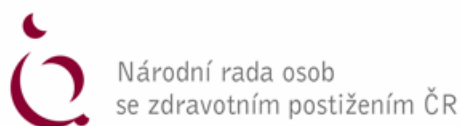




ALTERNATIVE REPORT
FOR THE UN COMMITTEE
ON THE RIGHTS
OF PERSONS WITH DISABILITIES

CZECH REPUBLIC
NOVEMBER 2011



List of contributors

- **Agentura pro podporované zaměstnávání Osmý den**
(Agency for Supported employment Osmý den)
 - Bc. Zuzana Thürllová
- **Asociace pomáhající lidem s autismem – APLA-Vysočina o.s.**
(Association of help for people with autism – APLA Vysočina)
 - JUDr. Dagmar Zápotočná
- **Asociace průvodců v problematice rizikového chování (APPRCH)**
(Association of guides in risky behaviour)
 - Mgr. Eva Pogodová,
- **AUTISTIK**
 - Ing. Milena Němcová
- **CEREBRUM – Sdružení osob po poranění mozku a jejich rodin**
(CEREBRUM – Association of persons after brain injuries and their families)
 - Dana Kollárová
- **Česká odborná společnost pro inkluzivní vzdělávání**
(Czech Expert Society for Inclusive Education)
 - Mgr. Lenka Felcmanová
- **Akademický odborník na zaměstnávání osob se zdravotním postižením**
(Academic expert on the employment of persons with disabilities)
 - JUDr. Jana Komendová, Ph.D.
- **Kolumbus, Sdružení uživatelů služeb psychiatrické péče hájící práva duševně nemocných**
(Kolumbus, Association of users of psychiatric services advocating for rights of persons with psychosocial disabilities)
 - Ing. Radek Prouza
 - Mgr. Michal Balabán
- **Lidé s tělesným postižením**
(Persons with disabilities)
 - Monika Henčlová
- **Liga lidských práv**
(League of Human Rights)
 - Mgr. Denisa Slašťanová
- **Mental Disability Advocacy Center (MDAC)**
 - Mgr. Zuzana Durajová
 - JUDr. Maroš Matiaško, LL.M
 - Mgr. Barbora Rittichová
- **Národní rada osob se zdravotním postižením ČR (NRZP ČR)**
(National Disability Council of the Czech Republic)
 - Mgr. Monika Heczková
 - JUDr. Jan Hutař

- Bc. Václav Krása
- **Občanská poradna Agentura Osmý den**
(Citizen's advisory centre Osmý den Agency)
 - Bc. Jitka Repešová
- **Quip – Společnost pro změnu**
(Quip – Association for a change)
 - JUDr. Dana Kořínková
- **Rytmus**
 - Mgr. Pavla Baxová
- **Společnost pro podporu lidí s mentálním postižením v České republice**
(Association for support for people with intellectual disabilities in the Czech Republic)
 - Camille Latimier
 - doc. PhDr. Jan Šiška, PhD.

Table of contents

List of contributors..... 3

Table of contents..... 6

Executive summary..... 8

Article 1: Purpose10

Article 5: Equality and non-discrimination11

Article 6: Women with disabilities13

Article 7: Children with disabilities14

Article 9: Accessibility15

Article 12: Equal recognition before the law16

Article 13: Access to justice20

Article 14: Liberty and security of the person23

Article 15: Freedom from torture or cruel, inhuman or degrading treatment or punishment
.....25

Article 19: Living independently and being included in the community26

Article 20: Personal mobility.....28

Article 21: Freedom of expression and opinion, and access to information.....29

Article 22: Respect for privacy.....29

Article 23: Respect for and the family.....30

Article 24: Education	31
Article 25: Health.....	33
Article 26: Habilitation and rehabilitation	35
Article 27: Work and employment.....	36
Article 28: Adequate standard of living and social protection	40
Article 29: Participation in political and public life.....	42
Article 30: Participation in cultural life, recreation, leisure and sport	44
Article 31: Statistics and data collection	45
Article 33: National implementation and monitoring.....	46
Graphs and tables	47
Sources	51

Executive summary

This report contains the views of a wide platform of DPOs, NGOs representing persons with disabilities and other organisations or individuals working with people with disabilities. This report covers the main areas of life of people with disabilities that are affected by legislation or practices that violate the respective articles of the Convention. Some crucial recommendations for the Czech Republic that emerge from the report are:

- **Adopt the definition of discrimination which is in line with the wording of the Convention:** Under the Anti-discrimination Code, the definition of reasonable accommodation is limited to employment issues and does not reflect wide understanding of this core disability rights principle, as was introduced by the CRPD. The Czech Republic should amend the Anti-discrimination Code to implement the principle of equality as understood by the CRPD.
- **Abandon the guardianship system and introduce a system of supported decision-making:** The current system of protection of people with mental disabilities is based on a traditional substitute decision-making model. People under plenary guardianship are legally “dead” and are therefore denied the most basic human rights, such as the right of access to justice, the right to enjoy and inherit property, the right to marry, the right to vote, etc. Although a new Civil Code, currently being discussed before Parliament does recognise supported decision making principles; the draft provisions still include the restriction of legal capacity. The draft of the Civil Code also introduced an old fashion terminology for legal capacity (“*svéprávnost*”) which is considered unacceptable by people with disabilities themselves because it holds negative connotations.
- **Promote the right to community living:** The process of de-institutionalisation has begun in the Czech Republic and some progress has been made. However, the government must actively develop alternative community-based services to stop any new admissions of children into residential institutions and allow adults with disabilities to make a real choice about their lives. Current policies are limited in scope and target exclusively persons with intellectual disabilities, other groups. *i.e.* persons with Alzheimer’s disease or psychosocial disabilities still face massive institutionalisation. To offer real alternative community-based services the government must invest in new types of services. In addition, substitute care for children with disabilities should be promoted to prevent them from institutionalisation. Staff of the residential institutions should receive appropriate life-long-learning education and transitional programmes to support autonomy and foster self-care among people who have lived in institutions should be developed at a larger scale.
- **Reform the system of involuntary hospitalizations.** The Czech Republic should reform its health laws so that the law does not provide for deprivation of liberty based on disability. The reform which is currently being discussed under the auspices of the Ministry of Justice must be regarded as a first step because it addresses only major human rights problems and does not address the core of the problem. Therefore the Czech Republic must assure the Committee that the reform will continue.
- **Education for all:** Inclusive Education is a myth rather than a reality in the Czech Republic. Statistical data show that the majority of children with disabilities are still educated in special schools. Although improvements can be found they do not apply equally to all children and

young people with disabilities, and children with intellectual disabilities particularly rarely benefit from integrated education. Inclusive education should be adopted as a principle in education legislation and children with special educational needs should benefit from individual support and reasonable accommodation, including financing on the basis of their needs and not on the basis of their disability.

- **The right to work should be fulfilled.** The state should guarantee that persons with disabilities are not excluded from the labour market. The Czech Republic should support employers to ensure that employment of persons with disabilities does not mean an inadequate burden for them. The Labour Law should recognise a specific category of disadvantaged persons with disabilities.
- **Participation of people with disabilities in society and in all matters that affect them:** The lack of provisions to implement article 33 CRPD shows the lack of coordination and transparency in the cooperation between government bodies. Mainstreaming disability issues to ensure that people with disabilities are included in all programmes and policies throughout all the relevant sectors needs to be establish. It is also crucial to work with families at all ages of the children according to their development. The government should support advocacy and self-advocacy movements to support the citizenship of people with disabilities, who are denied equal participation in society and in matters affecting them.

Article 1: Purpose

1. The Czech Republic has lately adopted certain measures which aim to limit the rights and freedoms of persons with disabilities rather than to protect these rights. For instance, the measures restricting rights of persons with disabilities are an integral part of the upcoming reform of social benefit systems. Since 2010, the changes of the pension system have entered into force; these changes merely introduced of 1st degree of disability with lower amount of pensions and resulted in a decline of finances of persons with disabilities. The average amount of top level disability pension awarded in the second quarter of 2011 amounted to 5 241 CZK (approx. 210 euros) for men and 4 815 CZK (approx. 193 euros) for women. For comparison, originally awarded partial disability pensions in the same period of 2009 amounted to 6 602 CZK for men (approx. 264 euros) and 5 993 CZK for women (approx. 240 euros). A new method of pension calculation which will be in force from 1. 10. 2011 will lead to newly awarded pensions being substantially lower in many cases than under the previous regulation. The previously mentioned upcoming social reform in the originally proposed version markedly restricts freedom of movement, the right to choose social services and the environment in which the person with a disability will live, possibilities for parents to take care of children with a disability in their home environment, a decline in the availability of devices and will also have a number of very negative impacts on other areas.

The primary impact of the originally proposed measures for persons with disabilities resulting from the draft amendment to the Act on provision of social benefits to persons with disabilities, and amending related laws:

2. Abolition of passes; abolition of benefit for motor vehicle purchase, abolition of benefit for barrier free flat and garage; worsened conditions for mobility benefit; obligation of quarterly report concerning applicant's amount of income but also of jointly assessed persons (husband, wife, parents or children who had their own income); mobility benefit should amount only to six times an individual's living wage $3\,125\text{ CZK} \times 6 = 18\,756\text{ CZK}$ ($125 \times 6 = 750$ euros), i.e. 79 % of the average wage in year 2010 (23 665 CZK. i.e. 947 euros); worsening conditions for provisions and limitation of benefit for special devices.

Primary problems of the draft amendment to Act No. 108/2006 Coll. on social services:

3. Care benefit should be available from the third year of child's age, this will cause the loss of up to 6 400 CZK per month (256 euros) for children under three years of age who are long-term heavily disabled; change of the delimitation of basic living needs (this measure would completely exclude from possibility of obtaining benefit children who are reliant on specialised nutrition, suffering from cancer, suffering from internal diseases, etc.); the unused part of the benefit for social services should cease in the next month; introduction of obligation of caregivers and persons with disabilities to set up a bank account and report the number of this account to the employment office.

Problems of the draft amendment to Act No. 117/1995 Coll. on state social support:

4. Abolition of entitlement for parental benefit for children from 4 to 7 years of age which will cause a loss of income of approx. 4 600 CZK per month (184 euros) and for older children who don't meet the conditions for admission of first level care benefit to the amount of 3 000 CZK per month (120 euros). It concerns children with disabilities which necessarily require specialised diets (phenylketonuria, celiac disease and other metabolic disorders), children with cancer, and children suffering from other serious internal diseases. Another problem is the proposed

inclusion of care benefit in chargeable incomes for housing benefit purposes which would mean that people living outside Prague would have to pay 30% of the care and housing benefit and in the case of people living in Prague this percentage would increase to 35%.

