGO information to the United Nations Committee on the Elimination of Discrimination against Women**

**The Sixth Periodic Report of the Czech Republic under the Convention on the Elimination of All Forms of Discrimination against Women**

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Submitted by the

Mental Disability Advocacy Centre (MDAC)

&

Forum for Human Rights (FORUM)

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1. **OVERVIEW**

This written submission provides an outline of issues of concern with regard to the Czech Republic’s compliance with the provisions of the Convention on the Elimination of All Forms of Discrimination against Women (hereinafter “the Convention”), with particular focus on the enjoyment of those rights by persons with mental disabilities.

The submission has been written by the Mental Disability Advocacy Centre (MDAC) and Forum for Human Rights (FORUM). MDAC is an international human rights organisation which uses the law to secure equality, inclusion and justice for people with mental disabilities worldwide. MDAC’s vision is a world of equality where emotional, mental and learning differences are valued equally; where the inherent autonomy and dignity of each person is fully respected; and where human rights are realised for all persons without discrimination of any form. MDAC has participatory status at the Council of Europe, and observer status at ECOSOC. For more information, please visit [www.mdac.org](http://www.mdac.org).

FORUM is an international human rights organisation working in the Central European region. It provides support and leads domestic and international litigation and advocacy activities. FORUM has been supporting a number of cases pending before domestic judicial authorities and before the European Court of Human Rights, *inter alia* on violation of social rights, on the rights of women with disabilities, on the protection of vulnerable groups against torture and ill-treatment in different settings, etc. FORUM also co-authored reports e.g. to the European Committee of Social Rights, UN CRPD and UN Human Rights Committee.

**II. WOMEN WITH DISABILITIES AND SPECIFIC ISSUES OF CONCERN**

Women with disabilities make up a significant portion of the global population.[[1]](#footnote-2) According to the 2011 WHO’s and World Bank’s *World Report on Disability*, it is estimated that approximately 15 per cent of the world’s population lives with some form of disability and that female prevalence is 19.2, much higher than male[[2]](#footnote-3) Women with disabilities experience both the stereotypical attitudes towards women and towards persons with disabilities, and an absence of institutional means to create their own social identities, cultivating a psychological sense of invisibility, self-estrangement, and/or powerlessness.[[3]](#footnote-4)

**1. Gender-based violence and institutionalisation**

Despite already existing normative frameworks, as noted by the Special Rapporteur on violence against women, “*the impact of the combined effects of both gender and disability have not gained sufficient attention, and violence against women with disabilities remains largely unaddressed*”.[[4]](#footnote-5) This situation is striking considering that women with disabilities are often victims of “*unique forms of violence*”, which “*has unique causes and results in unique consequences*”.[[5]](#footnote-6)

In the Czech Republic there has been little research carried out in relation to the specific forms of violence suffered by women with disabilities. We however know from two pieces of global research, compared to women without disabilities, women with disabilities are more likely to experience physical and sexual violence, increased severity of violence, multiple forms of violence and longer durations of violence.[[6]](#footnote-7) It has also been noted that “*older women experience disability more frequently …[and] are at particularly high risk of violence*”.[[7]](#footnote-8)

Other examples of violence perpetuated against women with disabilities include sterilisation and forced termination of pregnancy. In Czechoslovakia, a Public Decree on Sterilisation from 1972 enabled public authorities to take programmatic steps to encourage the sterilisation of Romani women and women with disabilities placed in psychiatric institutions, in order to control their birth-rate. There has been no research in the Czech Republic to identify the number of women with disabilities who have been subjected to such procedures, nor are there concrete possibilities for these women to receive reparations and compensation.

Women with disabilities are more likely to experience violence in residential and institutional settings.[[8]](#footnote-9) The Special Rapporteur on violence against women has emphasised that “*forced institutionalization* *itself constitutes a form of violence*”.[[9]](#footnote-10) Regardless of whether the admission was voluntary or involuntary, institutionalisation results in social isolation, reduced environmental stimulation and loss of control over almost all aspects of daily life. As emphasised in a judgment at the European Court of Human Rights, social isolation by forcing someone to live in a social care home had “*the result that [the complainant] had developed ‘institutionalisation syndrome’, that is, the loss of social skills and individual personality traits”.*[[10]](#footnote-11) Reduced activity and stimulation impact negatively on physical and psychological development, especially when imposed from a young age or/and for extended periods of time.[[11]](#footnote-12) “*Institutionalised living often means that residents are forced to sleep as a group, eat as a group, wash as a group, spend their day as a group and – to the extent that employment is possible in an institution – work as a group. There is no room for individual autonomy […] and behavior diverging from the norm is punished.*”[[12]](#footnote-13)