Basic problems of the draft amendment to Act No. 435/2004 Coll. on employment:

5. The shortening of the decision period for relief of unemployment entitlement from 3 to 2 years, which will significantly affect persons with disabilities (see chart of the average period of unemployment specified in article 27); abolition of the persons with health disadvantage category; restrictions on financial support for employment of persons with disabilities only for protected job positions and at the same time a reduction of the maximum amount of provided benefit from the current 139 404 CZK (5 576 euros) to 48 000 CZK (1 920 euros); abolition of tax relief for employers of persons with disabilities; The possibility of employers who are obliged to employ people with disabilities choosing instead to source products and services from a company with a workforce comprised of over 50% people with disabilities was almost entirely removed.
6. Generally it can be stated that persons with disabilities have been chosen as the main source of financial savings in the state budget. At the same time ongoing medical reform will make life far harder for people with disabilities.
7. After mass protests by persons with disabilities (petitions, protest rallies and a demonstration in front of the Ministry of Labour and Social Affairs) a meeting has taken place between the Ministry of Labour and the National Counsel of Persons with Disabilities, with the following consequences: passes remain, including entitlements resulting from them; benefit for motor vehicle purchase is also retained; conditions concerning provision of mobility benefit are changed; obligation of income report is not imposed. There was a change also in the case of devices, that the price of devices has been reduced to 24 000 CZK (960 EUR) and in fact income has been increased to eight times the living wage. Partial compensation of benefit care loss was agreed, resting in a special bonus of 2 000 CZK (80 EUR) for families with income up to double the living wage and there has also been a change in the conditions of residence of persons in social institutions and delimitation of basic necessities of life concerning children mentioned in paragraph 4. Proposed cessation of unused part of benefit on social services in the following month has been omitted. Also the measure concerning inclusion of care benefit in chargeable incomes for purposes of housing benefit has been omitted, so the effects listed below this point will not occur. Regarding the proposed amendments to the employment law, there was a postponement of the abolition of the persons with health disadvantage category for 2 years and the abolition of the possibility of employers whose staff comprises 50% persons with disabilities supplying products or services to employers who are obliged to employ persons with disabilities and who do not comply with it directly by employing but by collecting the products and services has been abandoned.

Article 5: Equality and non-discrimination

8. Principle of equality is generally regulated by Art. 3.1 of the Declaration of Basic Rights and Liberties. Concrete protection against discrimination is guaranteed in particular by anti-discrimination Act No. 198/2009 Coll. Crucial element in the protection against discrimination of persons with disabilities is the principle of reasonable accommodation. Anti-discrimination Act regulates this concept, but only in relation to employment of persons with disabilities. This Act in

§ 3 sub. 2 state that indirect discrimination on grounds of disability is understand also as refusal or failure to take reasonable steps to ensure that person with disability has access to specific job, to working activity or to functional or other progress in employment, to employ career counselling or to participate in other vocational education or to employ services given to public. It will be considered as indirect discrimination only then, when measures don't cause undue burden.

9. There are two worrying aspects of this legislation. First, it is a very narrowly conceived definition of reasonable accommodation that does not match the understanding of this concept according to Art. 5 of the Convention. And further, the undue burden, or assessing whether a particular action constitutes undue burden is defined so broadly that it virtually prevents the application of the rule on the obligation of creating reasonable accommodation and measures.
10. We believe that the State is obliged to ensure that persons with disabilities have the right to reasonable accommodation in all areas of life. Except area of employment the attention can be drawn to the following areas: I.) Provision of information: It is always necessary to take such measures that would allow a maximum access to information for all persons with disabilities; II.) Transportation: It is necessary that there has been widespread adoptions of reasonable measures and accommodation that the transportation would be available and accessible to persons with disabilities; III.) Justice: It is necessary that State ensures access to justice for persons with disabilities and controls implementation of these provisions. There are both technical arrangements and administrative procedures, but also adequate changes of procedural rules so that persons with disabilities have a possibility to actually exercise their rights; IV.) Prison service: It is necessary that State ensures the right of reasonable accommodation for persons with disabilities in situation when they are deprived of personal freedom. Act No. 169/1999 Coll. on execution of punishment of imprisonment guarantees¹ this right but legislation is missing in the case of custody²; V.) Education: It is necessary that State ensures reasonable accommodation in the area of education for persons with disabilities. Accommodation should be made individually according to the needs of each child and may rest for example in a barrier free access to schools, the use of special teachings aids, provision of trained personal assistants and education of teachers and other school employees; VI.) Participation in political life: It is necessary to use reasonable accommodation which should help persons with disabilities to fully participate in political life of the country. This may be for example specific measures which allow these people participation in the election process such as the possibility to use an assistant, special modification of ballot, electronic election and more.

11. Recommendation:	<ul style="list-style-type: none"> ❖ It is necessary to implement the definition of discrimination based on disability so that the definition of reasonable accommodation fits the definition under the Convention. ❖ It is also necessary to provide reasonable accommodation for persons with disabilities in other areas, except the area of employment, especially: <ul style="list-style-type: none"> I.) Provision of information: It is always necessary to take such measures that would allow maximum access to information for all persons with disabilities ; II.) Transportation: There should be widespread adoption of reasonable measures and accommodation so that
----------------------------	---

¹ Act No. 169/1999 Coll. on execution of punishment of imprisonment, par. 16 sub. 6.

² Act No. 293/1993 Coll. on execution of custody.

	<p>transportation will be available and accessible to persons with disabilities;</p> <p>III.) Justice: It is necessary that the State ensures access to justice for persons with disabilities and controls implementation of these provisions. This requires both technical arrangements and administrative procedures, but also adequate changes of procedural rules so that persons with disabilities have the possibility to actually exercise their rights;</p> <p>IV.) Prison service: It is necessary that the State ensures the right of reasonable accommodation for persons with disabilities in situations where they are deprived of personal freedom. Act No. 169/1999 Coll. on execution of punishment of imprisonment guarantees this right but legislation is missing in the case of custody;</p> <p>V.) Education: It is necessary that the State ensures reasonable accommodation in the area of education for persons with disabilities. Accommodation should be made individually according to the needs of each child and may rest for example in barrier free access to schools, the use of special teachings aids, provision of trained personal assistants and education of teachers and other school employees;</p> <p>VI.) Participation in political life: It is necessary to use reasonable accommodation which should help persons with disabilities to fully participate in the political life of the country. This may be for example specific measures which allow these people participation in the election process such as the possibility to use an assistant, special modification of ballot, electronic voting and more.</p>
--	---

Article 6: Women with disabilities

12. Discrimination against women with disabilities is rather a marginal phenomenon in the Czech Republic. If some inequality appears, it is primarily due to the disparities in pay between men and women and due to the fact that the women's retirement age is still slightly lower than the men's retirement age, resulting in lower disability pensions.
13. A study prepared by the National Disability Council of the Czech Republic within the EQUAL project aimed at women in the labour market, showed that the proportion of women with disabilities within the total number of unemployed persons with disabilities is virtually identical to the total share of women in the total number of job seekers. Although detailed monitoring took place between 2003 and 2006, this confirmed the continued validity of previously collected data. Disability is a clearly evident decisive factor in the labour market.

Article 7: Children with disabilities

- ❖ The measures contained in national policy documents to transform and unify the system of care for vulnerable children³ in the Czech Republic remain unfulfilled. We find the reasons for this particularly in the ongoing public apathy towards topics related to children with disabilities and their families and a lack of extensive expert dialogue on these issues.
- ❖ The fragmentation of the issue between departments makes the creation of conceptions or strategies much more difficult.⁴ This leads to a conservative and unsatisfactory form of care for children with disabilities. It should be emphasized that neither the State's Third or Fourth Periodic Report to the UN Committee on the Rights of the Child⁵ nor NGO alternative reports contain any information on the situation of children with disabilities in the context of the relevant articles of the Convention.
- ❖ Inconsistencies in care for these children and their families have resulted in a disparate legislation, lack of coherent data, insufficient availability and interrelatedness of social services. The family of a child with disabilities is faced with a lack of information and is often dependent on solving the unfavourable situation on their own in the areas of education, social services and health care. One of the consequences of this situation is the growing number of children with intellectual disabilities in institutions.
- ❖ The alternative reports to the Committee for the Rights of the Child are agreed that there is a lack of united methodological procedures and standardization of methods of social work in the area of child protection from violence and neglect. *The National Strategy for Preventing Violence against Children for 2008-2018* deals with all forms of violence perpetrated against children. According to this strategy there is no overall valid data on violence against children in the Czech Republic. The issue of torture and abuse of children with disabilities is not covered by this strategy at all. The third and fourth periodic report to the Committee on the Rights of the Child (2008) also does not address the issue of rehabilitation of children with disabilities in the context of disability. The extent and effectiveness of fieldwork in the Czech Republic is inadequate. There is not enough time for continuous work with vulnerable families and other preventive action. Improving the situation of child protection against neglect, maltreatment or exploitation, requires a fundamental change in the nature of social work in the country.
- ❖ There are no sufficient statistical data on the numbers of children with disabilities placed in institutional facilities. It is estimated that the number of children in institutions in the Czech Republic is rising. Although there has been an improvement in the standard of living in institutions, there are still cases where adults live together with children and sometimes the whole functioning of the institution, including the internal rules, is designed for adult residents. The right of a child (with an intellectual disability) placed in the institution to express their opinion is not fulfilled.
- ❖ Some common reasons for placing a child in institutional care facilities include the inability of parents to provide adequate care, which is often caused by the absence or inaccessibility of

³ In particular, the Concept of care for vulnerable children and children living outside their own families, adopted by the government in 2006 and the National Action Plan to transform and unify the system of care for children at risk for the period 2009 to 2011, adopted by the government in 2009.

⁴ The care for vulnerable children is the responsibility of three different agencies - the Ministry of Labour and Social Affairs, Ministry of Health and the Ministry of Education, while there is no interagency body established that would deal with this topic.

⁵ The third and fourth Periodic Report on the fulfilment of obligations under the Convention on the Rights of the Child and the Government's information on the implementation of the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict Article 127 (2008).

social services, including community or advice services. Another common reason is the unfavourable economic situation of a family who does not have sufficient funds to cover the costs of the social service.

- ❖ The issue of health care provided to children with disabilities remains ignored. These children are not recognised as a marginalized group. The support in health care provided to parents of children with intellectual disabilities is almost non-existent. Due to the complexity of care for children with intellectual disabilities, the parents experience problems with access to medical care, its consistency and alarming lack of information.
- ❖ Discriminatory situations that parents of children with intellectual or combined disabilities face are often linked to discrimination on the basis of the connection to a person. In addition, families from rural areas suffer from the lack of education and facilities offering education opportunities

14. As for the opinion of the child themselves, although the Code of Civil Procedure was amended for the opinion of a child to be respected during a court procedure, there are no experiences with the task of determining the opinion of a child with intellectual disabilities.

15. Recommendation:	<ul style="list-style-type: none"> ❖ It is necessary to unify the system of care for vulnerable children, especially to set up an interdepartmental body which will permanently deal with the topic of endangered children. ❖ Access to information on education, social and health care for families with children with disabilities must be simplified. ❖ It is necessary to ensure fulfilment of the obligations of government policies relating to the care of endangered children. ❖ It is necessary to improve the system of social care for children with disabilities and their families, which should be directed in particular to prevent institutionalization of children and protect them from violence and abuse. ❖ The right to of a child with disabilities to participate in judicial proceedings that concern him should be recognised, including ensuring reasonable accommodation for the exercise of this right.
----------------------------	---

Article 9: Accessibility

16. The issue of the accessibility of buildings, other indoor and outdoor facilities, schools, housing, medical facilities, etc., is dealt with in the Act No. 183/2006 Coll., the Building Act, and especially in the Regulation No. 398/2009 Coll.⁶ Observance of these legal regulations is not without problems, it happens very often in practice that the obligation not to create physical barriers is not respected. As regards transportation, all vehicles have to comply with the required standards and norms. In the Czech Republic there are no “talking” buses or trams that would help visually impaired people to orientate find their way in the public transport system, in line numbers and directions.

⁶ Regulation No. 398/2009 Coll., on general technical requirements for barrier-free use buildings.

17. As regards the accessibility of public facilities, very often the right of hearing-impaired people to the presence of an interpreter in dealings with authorities is disrespected. The presence of an interpreter is refused on the grounds that the interpreter is not a participant in the dealings. Very often authorities do not respect the needs of hearing-impaired people with regard to interpreting. The use of Braille is determined in many legal regulations.⁷ There are deficiencies in the accessibility of court proceedings for persons with mental disabilities, there are no standard rules concerning communication with persons with mental disabilities in court proceedings, there are no rules for delivering court decisions. In most cases related to the proceedings concerning legal capacity or involuntary hospitalization persons with mental disabilities are typically excluded from the proceedings.⁸

18. Recommendation:	<ul style="list-style-type: none"> ❖ It is necessary to protect the right of persons with disabilities to accessibility in all aspects of life and to ensure the full observance of this right, especially by enforcing the observance of legal regulations related to this aspect. ❖ It is necessary to ensure barrier-free access to all public buildings and public transport vehicles. ❖ It is necessary to ensure the accessibility of all court proceedings for persons with mental disabilities.
----------------------------	--

Article 12: Equal recognition before the law

19. The Czech legislation makes a difference between legal subjectivity and capacity to enter into legal transactions. Article 5 of the Charter of Fundamental Rights and Freedoms says that all people have the capacity to have rights. It is not possible to deprive anyone of this capacity or to restrict it.

20. The issue of capacity to enter into legal transactions is treated differently.⁹ A court can deprive a person of the possibility to make legal decisions on their own or they can restrict it but it has to be done in special court proceedings.¹⁰ It concerns the concept of substitute decision-making, which means that the person who is deprived of their legal capacity or whose legal capacity is restricted has a court-appointed guardian. The guardian is responsible for decision-making in those issues in which the person with a disability cannot decide on their own, including everyday matters.

21. According to the current wording of the Civil Code, two conditions have to be met simultaneously in order to restrict a person's legal capacity. The first condition is an existing permanent mental disability and the second condition is the person's inability to perform all or some legal acts.¹¹ But practice shows that most persons with mental or psychosocial disabilities are deprived of legal capacity regardless of their ability to perform legal acts. The number of

⁷ For example, the Act No. 243/2008 Coll., Education Act, the Act No. 155/1998 Coll., on Communication Systems for Hearing-impaired and Deafblind Persons; and the Act No. 378/2007 Coll., on Medication.

⁸ For details see Article 12 and Article 13.

⁹ See § 10 of the Act No. 40/1964 Coll., Civil Code.

¹⁰ See § 186 – 191 of the Act No. 99/1963 Coll., Civil Procedure Code.

¹¹ §10 para. 1 and 2 of the Civil Code.

persons who are deprived of legal capacity or whose legal capacity is restricted is still increasing. Presently, 5,741 persons have restricted legal capacity and 26,520 persons are deprived of legal capacity.¹² This means that the number of persons who are deprived of legal capacity is 4.5 times higher than the number of persons whose legal capacity is only restricted. There are two reasons for this – deficiencies in the legislation and bad, overly formalistic, practice of courts. In practice, the courts do not use the articles of the Convention.

22. Although the current legislation provides for restoration of legal capacity in legally defined circumstances,¹³ it rarely happens in practice.¹⁴ Moreover, Czech legislation does not contain any provision concerning a regular reassessment of such measures by a responsible authority or court; the lack of regular reassessment is in contradiction of Point 4 of Article 12 of the Convention.

Proceedings concerning legal capacity and guardianship

23. The legislation concerning legal capacity contains many problematic provisions that worsen the position of a person with disability in such proceedings. Although these are mostly exceptions to the general legislation, they are very often used. This means that the rights of a party to the proceedings are significantly restricted. This mainly concerns the right to information on proceedings, the right to participate in the proceedings, the right to give one's opinion, the right to delivery of court decision and the right to efficient legal representation. Violation of one of these rights can lead to the impossibility of exercising other rights.
24. In practice, the proceedings concerning legal capacity are affected by formalism. The disadvantage of the proceedings is the fact that anyone can initiate the proceedings. And the person who is subject to the examination does not have to learn about the proceedings, which is a severe flaw. The law provides for a rule that says that if an expert's opinion states that the person under examination is unable to understand the meaning of the decision, the court may decide that decision on restriction or deprivation of legal capacity will not be delivered.¹⁵ This means that in practice many other decisions fail to be delivered as well.
25. A related problem is the fact that the persons are not actually asked whether they want to choose their own representative in the proceedings. If the representative is court-appointed, they do not represent their clients well. (Lawyers do not establish sufficient communication with their clients and do not sufficiently enforce their clients' interests.) The law also provides for the possibility of not interrogating the person under examination in cases where the interrogation cannot be done at all or without harming the health of the person.¹⁶ This provision is very often (ab)used, which can lead to the deprivation of the person's possibility to participate in the proceedings and to protect their rights.
26. A severe restriction of human rights represents a forced examination in a medical facility, which can be ordered by court upon an expert's recommendation. In this way a person can be involuntarily hospitalized for up to 6 weeks. The provision § 186.3 of the Civil Procedure Code is also in contradiction with Article 12, as it enables the court that once refused to restore a person's legal capacity to decide in such way that the person under examination cannot submit another proposal for a period of up to one year. This is an exceptional intervention in personal rights and human integrity, when a person's right to access to justice is denied.

¹² Information based on the statistics of the Ministry of Interior, 29th June 2011.

¹³ §10 para. 3 of the Civil Code.

¹⁴ In 2010, in 2,045 cases the courts deprived persons of legal capacity, and in 816 cases the courts restricted a person's legal capacity, but only in 45 cases the courts restored a person's legal capacity.

¹⁵ See § 186 of the Act No. 99/1963 Coll., Civil Procedure Code.

¹⁶ See § 187 para. 2 of the Act No. 99/1963 Coll., Civil Procedure Code.

27. The whole proceedings concerning legal capacity are affected by much formalism, in most cases the decision is given after a single meeting, on the grounds of a single expert's opinion, without examining other evidence. Experts' opinions of psychiatrists are being accepted without any doubt.¹⁷ It happens very often that the psychiatrists are not sufficiently trained in discerning the abilities of persons with mental disabilities or brain injuries. These facts together with the inefficient legal representation present a severe intervention in rights of persons with disabilities to fair trial.
28. The current legislation does not define any period within which the court should appoint a guardian of the person who is deprived of legal capacity or whose legal capacity is restricted. The proceeding concerning legal capacity and the proceedings concerning guardianship go on separately, which means that the person deprived of legal capacity can be without a guardian for several months, living in a "legal vacuum".

Performance of guardianship, substitute and support decision-making

29. In the Czech Republic, the protection of persons with mental disabilities is solely provided by the system of substitute decision-making. The State does not provide appropriate and efficient warranties against abuse, e.g. there are no legally defined competences of the guardian and the State does not supervise a proper training of guardians.
30. Measures that are in use in the Czech Republic do not offer sufficient warranties for ensuring that the rights, decisions and preferences of the affected person will be respected. There is no legally defined mechanism to check for possible abuse of the guardian function. The individual can only propose a change of guardian, file a complaint against the guardian or ask for the appointment of a collision guardian. These options are often inefficient, as the complaints or proposals of change are being decided by courts for months, and moreover, evidence is restricted to examining how the guardian handles the affected person's property.
31. In the Czech Republic there are many persons with mild mental disabilities who are totally deprived of legal capacity and are institutionalized. Very often the guardian does not communicate either with the services provider or with the person under guardianship. This makes it very difficult, if not impossible, for the persons under guardianship to prepare and carry out the transition to protected housing.
32. So far, the State has not adopted appropriate measures which would enable people with disabilities to access assistance in exercising legal capacity. There is only a social service of personal assistance.¹⁸

Right to property and inheritance and equal access to property

33. The right to own property is guaranteed by the Constitution of the Czech Republic.¹⁹ But the handling of property is significantly limited in cases of persons who are deprived of legal capacity or whose legal capacity is restricted. In these cases the property is partly or totally handled by a court-appointed guardian. Due to an insufficient legislation on guardianship it happens that the guardian handles the entire property of the person under guardianship without having to respect the person's instructions and interests.
34. So far, the Czech Republic has not adopted the necessary measures that would ensure that persons with disabilities who are deprived of legal capacity or whose legal capacity is restricted

¹⁷ The formality of legal capacity has been criticized by the Constitutional Court in its decision from 7th December 2005, file No. IV.ÚS 412/04 or in its decision from 18th August 2009, file No. I. ÚS 557/09.

¹⁸ § 39 of the Act No. 108/2006 Coll., on Social Services.

¹⁹ The Charter of Fundamental Rights and Freedoms, Article 11 /1.

have equal access to loans, mortgages and other forms of financial credit. Moreover, these persons cannot handle their financial affairs, decide about their inheritance or draw up a will.