The main reason for long-term residential institutionalisation of women and girls with disabilities in the Czech Republic remains a chronic lack of community-based support and services. Other research has shown that women with disabilities in institutions suffer disproportionate and specific forms of violence. For example, a recent Human Rights Watch report explained that one of the defining features of institutionalization is a lack of privacy which is “*especially detrimental to women and children with disabilities as it is strongly related to poor mental health, poor social relationships, and poor child care*.”[[13]](#footnote-14) We also know from research of the European Parliament that 80% of women with disabilities in institutions are exposed to violence from the people around them.[[14]](#footnote-15)

Further it has been noted that “*older women experience disability more frequently … are at particularly high risk of violence*”.[[15]](#footnote-16) When forced, institutionalisation “*itself constitutes a form of violence*”. Moreover, inside these institutions not only “*women with disabilities”,* but also “*older women, or older women with disabilities*”[[16]](#footnote-17)are subjected to *“numerous forms of violence, including the forced intake of psychotropic drugs or other forced psychiatric treatment*”.[[17]](#footnote-18)

To prevent institutionalisation and consequently violence against women, states are under obligation to ensure available and accessible community based services.[[18]](#footnote-19) The CEDAW Committee in this respect underlined that older women have a right to “*affordable and accessible … long term health and social care, including care that allows for independent living, and palliative care*.”

However, in the Czech Republic the deinstitutionalisation process has been slow and problematic. The Govermenet was urged by the CRPD Committee “*to step up the process of deinstitutionalization and to allocate sufficient resources for development of support services in local communities that would enable all persons with disabilities, regardless of their … age, to choose freely with whom, where and under which living arrangements they will live”*.[[19]](#footnote-20) Thus far, the Government has failed to take any concrete steps. The CRPD Committee expressed its concern in relation to “*lack of plans to provide support services in local communities for older persons with disabilities*”.[[20]](#footnote-21) The Czech Government views older people, including older women as outside of the ambit of their obligations to ensure “*accessible long term health and social care … that allows for independent living”.*[[21]](#footnote-22) In fact, the National Action Plan for Support of Positive Ageing for years 2013-2017 does not even mention any process of deinstitutionalisation[[22]](#footnote-23) and the Government takes the position that such processes could be contrary to the fiscal interests of the state.

***Proposed recommendations:***

**Develop prevention, monitoring and sanctioning policies to address violence against women with disabilities, including for older women with disabilities and those in institutions, and ensure access to justice for all women.**

**Document and research the sterilisation of women with disabilities, including historic and current practices, and ensure accountability for perpetrators, identification and redress for victims.**

**Undertake thematic research and monitoring on the gender dimension of human rights violations suffered by women with disabilities in institutions, and develop evidence-based policy responses.**

**Ensure continuing deinstitutionalisation of all social care institutions, including residential services for older people, especially older women, and allocate sufficient resources for the development of gender-sensitive support services in local communities including care that allows for independent living, and palliative care.**

**2. Inclusive education (Article 10)**

That persons with disabilities, of both genders and all ages, have a right to education cannot now be disputed. Unfortunately, neither can it now be disputed that persons with disabilities, of both genders and all ages and in most parts of the world, suffer from a pervasive and disproportionate denial of this right.[[23]](#footnote-24)

In the Czech Republic there are registered 75,848 students with disabilities, of which 29,995 were placed in special classes, and 45,853 were ‘individually integrated’.[[24]](#footnote-25) A very large number of children who are individually integrates are either placed in segregated classrooms in mainstream schools, or are placed in segregated schools. This means a significant number of girls with disabilities are provided with education in segregated settings, constituting a violation of their right to education. There is also data suggesting that Romani children, including girls, are disproportionately affected by segregation in education.[[25]](#footnote-26)

International and regional human rights instruments, including Article 10 of CEDAW provides for the right to education, and it has been understood that “*the right to education is in fact the right to inclusive education*”.[[26]](#footnote-27) Inclusion in education is a process that “*recognizes: (a) the obligation to eliminate barriers that restrict or ban participation, and (b) the need to change culture, policy and practice of the mainstream schools to accommodate the needs of all students, including those with impairments*”.[[27]](#footnote-28) Therefore no child should be provided education in a segregated setting, irrespective of their gender, ethnicity or disability.