Draft of a new Civil Code

- 35. In 2008, the draft of the new Civil Code was turned down by Parliament and returned for further modification, resulting in postponing the possibility of abolishing the concept of total deprivation of legal capacity.
- 36. When this report was being prepared, Parliament had been discussing the draft of the new Civil Code, which would introduce many significant changes, including the abolition of the concept of deprivation of legal capacity. Nevertheless, the draft still provides for restriction of legal capacity. Furthermore, the new Civil Code introduces new concepts that would enforce the legal position of persons with disabilities. These are the concept of supported decision-making – “Assistance in decision-making”, the possibility of making “a preliminary legal statement”, and the concept of representation by a household member.²⁰
- 37. Another problematic issue is the re-introduction of former terminology concerning the concept of deprivation of legal capacity as well. The draft of the new Civil Code reintroduces the terms of “person under restraint”, which carries a negative connotation for persons with disabilities as well as for the general public.

Right to vote

- 38. Persons whose legal capacity is restricted have an unrestricted right to vote. But persons deprived of legal capacity are also legally deprived of their right to vote.²¹ This issue is dealt with in the commentary on Article 29.

Family rights

- 39. When a person is declared as a person with restricted legal capacity or a person deprived of legal capacity, the person is also legally and automatically deprived of other rights, without ever examining the person’s abilities and skills in the matters in which the person is to be restricted, including family rights. For more details see commentary on Article 23.

40. Recommendation:	<ul style="list-style-type: none"> ❖ The law should not provide for any intervention in legal capacity of persons with disabilities. ❖ It is necessary for the State to introduce measures based on the systems of supported decision-making, including provisions against possible abuse. ❖ It is necessary to remove any provisions concerning legal capacity that are in contradiction with the actual exercise of rights. ❖ It is necessary to draw up the legislation on guardianship in compliance with the Convention, current social and legal trends and the actual needs of people with disabilities.
----------------------------	---

²⁰ Provision §§ 45–48 and §§ 49–54 of the government draft of the Civil Code (May 2011).

²¹ Provision § 2 (b) of the Act No. 247/1995 Coll., on Parliamentary elections in the Czech Republic. Similar provisions can be found in other acts concerning elections to city or regional councils or elections to the European Parliament.

Article 13: Access to justice

41. Currently, the Article 13 of the Convention is not being implemented sufficiently in the Czech Republic. Although the Czech legal order establishes a lot of rules regarding respect for rights of persons with disabilities,²² these provisions are not satisfactory in reality.
42. Currently, the right of persons with disabilities to a fair trial is not respected properly. Despite the fact that appropriate procedure is declared in some legislation, it is not always implemented in practice. First of all, the legal rules concerning access to justice do not stipulate the duty to make reasonable accommodations which would allow persons with disabilities to fully exercise their rights.

Legal barriers

Position of a person with disabilities as a party to judicial proceedings

43. Although our legal order generally provides the parties to proceedings and other persons participating in the proceedings with a number of rights, there are also many exceptions to the general regulation which apply to persons with disabilities, and in particular to persons with mental disabilities. These exceptions in fact make it impossible for persons with disabilities to exercise their rights. The exceptions present in our legal order specifically include proceedings concerning legal capacity or so called detention proceedings, i.e. proceeding concerning permissibility of admission and further detention in a health care institution.
44. The rights of parties are often not respected in the proceedings concerning legal capacity. This issue is addressed in more detail in the commentary on Article 12.
45. Similar issues arise in proceedings concerning declaration of permissibility of admission in a health care institution, or so called detention proceedings.²³ Due to a lot of exceptions, the rights of persons with disabilities are not implemented properly in these proceedings either. From the moment of admission to the medical facility the person placed there is not properly informed about the nature of the proceedings and about the rights that they enjoy as a party to proceedings. In practice, the person is not properly asked whether they wish to choose their legal representative, and the representative is, often even without their knowledge, appointed for them by the court. The person is not sufficiently informed about the course of the proceedings, and the rules on delivery are not properly observed.²⁴ Sometimes the person is not even heard, which happens if the physician informs the court that the person is unable to be heard.²⁵ These cases result in a situation when the court decides without the person detained in the medical facility even knowing about the course of the proceedings and having real opportunity to influence it. This negative practice is further highlighted by the lack of interest of the court-appointed representatives in this issue. The presented issue is further addressed in the commentary on article 14.

²² The rights of persons with disabilities are primarily protected by the art. 90 and 96 of the Constitution of the Czech Republic, art. 36 et seq. of the Charter of fundamental rights and freedoms; rules for the procedure before a court are established in the Civil Procedure Code, Act. No. 99/1963 Coll., as well as in other pieces of legislation.

²³ See § 191 et seq. of the Civil Procedure Code.

²⁴ In compliance with § 191c para. 1 of the Civil Procedure Code, the court decision will not be delivered to the persons if the attending physician states that the person is not able to understand the contents of the decision.

²⁵ See § 191b/3 of the Civil Procedure Code.

The role of the guardian

46. In the Czech Republic the concept of a guardian, deciding in so called substitute decision-making, i.e. acting on behalf of the person for whom they have been appointed, has been introduced. Notwithstanding that the guardians are appointed for the people deprived of or restricted in legal capacity to protect their rights, these representatives do not always act in harmony with the interests of the represented persons.
47. If the persons with disabilities are deprived of legal capacity they are almost completely denied legal access to courts on their own, except for the proceedings which may be initiated by the decision of the court itself. It follows that the persons, for instance, cannot seek compensation for damages before court, unless their guardians do it. Given the lack of any institution controlling the exercise of guardians' duties or reviewing all spheres of their activities in the Czech Republic at the present time, such persons with disabilities might in practice be prevented from access to justice. Persons deprived of legal capacity and their rights are wholly dependent on the will of their guardians who decide whether they bring the eventual action. This is contrary to Article 13.

Actual position of a person with mental disability in the proceedings

48. In many cases the right of persons with mental disabilities to a fair trial is violated. These persons are considered not sufficiently credible and their various submissions are not often dealt with in the appropriate way. Even the Public Defender of Rights pointed out the negative practice which is applied to these persons with disabilities in his reports.²⁶ He underlined for example the lack of a complaint mechanism in psychiatric hospitals. The stigma of a person with mental disability, or a person deprived of or restricted in legal capacity brings about a situation when the general rules are not always fully observed.

Reasonable accommodations to exercise the right to a fair trial

49. Almost all legislation is accessible only in the classic, written form. Only a minimum amount of the legislation is accessible in a form perceivable for persons with disabilities. Not even court decisions, decisions of other authorities or other important documents can be received in a simplified version or so called easy-to-read form. This fact constitutes a principle difficulty obstructing access to justice for the persons with disabilities.
50. The legislative acts stipulate no rules for adapting judicial proceedings to persons with intellectual or mental disabilities, or persons with a brain injury to whom all these problems also relate.²⁷ This results in significant consequences. Authorities often consider these persons not credible, probably because of the inability to communicate with these persons.
51. It is quite common that, without any detailed examination, such persons are not accepted as witnesses, for example, although they might be able to give information on the case. Public officers who deal with the persons with intellectual or mental disabilities are not trained in how to approach these persons and how to treat them. Such situation brings about principal problems regarding exercise of procedural rights, and consequently also material rights for the persons with such disabilities.

²⁶ Public Defender of Rights, Report on visits to mental homes, September 2008, The Right to file complaints, pp. 51 et seq. (Veřejný ochránce práv, Zpráva z návštěv psychiatrických léčeben, Zář 2008, Právo podávat stížnosti). Available at:

<http://www.ochrance.cz/fileadmin/user_upload/ochrana_osob/2008/SZ_psychiatricke_lecebny_08.pdf>.

²⁷ The issues of persons with intellectual or mental disabilities concern also persons after brain injuries that have affected their rational or volitional capacities.

- 52. According to the Civil Procedure Code, § 18/2, the court appoints an interpreter from the list of interpreters for the party to the proceedings also in case that it is not possible to communicate with the party but with using one of the deaf and deaf-blind communication systems. However, the act establishes no other reasonable accommodations to ensure equal access to justice for these persons (for example interpretation to some alternative forms of communication, adaptation of courtrooms, etc.). This fact then results in the impossibility of persons with specific type of disability to exercise fully their rights.
- 53. The number of interpreters is also important. In proceedings where there are persons with disabilities who need an interpreter on both competing sides it is not possible that only one person performs this function. Furthermore, there might be a difference in the needs of both parties resulting in other difficulties; for instance, one party might use the method of sign language interpretation while the second party might use so called signed Czech. (The differences in preferences of interpretation methods follow from the differences in the sense of hearing condition, but also from the learned abilities etc.) Such interpreting would be not only extremely hard for the interpreter but it would also hardly be practicable from a technical point of view.
- 54. The accessibility of court buildings is also problematic. Although the legislation provides that access to all courts must be ensured by horizontal paths, staircases and parallel wheelchair ramps or elevators, or, under certain circumstances, by lifting platforms,²⁸ a large number of court buildings are not sufficiently equipped with barrier-free facilities at this time. This deficiency affects the access to justice for persons with disabilities.

55. Recommendation:	<ul style="list-style-type: none"> ❖ The State should abolish those statutory provisions which restrict access to justice for persons with disabilities and which disadvantage them in their procedural position. ❖ It is necessary to provide also persons deprived of or restricted in legal capacity with the possibility to claim their rights and protect their interests before court. ❖ The State should ensure the accessibility of the legislation for persons with disabilities. ❖ The State should make adequate reasonable accommodations of a technical nature in order to ensure the full accessibility of judicial and other proceedings for persons with disabilities. ❖ It is necessary to ensure a sufficient number of interpreters for sign language or other types of communication to be available for judicial proceedings. The State should train those working in the field of justice and state administration and in other institutions in how to communicate with persons with disabilities.
----------------------------	---

²⁸ See § 6 para. 2 of the Regulation No. 398/2009 Coll., on general technical requirements for barrier-free use of buildings.

Article 14: Liberty and security of the person

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

Involuntary hospitalisations

57. Involuntary hospitalisations are a common phenomenon in the Czech Republic, as the intervention social services that could prevent involuntary hospitalisations are almost non-existent in the Czech Republic.²⁹ The law does not require the use of less restrictive measures before hospitalisation. The proceedings on the involuntary hospitalisation are regulated in the Czech Republic by.³⁰ § 191et seq. of the Act no. 99/1963 Coll., Code of Civil Procedure. A person may be hospitalised without their consent if , they show signs of a mental illness and they are dangerous to themselves or others³¹ Within 24 hours of admission, every involuntary hospitalisation must be announced to the respective court, which must subsequently decide on the lawfulness of this admission.

58. The detention proceedings are often formal and they suffer from procedural flaws. As apparent from the statistics³² the courts state that the admission was lawful in almost 100% of cases. For instance, as seen in table no. 1 and graph no. 1³³, **in 2006, the courts presided over 9332 cases and they stated that the detention was unlawful only in 6 of the cases.**

59. Although the law requires for a person to be represented in the proceedings, the representation is not effective in most of the cases. As apparent from the statistics, the representation is often merely formal, in most of the cases they do not even appeal against the decision on the lawfulness of the admission. For instance, as seen in the graph no. 2³⁴, **in 2009, from 9332 cases only 110 appeals were submitted, i.e. only in 1% of the cases.** This practice shows that in most cases, the appointed attorneys do not appeal against the decisions.

60. Another issue is the state of the proceedings in cases when a person that was involuntarily hospitalised agrees subsequently with the hospitalisation or is released before the decision of the court. According to the Opinion of the Supreme Court from January 14th 2009 *Cpjn 29/2006*. According to the Supreme Court: *„If the reasons for which the proceeding was initiated cease to exist, the proceedings must be stopped according to § 104/. 1 of the Court of Civil Procedure. . . This will happen e.g. when a person consecutively gives a written consent with the hospitalisation or he or she is released. Similarly this will happen in case the person dies“.* This conclusion leads to the fact that in cases where the person is released, the court does not assess the lawfulness of the initial admission. This practice is very common, the courts do not decide on the unlawfulness of the deprivation of liberty and thus the person concerned is not able to claim any damages for the hospitalisation.

²⁹ See also art.. 19.

³⁰ The proceedings on the legality of placement and other detention in a medical facility (detention proceedings) are regulated by § 191a et seq. of the Act no. 99/1963 Coll., Court of Civil Proceedings.

³¹ See § 23of the Act no. 20/1966 Coll., on the protection of the people's health.

³² The statistics connected to the detention proceedings acquired by the League of Human Rights from district courts for 2009

³³ See tables and graphs on pages 47 – 49.

³⁴ See tables and graphs on pages 47 – 49.

61. A further problematic issue is the lack of procedural guarantees for the person involuntarily hospitalised. This issue is discussed in more detail in the commentary to art. 13.

Placement in the social care facility

62. Social care services are provided on a contractual basis. This means that the parties - the provider of a social care service and the client - are familiar and agree with the content of the contract on social care services.³⁵ However, in some instances this principle is disrupted, especially when a person is deprived of or limited in legal capacity or he or she is unable to give consent. When a person is deprived of or limited in legal capacity, the contract is signed by a guardian.³⁶ Often the social care services are provided in an institution.³⁷ The contract on a social care service is thus a very important step for a person with disabilities, especially if he or she is forced to subordinate to the institutional regime, e.g. in eating, hygiene or privacy. Despite this, the law does not require the person deprived of legal capacity to be consulted or even present when negotiating the contract. Another case when the presence of the person concerned is not necessary when negotiating the contract on social care services is a situation when this person is not, according to the report of the treating doctor, able to legally act. In this case the contract might be signed by the local authority. The law does not provide any procedural guarantees, e.g. by means of a court review.

Protective treatment in a psychiatry hospital

63. The protective treatment is ordered in criminal proceedings to perpetrators that were of unsound mind during the act or who acted under a diminished responsibility and their release is dangerous for society.³⁸ The biggest problem is the length and reasons for protective treatment and the insufficient regulation of the condition of the protective treatment, including the lack of separation between the deprivation of liberty and compromisation of one's physical integrity.

64. The law sets forth that the treatment lasts until it achieves its purpose. The court must assess the existence of the conditions every two years and may order the continuation of the treatment. Although the law refers to "a purpose of the protective treatment", it does not contain any definition of this term. There are no objective methods used for assessment of the need to continue the protective treatment. This is contrary to the wording of the art. 14, which prohibits the deprivation of liberty on grounds of disability.

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

66. Recommendation:	<ul style="list-style-type: none">❖ The existence of disability should not be a condition for deprivation or limitation of liberty.❖ The law should set forth that the court must decide on the lawfulness of the admission to the psychiatric hospital in cases where a person was released before the decision was issued by the court.
----------------------------	--

³⁵ See § of the Act no. 108/2006 Coll., on Social Services.

³⁶ For more detailed discussion on this issue see commentary to art. 12.

³⁷ For more detailed discussion on the alternatives to institutional social care services see art. 19.

³⁸ See § 99/ 1 and 2 of the Act no. 40/2009 Coll., Criminal Code

	<ul style="list-style-type: none"> ❖ The state should ensure an effective representation in detention proceedings. ❖ The law should require that the person deprived or limited of legal capacity is familiar with the content of the contract on social care services and his or her opinion on this contract is always taken into consideration. ❖ For the cases where a person does not agree with the contract on social care services, the law should require a guarantee by means of a court assessment of the lawfulness of the deprivation of liberty. ❖ The law must clearly set forth the purpose of the protective treatment, which must be built on disability neutral reasons, e.g. endangering the health or lives of others. ❖ It is necessary to ensure that a person deprived of liberty by means of involuntary hospitalisation or protective treatment is able to express their consent or dissent to the treatment and to choose from alternatives.
--	--

Article 15: Freedom from torture or cruel, inhuman or degrading treatment or punishment

67. Protection from torture is regulated by the Act no. 40/2009 Coll., Criminal Code. However, this law does not contain specific protection for people with disabilities. Furthermore, the authors of this report wish to point out that the current system of social and psychiatric care, which is based on mass institutionalisation, enables the occurrence of ill-treatment. We find the use of specific measures for people with disabilities especially problematic. This concerns mainly testicular pulpectomy (i.e. surgical castration) and the use of net beds in health services.

68. We find it especially problematic that in the Czech Republic, surgical castrations are carried out on persons deprived of liberty. Surgical castration is a non-reversible treatment which has a great impact on the physical integrity of a person. The European Committee for Prevention of Torture and Inhuman or Degrading Treatment (CPT) expressed its stand on this issue several times when it emphasised in its report that the surgical castration of the perpetrators of sexual crimes, who are deprived of liberty constitutes degrading treatment. It also repeatedly called upon the Czech government to suspend the practice of surgical castration as a treatment for sexual delinquents.³⁹

69. The use of restrictive measures in health care facilities in the Czech Republic are regulated by a methodical measure no. 37800/2009, that came into force on 1st October 2009. This instruction replaced a regulation from 2005. Although the new regulation brought some progress on the issue, DPOs and other persons point out the cases of inadequate use of restraints. The Public Defender of Rights highlighted the continual lack of respect for the rights of patients in his report

³⁹ The report for the government of the Czech Republic on the visit in the Czech Republic, which was made by the European Committee for the Protection from Torture and Inhuman or Degrading Treatment (CPT) on October 21 to 23 2009, pp. 7 – 8, In: <http://www.vlada.cz/assets/ppov/rlp/dokumenty/zpravy-plneni-mezin-umluv/Zprava-CPT-z-ad-hoc-navstevy-2009.pdf>

from 15th June 2010, where he stated: *"long-term deficiencies in the use of restrictive measures, degrading treatment of the patients, problems with abiding by the time for restrictions of liberty of patients and absence of informed consent resulting in insufficient information on the treatment."*

- 70.** From this point of view the most problematic aspect is the use of net beds. This restrictive measure has been criticized by experts and its use is considered a degrading treatment (see e.g. Concluding recommendation of the Human Right Committee, 2007, Report for the Czech Republic on the visits of CPT, 2002 and 2006). On 13th July 2004, the Minister of Health issued an order for all the health care facilities governed by the Ministry of Health to gradually establish "rooms specially equipped against injuries for patients in order to abandon the use of net beds by the end of 2004."⁴⁰ The use of net beds in social care services is not possible since the new Act no. 108/2006 Coll., on Social Care Services came into force.
- 71.** Ill-treatment is also connected to the mass institutionalisation of people with disabilities. We discuss the conditions in residential social care services in the commentary to article 19.

72. Recommendation:	<ul style="list-style-type: none"> ❖ It is necessary to put more emphasis on an individual approach to social care users and to prevent the unnecessary violations of rights of the clients (e.g. due to the lack of staff or insufficient education of staff) ❖ It is necessary to abolish the use of surgical castration on persons deprived of liberty. ❖ It is necessary to abandon the use of net beds in health care facilities.
----------------------------	---

Article 19: Living independently and being included in the community

- 73.** According to the § 2 of the Act no. 108/2006 Coll., on Social Care Services, the help must emanate from the individual needs of the people, it must engage people and support their independence, motivate them and support their social inclusion .
- 74.** The **law does not recognise the obligation for de-institutionalisation or the obligation to provide services and support in the least restrictive environment.** Although the Act on Social Services is built on the requirement of autonomy, independence and inclusion of disabled people into society and with regard to Article 19 of the Convention we may come into conclusion that the purpose is to provide such social care services that fulfil these conditions, residential social care services are mostly provided in an institutional form. It is apparent that in isolated institutions for people with disabilities, where support and care is provided to tens, hundreds, or in some cases thousands or persons, these aims can not be fulfilled. On 21st February 2007 the Government of the Czech Republic adopted by resolution no. 127 *The Concept of support of transformation in residential social care services to different kinds of services provided in the natural community and supporting the social inclusion of the user to society.*⁴¹ Based on this conception, the Ministry of Labour and Social Care Services prepared a pilot project to transform institutions for people with disabilities. Although the pilot project is a major shift for the

⁴⁰ See the report on the fulfilment of recommendations of CPT from 2005.

⁴¹ The conception is accessible from: http://www.mpsv.cz/files/clanky/3858/Koncepcie_podpory.pdf

progressive implementation of people with mental disabilities' right to live in a community, unfortunately it is limited to the target group of people with intellectual disabilities and includes only a small number of institutions. The project includes 32 facilities from hundreds of institutions in the Czech Republic.

- 75.** We found a lack of a complex strategy of transformation of institutional services for all people with disabilities. What we find striking is the non-existent conception of transformation of psychiatric care which is currently provided mainly in institutional facilities that hold more than a thousand beds. The Czech Republic also lacks a conception of institutional facilities for seniors. On the contrary, the number of beds in such institutions, including the ones with more than hundred beds, is rising in a number of regions.
- 76.** Another problem is the division of authorities and the absence of statistics concerning children with disabilities placed in institutions.⁴² The last information on the number of these persons that we were able to find is from 2006, when, according to the Ministry of Labour and Social Care Services, there were 10,517 clients in institutions for disabled youth. It is not clear how many of them are in the facility on a weekly stay and how many remain in the facility year round. In the yearbook from 2007 and 2008, we find only information on the number of clients in homes for people with disabilities; it is not clear how many of them are younger than 18 years of age.⁴³ In the institutions governed by the Ministry of Education, Youth and Sport (homes for children, homes for children with school, educational institutions, diagnostic institutions) there were 4069 children with disabilities from 7878 institutionalised children in 2009. In nursing homes and homes for children under 3 years of age, there were 311 children with special needs (formerly called handicapped children) out of 1966 admitted children in 2009. Some common reasons for placing a child in institutional care facilities include the inability of parents to provide adequate care, which is often caused by the absence or inaccessibility of social services, including community or advice services. Another common reason is the unfavourable economic situation of the family who does not have sufficient funds to cover the costs of the social service⁴⁴. We provided more extensive information on this issue in the comments on art. 7.
- 77.** Another problematic issue is the conditions in residential social care facilities. The law⁴⁵ regulates the evaluation of quality of social care services according to the fulfilment of the rights and freedoms of the individual and the right to independent life. This is very important, however, in reality, many clients of residential social services do not have the possibility of individualised care and support which would aim for the humanisation of the service. Homes for people with the number of clients over 80 are often divided into sections, where the clients with the same degree of disability are placed together, and individual work with clients is an exception. Clients are dependent on the staff that is often not sufficiently trained and the clients do not receive adequate support in independent development. Currently, some of the institutions have a sterile medicinal feel; they lack interactive methods of work and appropriate tools. We can conclude that a reasonable number of clients of residential social care services are subject to ill treatment and their rights, such as the right to privacy or free movement, are violated.