Under CEDAW, the Czech Republic has an obligation *“to promote the equal rights of girls since girls are part of the larger community of women and are more vulnerable to discrimination in such areas as access to basic education …*”[[28]](#footnote-29), and especially girls and women with disabilities who “*suffer from a double discrimination linked to their special living conditions*”.[[29]](#footnote-30) As the CEDAW Committee has observed, discrimination against women “*can also occur through the failure of the state to take necessary legislative measures to ensure the full realization of women’s rights*”[[30]](#footnote-31), including the right to education[[31]](#footnote-32) and, “*the failure to adopt national policies aimed at achieving equality between women and men and the failure to enforce relevant laws.*”[[32]](#footnote-33) The Special Rapporteur on the right to education explained that to achieve the full enjoyment of the right to inclusive education, legislative frameworks should at a minimum:

(a) Recognize inclusive education as a right;

(b) Identify minimum standards in relation to the right to education;

(c) Identify minimum standards in relation to the underlying determinants of the right to education;

(d) Ensure a transition plan;

(e) Identify duty-bearers and their responsibilities;

(f) Provide resources; and

(g) Establish monitoring and evaluation mechanisms.[[33]](#footnote-34)

Very recently, the CEDAW Committee recommended that Slovakia “*give priority to inclusive education of children with disabilities, including children with intellectual and psycho-social disabilities, by reviewing relevant legislation and policies to explicitly recognize inclusive education as a right of children with disabilities and allocate the necessary technical, human and financial resources to provide for reasonable accommodation for them to study in mainstream classes at mainstream schools.*”[[34]](#footnote-35)

The Czech Republic shares a common history with Slovakia and problems with widespread segregation are almost identical. Therefore, relying on this targeted and very appropriate language of the CEDAW Committee, we understand that a specific emphasis should be placed on explicit incorporation of the right to education into the Czech Education Act and development of a transition plan, including allocation of the necessary technical, human and financial resources to ensure fulfilment of “*the equal rights of girls”* with disabilities *“who suffer from a double discrimination”* in access to education.

Although the Government is currently introducing a school legislation reform, which is supposed to provide for easier integration of children with special education needs to the mainstream schooling system, those steps fall far beneath the relevant human rights standards relating to the right to inclusive education, as neither of the aforementioned minimum standards on the legislative framework introduced by the Special Rapporteur will be met.

***Proposed recommendation:***

**Give priority to inclusive education of children with disabilities, including all children with intellectual and psycho-social disabilities, by reviewing relevant legislation and policies to explicitly recognise inclusive education as a right of children with disabilities, to adopt a national transition plan and allocate the necessary technical, human and financial resources to provide for reasonable accommodation for them to study in mainstream classes at mainstream schools.**

**3. Legal capacity (Articles 7, 15), health (Article 12) and family rights (Article 16)**

Even though the new Czech Civil Code no. 89/2012 Coll. abolished plenary guardianship, it also introduced specific provisions which allow general courts to restrict a person’s legal capacity in specific matters, including family and reproductive rights; in concrete the right to marry[[35]](#footnote-36) and the parental responsibility[[36]](#footnote-37). These restrictions affect regularly women with intellectual and psycho-social disabilities.

It has been already acknowledged that the denial of legal capacity to persons with disabilities has, in many cases, led to their being deprived of many fundamental rights, including “*… the right to marry and found a family, reproductive rights, parental rights, the right to give consent for intimate relationships …“.*[[37]](#footnote-38)It is thus evident, that recognition of legal capacity is inextricably linked to the enjoyment of the right to marry and found a family.[[38]](#footnote-39) The CEDAW Committee underlined that a woman's right “*to choose a spouse and enter freely into marriage is central to her life and to her dignity and equality as a human being*”[[39]](#footnote-40). Therefore, “*subject to reasonable restrictions based for example on woman's youth or consanguinity with her partner, a woman's right to choose when, if, and whom she will marry must be protected and enforced at law*.”[[40]](#footnote-41) Disability or impairment should never be reasonable ground on which to restrict or deny legal capacity,[[41]](#footnote-42) including in respect of family and marriage rights. In this respect the CESCR expressed its concern that “*the right of persons with disabilities to marry and have their own family … are frequently ignored or denied, especially in the case of persons with mental disabilities*”, and noted that “*States parties should ensure that laws and social policies and practices do not impede the realization of these rights*”.[[42]](#footnote-43) Despite the Government being already informed that the law which “*explicitly allow[s] for the restriction of legal capacity in family matters, especially the right to marriage, parental responsibility, and adoption*”[[43]](#footnote-44) is problematic from a human rights perspective and has recommended repeal of these provisions, the Czech Government has failed to take any steps in this regard.