78. Recommendation:	❖ The Czech Republic must abandon all the policies of institutionalisation of persons with disabilities. . .
----------------------------	--

⁴² Ibid.

⁴³ Alternative Report to the Committee on the Rights of the Child on the Czech Republic by organisation *V zájmu dítěte* with the cooperation with *Amalthea, Středisko náhradní rodinné péče, Člověk hledá člověka* and others, 2010, p. 16-17.

⁴⁴ Šiška J., Latimier C., *The rights of children with mental disabilities in the Czech Republic in the context of the United Nations Convention on the rights of the child*, Social work, no. 2/2011. pp. 115-116.

⁴⁵ See the Act no. 108/2006 Coll., on Social Care Services .

	<ul style="list-style-type: none"> ❖ The state must ensure protection from institutionalisation, it must generally guarantee that the right to choose a place of residence is fully respected and the contract regarding social care services is always made in favour and according to the wishes of the person with disabilities. ❖ The law should not enable the placement of a person in a social care service facility without their consent or without a review from an independent body. ❖ The Czech Republic must ensure equal access to services provided in the community. ❖ The state must adopt a national policy on transformation of institutional care for all people with disabilities with a detailed plan for realisation of the right to live in the community. ❖ The law should recognise the right of every person to receive social and medical care in the community.
--	---

<h2 style="margin: 0;">Article 20: Personal mobility</h2>

79. Legal regulation regulating mobility includes contributions to the purchase, total modification or repair of motor vehicles, contribution to its operation, free use of public transport, and a 75% discount on international bus and train connections. Persons who need companionship are entitled to have a guide whose transport is free of charge (Decree No. 182/1991 Coll.). The issue of mobility aids arises under the Ministry of Health and the Ministry of Labour and Social Affairs. Mobility aids prescribed for the purposes of continuing treatment, or to support stabilization, or to replace missing or malfunctioning body parts are provided on the basis of public health insurance, which is regulated by Act No. 48/1997 Coll. Appendix to this Act shall specify which mobility aids and in what amount are covered by insurance. Mobility aids that are not listed in the Appendix are reimbursed amounting to 75% of their price.

80. Mobility aids are designed to make life easier in the natural environment and to contribute to the development of social contacts. It concerns aids for persons with mobility, visual or hearing disabilities. The amount of contribution ranges from 50 to 100% depending on the type and price, and total personal assets. They shall be provided according to Decree No. 182/1991 Coll. A major contribution to the mobility of people with visual disabilities would be installing acoustic equipment on trams, buses and the underground, which announces the number of connections, the direction, the name of the starting and next station. The device is managed by a blind person using a transmitter, placed in a cane for the blind person, or using a separate controller. All means of public transport in regions and some other cities in the country are equipped in this manner.

Article 21: Freedom of expression and opinion, and access to information

1. In the area of access to information the advisory system for persons with disabilities leads to total destruction. In 2010 the district advisories of the National Council for People with Disabilities in the Czech Republic were eliminated; in 2009, for example, they provided assistance to more than 21 000 people. Currently, due to the lack of financial means the regional advisories of NRZP in the Czech Republic are being eliminated. Their services were used by more than 13 000 people in 2009. It is all happening in the period leading to dramatic changes in legal regulations which are going to affect people with disabilities.

81. Recommendation: ❖ The advisory system for people with disabilities should be revived.

Article 22: Respect for privacy

82. In the Czech Republic, the level of privacy protection of institutionalized persons is a very problematic issue; it is especially striking in the area of social services, mainly in care centres for persons with disabilities or retirement centres, and in the area of health care, mainly in mental homes. In his reports on visits to social services facilities and to mental homes the Public Defender of Rights repeatedly states that the accommodation in rooms with more than two beds does not correspond to present requirements for privacy,⁴⁶ not every patient can use a locker,⁴⁷ there is low privacy when hygienic or nursing acts have to be performed in rooms with more than two beds at gerontological psychiatric wards,⁴⁸ the toilet stalls are not equipped with lockable doors,⁴⁹ in some cases the patients are forced to take showers together, in some cases the showers stalls are not equipped with curtains and in some places the patients have to take showers together under the supervision of staff of the opposite sex.⁵⁰ In some places, the information of the patient's health is insufficiently protected in the course of doctors' visits,⁵¹ the wards are watched by cameras without previous information or the consent of the patients,⁵² there are no separate rooms for visits, which would give the patients and their visiting friends and families enough privacy.⁵³

⁴⁶ Compare Public Defender of Rights, *Report on visits to social care homes for adults with physical disabilities*, April 2006, Art. 105. The report is available at: <<http://www.ochrance.cz/?id=101614>>
Report on visits to psychiatric hospitals, September 2008, Art. 107. The report is available at: <http://www.ochrance.cz/fileadmin/user_upload/ochrana_osob/2008/SZ_psychiatricke_lecebny_08.pdf>;
Report on visits in social care homes for persons with disabilities, 2009, Art. 89. The report is available at: <<http://www.ochrance.cz/?id=101624>>.

⁴⁷ *Ibid.*, para. 108.

⁴⁸ *Ibid.*, para. 109.

⁴⁹ *Ibid.*, para. 110.

⁵⁰ *Ibid.*, para. 111.

⁵¹ *Ibid.*, para. 112.

⁵² *Ibid.*, para. 115.

⁵³ *Ibid.*, para. 118.

83. Recommendation:	❖ It is necessary to modify the conditions for providing social or psychiatric institutional care, so that the person's right to privacy is fully protected and respected
----------------------------	---

Article 23: Respect for and the family

- 84.** The right to marry is regulated by the Act No. 94/1963 Coll., Family Act. This right generally belongs to all persons without any distinction, however, the act establishes a very doubtful rule that persons deprived of legal capacity cannot exercise the right.⁵⁴ Persons restricted in legal capacity can marry only with court consent.⁵⁵ It follows, that the Family Act automatically denies a large group of persons with disabilities who have been deprived of or restricted in legal capacity the equal right to marry. We consider this regulation contrary to the provision of Article 23 para. 1 (a) of the Convention.
- 85.** Furthermore, the Family Act provides for very dubious interferences with parental rights.⁵⁶ All persons deprived of or restricted in legal capacity lose parental rights automatically. This regulation is inconsistent with Article 23 para. 1 (b) of the Convention.
- 86.** Similarly, the Family Act automatically excludes persons deprived of or restricted in legal capacity from the possibility of adopting a child.⁵⁷ This regulation is contrary to Article 23 para. 1 (c) of the Convention.
- 87.** The organisations representing the interests of families with children with disabilities warn that as of 1st January 2012 certain forms of assistance for families with children with disabilities cease to be provided. In the Czech Republic, the children are entitled to receive aid and other services pursuant to the Act No. 108/2006 Coll., on Social Services. This Act also provides for child care benefit, ranging between 3,000 and 12,000 CZK (approximately 125–487 EUR), depending on the degree of the child's disability. To compare, the minimum salary is 8,000 CZK (approximately 333 EUR) and the child care costs usually 100 CZK (approximately 4 EUR) per hour. This benefit is not included in the total family income, which means that it is not taken into consideration when assessing entitlement to other benefits or when determining tax liability. Another important assistance has been established by the Act No. 117/1995 Coll., on State Social Support, which entitles a parent caring for a child under 7 with moderate or severe disability to financial benefit of 7,600 CZK (approximately 309 EUR). If the family income does not exceed twice the subsistence minimum the family is entitled to another social benefit and the concrete amount of this benefit is calculated depending on the family income and the age of the child. In the case of a child with an internal disease requiring parental supervision of the child's diet, however the child is self-sufficient in other areas; the parents are entitled to the benefit until the child is 15. Unfortunately, as from 1st January 2012 these forms of assistance for families with children with disabilities cease to exist. Consequently, there is a danger that fewer families will be able to secure care for children with disabilities.

⁵⁴ See § 14/1 of the Act no. 1963/94 Coll. Family Act.

⁵⁵ See § 14/2 of the Act no. 1963/94 Coll. Family Act.

⁵⁶ § 34/2 of the Act no. 1963/94 Coll. Family Act.

⁵⁷ § 64/2 of the Act no. 1963/94 Coll. Family Act.

88. Recommendation:	<ul style="list-style-type: none"> ❖ The State is obliged to ensure that all persons with disability can marry on an equal basis with others, have parental rights and the right to adopt a child. The legislation cannot deny the group of persons with disabilities these rights. Consequently, the State should change the existing legal regulation so as to remove provisions preventing persons with mental disabilities deprived of full legal capacity from enjoying the right to a family. ❖ The Czech Republic must ensure that children with disabilities are provided with support which enables them to enjoy their right to life in a family. In particular, the State should not reduce state budget expenses in the social area if these cuts have impact on lives of children with disabilities and if their right to life in a family is threatened.
----------------------------	--

Article 24: Education

89. The Czech legislation does not know the concept of “inclusive education”; inclusion is defined nowhere in the law. The law only recognises the right to equal access of all persons to education and consideration of individual needs of every person,⁵⁸ and it also prefers so-called individual integration, that is the integration of individual children with disabilities into normal schools or in special classes, schools for children with a different disability.⁵⁹ The second part of the provision concerning “individual integration” is problematic, as it also includes education in special classes or in cases to be considered, it includes **education in special schools for children with a different disability**.⁶⁰ In this case no integration is possible, which means that children with disabilities continue to be excluded. This provision is in total contradiction to Article 24 of the Convention.

90. This is in total contradiction with Article 24 of the Convention.

91. In spite of the possibility of individual integration, the education of children and adults with disabilities is mostly done in special schools outside mainstream education. As is shown in table no. 2⁶¹, only **half of children with disabilities or disadvantaged children**⁶² are **individually integrated in normal classes in normal schools**, moreover, as it can be seen in table no. 3⁶³, the majority of individually integrated children suffer from development disorders; whereas only 1,119 children with mental disabilities go to normal schools, and the statistics of the Ministry of Education do not contain a total number of children with mental disabilities in schools.

92. A certain change has been brought by the amendment to the Regulation No. 73/2005 Coll. to the Education Act, but it still contains provisions that are in contradiction with Article 24 of the Convention. The legislation still contains the term of “**special education**”, which applies to the education of children with disabilities.⁶⁴ According to the amendment, this term includes special

⁵⁸ See § 2 para. 1 of the Act No. 561/2004 Coll., Education Act.

⁵⁹ See § 3 para. 4 of the Regulation No. 73/2005.

⁶⁰ See § 3 para. 2 (b) of the Regulation No. 73/2005.

⁶¹ See tables and graphs on pages 47 – 49.

⁶² Both groups of children are included in the definition of disability according to § 1 of the Convention.

⁶³ See tables and graphs on pages 47 – 49.

⁶⁴ See §§ 1, 2, 3, 8 and 9 of the Regulation No. 73/2005 Coll

education, i.e. education at special schools, as well as education of children with disabilities in normal schools. What are special are the educational needs and the approach of involved special teachers who help the children integrate, and not the environment and form of education. **The possibility of individual integration is mentioned as one of the possible methods of special education.** This argument is basically in support of the change of terminology in § 2 – **inclusive education is not a form of special education.** It is done only in normal schools and classes.

93. Although children are supposed to go to a school in the neighbourhood of their home, unless their legal representative decides otherwise,⁶⁵ the head teachers often refuse to take children with disabilities in normal schools with reference to the provision which enables them to refuse a pupil on the grounds of a full capacity or unsuitable conditions.
94. Another problematic issue is the integration and classification of students “with special educational needs”.⁶⁶ This does not comply with the definition of disability according to Article 1 of the Convention. **The law does not recognise some types of disabilities, such as internal disability and intellectual disability (oncological diseases, severe epilepsy, metabolic disorders, severe diabetes, etc., and psychiatric diagnoses).** Children who suffer from such disabilities are classified as disadvantaged students and the schools do not get the necessary financial means for the support of these students. Additional financial means are provided to schools only for those types of disabilities that are defined in the Education Act.
95. The law does not contain any definition of a reasonable measure in education. Neither does it define the right of the child to support or to adequate provision in education. Supportive measures that are provided to children with disabilities are defined only vaguely. The regulation lacks the definition of any particular supportive measures (methodical, didactic, re-educative, organizational, etc.), which would be aimed at individual groups of children with disabilities.
96. Czech legislation does not recognise any exceptions to compulsory school attendance. Compulsory education is guaranteed for all children, including children with severe mental disabilities. But the method of education of children with severe mental disabilities is only very vaguely defined in § 42 of the Education Act. The method of education is decided individually by each regional authority. Organization and time schedule of the education as well as the method of evaluation of the children’s work in class is not legally defined. **In practice, the education of these children is often reduced to irregular visits of special teachers from schools or counselling centres. Very often these visits are executed once in a year or even less.** Therefore there is no possibility of a quality organized education, which should be provided to these children.

<p>97. Recommendation:</p>	<ul style="list-style-type: none"> ❖ It is necessary to amend the legislation in such a way as it would be in compliance with Article 24 of the Convention, it should especially contain the concept of inclusion and inclusive education and it should not provide for the possibility of placing children with disabilities in special segregated schools without their parents’ consent. ❖ It is necessary to carry out a re-examination of the system of classification of students with special educational needs in the Education Act, so that it would comply with Article 1 of the Convention. A new classification should not divide children according to their disability or disadvantage, it should be done on the grounds of the degree of support the children need in their education. This concept is
-----------------------------------	---

⁶⁵ See § 36 para. 5 of the Act No. 561/2004 Coll, Education Act.

⁶⁶ See § 16 para. 2 and 3 of the Act No. 561/2004 Coll., Education Act.

	<p>much more appropriate, as it is not based on the child's difficulties but on the definition of support the child needs in their education as well as on the definition of particular supportive measures.</p> <ul style="list-style-type: none"> ❖ Following the change of classification of students with special educational needs, it is also necessary to change the system of the financing of supportive measures for these children. Financial means should be given on the basis of the definition of the actual needs of every student and not on the basis of the student's diagnosis. Thanks to this some children with special educational needs will no longer be excluded from the possibility of getting financial means to cover their educational needs. ❖ With regard to this issue, it is also necessary to draw up a detailed list of supportive measures, that would describe the possibilities of support aimed at individual groups of children with special educational needs (for a particular type and degree of disability or disadvantage). This list should be used by school counselling centres and by schools when determining the most appropriate form of support for individual students. ❖ In § 3 of the Regulation No. 73/2005 Coll. it is necessary to modify the terminology used. Individual integration should continue to mean only education of a student in a normal class of a normal school.
--	---

Article 25: Health

98. From the perspective of persons with disabilities, we see a problem that often occurs in situations in which persons with disabilities do not have the option to accept or refuse treatment, surgery or other medical act. This fact is directly linked to the issue of deprivation of legal capacity (see Article 12). Acceptance or refusal of treatment, the so-called informed consent is considered in the Czech legal order for the legal act and, if a person is deprived or restricted of legal capacity, so that they cannot make decisions about the own treatment. All legal acts in the sphere of health are carried out by the legal guardian of the person concerned. This means that in the Czech Republic in practice there are situations where the guardian can make decisions on medical acts, which are undoubtedly acts of a strictly personal nature.
99. Czech legislation does not know the institution of **factual capacity**, i.e., actual human competence to decide about a specific medical procedure or treatment. This rule can be deduced from Article. 12, paragraph 2 of the Convention interpreted in the light of the older Convention on Human Rights and Biomedicine⁶⁷. This Convention provides in Article 5 that any intervention⁶⁸ in health must be carried out only on the condition that the person concerned has given free and informed consent. This person must be properly informed in advance about the purpose and nature of the intervention, as well as its consequences and risks. The Convention on Human Rights and Biomedicine emphasizes the involvement of the patient to the procedure of giving

⁶⁷ Czech Republic has ratified this Convention in 2011 and Publisher under no. 96/2001 Coll.

⁶⁸ The term "intervention" is here understood in broadest sense – includes all the acts carried out on the patient for medical reasons, including preventive care, diagnostic, treatment, rehabilitation and research (Explanatory report to the Convention, Article 5, paragraph 34).

authorised consent (persons without factual capacity) in its article 6, paragraph. 3: *"if under the applicable law, an adult person is not able to give consent to intervention because of a mental disability, illness or for similar reasons, the intervention can be performed only with the consent of legal representative or an authority or person or institution authorized by law. If possible, the person concerned is participating in the authorisation."* Participation of adults incapable of giving consent should never be completely excluded from deciding about the intervention. The explanatory report to the Convention, Article 6, paragraph 46 deals with *"the obligation to involve adults to consent procedures, whenever possible. It will be necessary to explain to these people the relevance and circumstances of the intervention and then obtain their opinion."*

- 100.** National regulation dealing with the consent of the patient to an intervention Act no. 20/1966 Coll., on health care to the people, specifically § 23. In this law, however, the concept of authorised consent is applied – when the guardian gives or denies the consent of an intervention carried out on a person deprived of legal capacity. This law does not correspond with the conventions when informed consent should be expressed by the patient to whom the intervention will apply, if he has the factual capacity for that. This law does not address the question of the factual eligibility.
- 101.** In the field of health care there is a long-term problem of the unethical approach of physicians and non-compliance with the law on personal data protection. There is the non-cooperation of physicians, even within a single building (hospitals, clinics). The patients undergo duplicate testing, because the physician often does not verify the experiments other than from the testimony of a patient (who often can't remember). There are situations when the patients do not provide information about the progress of treatment, sometimes even the patient does not comprehend what diseases he suffers from.⁶⁹
- 102.** Deaf patients face a shortage of qualified interpreters in the field of health care. The law does not specify the obligation of medical facility to ensure reasonable accommodation in the performance of health care, such as sign language interpreters or other type of communication.
- 103.** The establishment of the first degree of invalidity and the new method of calculation of invalidity affects access to health care. The fact is that the persons receiving assistance in material need are exempted from the payment of medical fees; however, the expenditure for health services in terms of the law does not affect the level of pensionable income. This leads to a high health care costs not reflected in the assessment of the social situation of the individual. Despite the fact that their incomes are substantially lower, this is not reflected in limits for height of the fees. The reduced limit of fee applies only to persons over 70 years of age, although data on pension insurance shows that all levels of disability pensions are less than old-age pensions, and in the case of invalidity of the first degree less than 50% of the old-age pensions. Persons under 18 years of age are exempted from medical fees.
- 104.** The newly adopted legislation, which will apply from the year 2012, will cause major social problems for persons with disabilities, because of the newly-established fee for a stay in the hospital of 100 CZK (4 EUR). This will cause very serious problems particularly to lone parents with children, since, unlike other European countries, in the Czech Republic the duration of payment of this fee is not limited (in practically all other states the maximum period is 30 days).
- 105.** Parents of children with mental disabilities point to the lack of information about health care.⁷⁰ Parents have to search for information through mutual self-help initiatives. The

⁶⁹ See The ten commandments of communication with patients with disabilities, drawn up by National Council for People with Disabilities: <http://www.rezidencnipece.cz/archiv/priloha/priloha0602.pdf>

⁷⁰ Šiška J., Latimier C., The rights of children with mental disabilities in the Czech Republic in the context of the United Nations Convention on the rights of the child, Social work, no. 2/2011, pages 111-112.

transmission of information in health care is done rather informally between the parents at the parents' meetings organised by their organizations. The lack of support for parents is often even increased by the doctor's lack of empathy, which is reflected especially in the hospitalisation of a child in the medical facility. Due to the complexity of care for children with mental disabilities, the experiences of parents with no access to health care, its random nature and the lack of information, are alarming. One of the mothers spoke about their experience with the approach of doctors in the period following the birth of a daughter with Down syndrome in 2005. Information about the diagnosis has been communicated without proper preparation and empathy, and moreover, with a very negative view: *"the doctor asked me dryly: you know that your baby has Down syndrome? I asked what we can expect. The doctor replied that he does not know much, but that the child does not attend regular school and will learn nothing ..."* A few weeks after the birth, when visiting medical facilities, this mother got the feeling that they expected manifestations of guilt for the birth of a child with disability. *"They asked me why I didn't go for amniocentesis. Every doctor is asking me if I knew it earlier, during the pregnancy, and I am lying now, because I don't want the doctor to write everywhere - the mother knew she gives birth to a child with Down syndrome"*⁷¹.