Restriction or denial of the legal capacity of women with disabilities also occurs through the operation Czech health legislation, providing the option of restricting their right to provide informed consent and make independent decisions about their healthcare decisions (see Article 28(3)(e) of the Health Care Services Act).

***Proposed recommendation:***

**Repeal provisions allowing for restriction of legal capacity in family matters, especially the right to marriage, parental responsibility, and adoption. Reasonable accommodations and support must be made available to women and girls with disabilities to exercise these rights, and the Government should consider adopting special measures where required.**

**Repeal provisions allowing for restriction of legal capacity in respect of health care matters, including the right to decide independently and provide informed consent. Reasonable accommodations and support must be made available to women and girls with disabilities, and the Government should consider adopting special measures where required.**

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1. Report of the Special Rapporteur on Violence against Women (the issue of violence against women with disabilities), A/67/227, report of 3 August 2012, para. 12. [↑](#footnote-ref-2)
2. The report is available online at: <http://www.who.int/disabilities/world_report/2011/en/> [↑](#footnote-ref-3)
3. Michelle Fine and Adrienne Asch, “Disabled women: sexism without the pedestal”, Journal of Sociology and Social Welfare, Soc. vol. 8, No. 2 (1981), cited in A/67/227, report of 3 August 2012, para. 20 [↑](#footnote-ref-4)
4. *Supra* note 1, A/67/227, report of 3 August 2012, para. 12. [↑](#footnote-ref-5)
5. *Ibid*. [↑](#footnote-ref-6)
6. Laurie E. Powers, Rosemary B. Hughes and Emily M. Lund. (2011). Interpersonal Violence and Women With Disabilities: A Research Update, available at <http://www.vawnet.org/applied-research-papers/print-document.php?doc_id=2077>. [↑](#footnote-ref-7)
7. *Supra* note 1, A/67/227, report of 3 August 2012, para. 30. [↑](#footnote-ref-8)
8. As found in a research conducted in Australia (The Guardian, *Domestic violence more severe against women with disabilities, research shows*, 10 June 2015, available at <http://www.theguardian.com/society/2015/jun/10/violence-much-more-severe-against-women-with-disabilities-research-shows>). [↑](#footnote-ref-9)
9. *Supra* note 1, A/67/227, report of 3 August 2012, para. 30. [↑](#footnote-ref-10)
10. *Stanev v. Bulgaria*, 36760/06 (2012) ECHR 45, judgment 17 January 2012, para. 250. [↑](#footnote-ref-11)
11. For more details see Mental Disability Rights Initiative, *Human rights oversight in institutional settings*, 2012, available at <http://www.mdri-s.org/wp-content/uploads/2013/10/human-rights-oversight-in-institutional-settings.pdf>. [↑](#footnote-ref-12)
12. (2011). *Out of Sight.Human Rights in Psychiatric Hospitals and Social Care Institutions in Croatia*. Mental Disability Advocacy Center and the Association for Social Affirmation of People with Mental Disabilities (SHINE), p. 58. [↑](#footnote-ref-13)
13. Human Rights Watch, *Human Rights for Women and Children with Disabilities* (2012), p. 14. [↑](#footnote-ref-14)
14. European Parliament, *Report on the situation of minority women in the European Union* (2003/2109(INI)), pp. 13. [↑](#footnote-ref-15)
15. *Supra* note 1, A/67/227, report of 3 August 2012, para. 30. [↑](#footnote-ref-16)
16. CEDAW/C/2010/47/GC.1, para. 37. [↑](#footnote-ref-17)
17. *Supra* note 1, A/67/227, report of 3 August 2012, para. 38. [↑](#footnote-ref-18)
18. Article 19 CRPD [↑](#footnote-ref-19)
19. CRPD Committee, Concluding Observations: Czech Republic, CRPD/C/CZE/CO/1, 15 May 2015, para. 39. [↑](#footnote-ref-20)
20. *Ibid.*, para. 38. [↑](#footnote-ref-21)
21. CEDAW Committee, General Recommendation No. 27 on older women and protection of their human rights, CEDAW/C/2010/47/GC.1, 19 October 2010, para. 37. [↑](#footnote-ref-22)
22. The action plan is available at:

<http://www.mpsv.cz/files/clanky/14540/III_vlada__Akcni_plan_staruti_.pdf> [↑](#footnote-ref-23)
23. Human Rights Council, The right to education of persons with disabilities: Report of the Special Rapporteur on the Right to Education, A/HRC/4/29, 19 February 2007, para. 7. [↑](#footnote-ref-24)
24. Statistické ročenky školství, výkonové ukazovatele, roky 2010/2011, 2011/2012, 2012/2013, 2013/2014, 2014/2015, kapitola C Základní vzdělávání, Tabulka C1.7.1 Základní vzdělávání – žáci/dívky podle druhu postižení – podle území, available online at: <http://www.msmt.cz/vzdelavani/skolstvi-v-cr/statistika-skolstvi/statisticka-rocenka-skolstvi-vykonove-ukazatele>. [↑](#footnote-ref-25)
25. BBC News, 28 October 2014, Roma complain of Czech school segregation, available at http://www.bbc.com/news/world-europe-29742282 [↑](#footnote-ref-26)
26. Human Rights Council, Thematic study on the rights of persons with disabilities to education: Report of the Office of the United Nations High Commissioner for Human Rights, A/HRC/25/29, 18 December 2013, para. 6. [↑](#footnote-ref-27)
27. Human Rights Council, The right to education of persons with disabilities: Report of the Special Rapporteur on the Right to Education, A/HRC/4/29, 19 February 2007, para. 7. [↑](#footnote-ref-28)
28. CEDAW Committee, General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of Discrimination Against Women, CEDAW/C/GC/28, 16 December 2010, para. 21. [↑](#footnote-ref-29)
29. Report of the Committee on the Elimination of Discrimination Against Women, U.N. Doc. A/46/38, 12 April 1994/ [↑](#footnote-ref-30)
30. *Ibid.*, para. 10. [↑](#footnote-ref-31)
31. *Ibid*., para. 19. [↑](#footnote-ref-32)
32. *Ibid.*, para. 10. [↑](#footnote-ref-33)
33. Human Rights Council, The right to education of persons with disabilities: Report of the Special Rapporteur on the Right to Education , A/HRC/4/29, 19 February 2007, para. 26-33, p. 12-13. [↑](#footnote-ref-34)
34. CEDAW Committee, Concluding observations: Slovakia, CEDAW/C/SVK/CO/5-6, 20 November 2015, para. 27. [↑](#footnote-ref-35)
35. According to Article 673 of the Civil Code, a “*person cannot enter into marriage if his or her capacity has been restricted in this respect*”. The court can restrict a woman’s right to enter into marriage on the basis of her disability. Although the Government does not make any statistics available, based on our direct experience, courts are frequently using this measure against young women with intellectual disabilities. [↑](#footnote-ref-36)
36. According to Article 865 (2) of the Civil Code, “*the court deciding on restriction of legal capacity can decide also on parental responsibility*”. Following this provision, when deciding on the restriction of legal capacity of a parent and usually mother, the court is under an obligation to decide on parental responsibility. The definition of parental responsibility is set out in Article 858 of the Civil Code covers the care of the child in its entirety, including health care, education, child contact, etc. In practice, restrictions of parental responsibility are made automatically when women with mental disabilities have their legal capacity restricted, and this is based on false and ungrounded assumptions that parents with mental disabilities are unfit to take care of a child. [↑](#footnote-ref-37)
37. CRPD Committee, General Comment No. 1: Equal recognition before the law CRPD/C/GC/1, 19 May 2014, para. 8. [↑](#footnote-ref-38)
38. *Ibid.*, para. 31. [↑](#footnote-ref-39)
39. CEDAW Committee, General Recommendation No. 21: Equality in Marriage and Family Relations, para. 16. [↑](#footnote-ref-40)
40. *Ibid*. [↑](#footnote-ref-41)
41. Article 23 (1)(a) CRPD in conjunction with Article 12 CRPD. [↑](#footnote-ref-42)
42. CESCR Committee, General Comment No. 5: Persons with Disabilities, 9 December 1994 para. 30. [↑](#footnote-ref-43)
43. CRPD Committee, Concluding Observations: Czech Republic, CRPD/C/CZE/CO/1, 15 May 2015, paras. 45 and 46. [↑](#footnote-ref-44)