106. Among the difficult situation of parents and health professionals, as communicated by the parents, belongs the hospitalization of a child with a mental disability. As indicated in interviews with parents, for health care facilities the hospitalization of a child with severe mental disability is problematic. Communication between a health care professional, patient, and their parents is often difficult. In the children's wards of hospitals it is possible for the mother to be present. But the hospital cannot provide the conditions for simultaneous accommodation for the parents, as they are also not ready to provide care to patients with disabilities, which they need and require due to their disability.⁷²

107. Recommendation:	<ul style="list-style-type: none"> ❖ There is the need to establish into the law the institute of factual capacity in connection with the provision of health care. The law cannot allow the guardians of people deprived and restricted of legal capacity to automatically decide about the medical interventions of these persons. ❖ The state should require the awareness of the medical staff about the social model of disability. ❖ The problem of mental disability should be included in the training of health workers, including communication with the disabled patient and his parents or other responsible person.
-----------------------------	---

Article 26: Habilitation and rehabilitation

108. Rehabilitation in the Czech Republic represents a serious problem in the long term. This doesn't concern medical rehabilitation (physical therapy), which is at a high level in the Czech Republic. The major problem is the continuity of the other forms. Although several attempts to

⁷¹ Ibid.

⁷² Jan Michalík, The family carrying for a family member with disability – do we know her? Contribution to the conference "Vulnerable child II", Prague 2010, page 22.

create a coherent and functional system have been made since 1990, there has never been a consensus on the content of legislation. Obviously the weakest part is the work for rehabilitation, which despite good legislation is not sufficiently used in practice. The continuity of working for the rehabilitation of the curative rehabilitation is insufficient.

109. The problem in the Czech Republic is also the fact that the law doesn't establish supported employment. This service is not included in the existing typologies of social services, in most cases it is registered as a "social rehabilitation". This implies an imbalance of the concept of supported employment. The main objective the supported employment is to enable people with disabilities to obtain and maintain suitable employment in the open labour market. Social rehabilitation is focused on supporting the personal competencies, capabilities and skills of the person, so that he or she could use the normal social resources and work in the natural environment, in all areas of social life. Financing of the two activities as one service is confusing and unbalanced. Financing of the service is not guaranteed and it is not possible to monitor the results and consequences of supported employment.

110. Recommendation:	<ul style="list-style-type: none"> ❖ To amend the law of the Czech Republic, so that in the field of comprehensive rehabilitation the continuity of the individual types of rehabilitation has a focus on full employment of persons with disabilities. ❖ Provide guaranteed funding of supported employment
-----------------------------	--

Article 27: Work and employment

111. The third part of the Act No. 435/2004 Coll., the Employment Act is dedicated to the regulation of employment of persons with disabilities. We consider the problem resulting from § 25 of the Employment Act as the biggest, which says that a person in the third degree of invalidity can only apply for employment in extraordinary conditions. **Extraordinary conditions** are defined by § 6 of the Decree on the assessment of disability⁷³ as "*a major modification of working conditions, acquisition and use of special equipment of the workplace, special modifications to existing machines, tools, use of special equipment or everyday support or assistance in the workplace in the form of reading services, interpretation services or employment assistance.*" These terms are most financially demanding for most employers and often unaffordable and thus discriminate against persons in the third degree of invalidity. Employers often prefer to employ people in the first and second degree of disability, whose employment is not associated with the creation of extraordinary conditions. Employers are obliged, according to Act no. 198/2009 Coll., on equal treatment and legal means of protection against discrimination (Antidiscrimination Act), to take reasonable measures (cf. Article 9 of the Convention) for persons with disabilities to access specific employment, performance of the work or functioning, or other promotion, to use services for the public. Failure to take reasonable measures, as defined in § 3 of the Antidiscrimination Act, is considered indirect discrimination, unless such measures constitute a **disproportionate burden**. In deciding whether the measure constitutes a

⁷³ Decree of the Ministry of labour and Social Affairs No 359/2009 Coll., laying down a percentage point decrease in the ability to work and elements of the report of the disability and provides for the assessment of the ability to work for the purposes of invalidity

disproportionate burden, it is necessary to take into account the level of benefit for the person with disabilities from the implementation of the measures, the financial resistance of the measures for the natural or legal person, who has to implement the measures, the availability of financial and other assistance to implement measures and eligibility of the alternative measures to satisfy the needs of persons with disabilities.

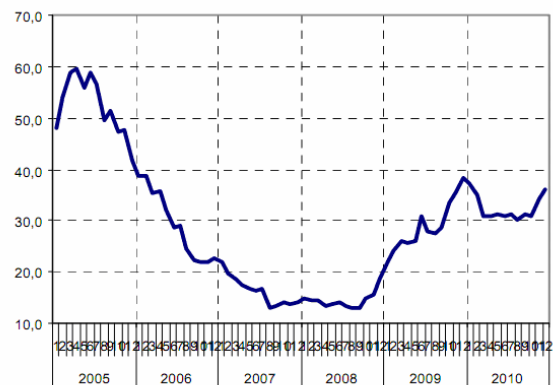
112. On the basis of the facts described above, we believe that the issue of reasonable measures and the extraordinary conditions in the context of the employment of persons with disabilities is quite vague in the Czech legal system, and that it is not entirely clear under which conditions people in the third degree of invalidity can be employed and so they're virtually excluded from the labour market.

113. In 2009 about 62 900 disabled men and 46 200 of disabled women were employed. This year the number of registered persons with disabilities seeking a job was 67.7 thousand, which is 12.6% of the total number of job seekers. For one job vacancy for people with disabilities there were on average 38.2 applicants with disabilities, which was almost double compared to the year 2008.⁷⁴ In 2010, the number of job applicants with disabilities rose slightly, by the end of the year 69.5 thousand people with disabilities had been registered as working, which was 12.4% of the total number of job seekers. In 2010, for every vacancy for people with disabilities there was an average of 35.9 applicants. The share of persons with disabilities from the total number of applicants and the number of persons with disabilities per one working place for persons with disabilities is evident from the following graphs.⁷⁵

The share of the PWD to the total number of applicants (in %) in the period 2005 – 2010



The number of the PWD to 1 vacancy for PWD in the period 2005 – 2010



114. It should be emphasized at this point that we are talking only about the registered job applicants, the actual numbers will be higher, because not all people with disabilities are on the register of the Labour office, and this is due to the fact that persons in the third degree of invalidity are not registered jobseekers (§ 25 of the Employment Act). If we compare these data with the data for previous periods, we must conclude that the current number of employed

⁷⁴ Analysis of the evolution of employment and unemployment in 2008 [online] Integrated Portal MPSV, 2010 [31 May 2011]

Available from: <http://portal.mpsv.cz/sz/politikazamest/trh_prace/rok2008/Anal2008.pdf>.

⁷⁵ Analysis of the development of employment and unemployment in 2010. Integrated Portal of the Ministry of Labour and Social Affairs, 2010 [31 May 2011]. Available from: <<http://www.mpsv.cz/files/clanky/10811/analyza.pdf>>.

persons is far below the values achieved in 1998. For comparison, in 1993, a total of 119 500 disabled men and 85 200 of disabled women were employed; and there were 13 800 disabled male job seekers and 14 300 disabled female job seekers, and in 1998 the number of employed men with disabilities was 71 600 and unemployed was 16 300. For women it was 51 100 employed women with disabilities and the registered unemployed 16 800.

- 115.** The monthly statistics on the development of unemployment for people with disabilities and the number of job vacancies for them shows, that in the period 2002-2010 there three counties are in the Czech Republic where disabled people stay on the list of job seekers on average more than 20 years as measured by the number of applicants to vacant posts. It is namely the districts of Znojmo –22.41, Karviná – 24.77 and Teplice – 26.69. In three other districts it is more than 10 years, namely the Opava – 10.94, Bruntál – 11.62 and Havlíčkův Brod 13.20 and the other 15 counties it is more than 5 years. The situation will become even worse because of measures to reduce support for the employment of persons with disabilities, as resulting from the proposed social reforms with the expected effect from January 2012. A reduction of the contribution to the operation of a protected job may reach 91 404 CZK (3 656 EUR) and there will also be an abolition of tax relief for employers employing persons with disabilities (18 000 – 60 000 CZK per year, i.e. 720 – 2 400 EUR).
- 116.** The lack of jobs for people with disabilities leads in some cases to gross violations of labour legislation by some employers and also leads to discrimination against persons with disabilities in the field of remuneration. The National Council of People with Disabilities has noticed that in addition to the legal reduction of the minimum wage, there has also been a reduction of the minimum wage scales, up to 50% from the basic rate valid for other employees; also there have been cases of illegal reductions of the income of workers with disabilities and the transfer of funds to the employer. It consisted of the following types:
- Agreement on the granting of a financial gift to the employer
 - Agreement to provide training for persons with disabilities, which was required for people with disabilities regardless of the level of education
 - Agreement to pay the costs above standard related to the employment of a disabled person. This format was implemented in particular in relation to employees in workplaces outside the residence of the employer and the amount of the required and collected funds was about 16.7% above the basic minimum wage to 47.95 % above the basic minimum wage. Whereas the treaties have been concluded under the civil code, employers were not punished. This will change the newly adopted amendments to the Employment Act.
- 117.** Act no. 262/2006 Coll., Labour code contains in the provisions of § 111 authorisation for government regulation to reduce the minimum wage and the minimum guaranteed wage levels according to the extent of the effects of restricting the working application. The Government has used this in the regulation of the Government of 6. December 2006 on the minimum wage, guaranteed levels of the lowest wages, on the definition of the aggravated working environment and the amount of the premium for the work in aggravated the working environment, as amended by Government Regulation no. 249/2007 Coll. and no. 452/2009 Coll., on the minimum wage; and reduced by 50% of the amount that apply to other employees the base rate of the minimum wage and other rates guaranteed wages of the employee who is a recipient of the disability pension for disability of the third degree, or the youthful employee who is disabled in the third degree and receive a disability pension for disability as the third degree. Employers who employ disabled persons, abuse this regulation in many cases, and pay the persons with disabilities the lowest possible wages regardless of their work performance. For the employee, who is the recipient of the disability pension for disability in the first or second degree the basic rate of the minimum wage and the lowest level of the guaranteed wage was reduced to 75% of the amounts that apply to other employees. This is based on the prejudice that being a recipient

of an invalidity pension limits the work of the employee. The application of this legislation by employers leads to violations of the right to equal remuneration and discriminates against a substantial part of the persons who are considered as persons with disabilities according the Czech legislation.

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

119. The Employment Act requires all employers who employ more than 25 employees to employ 4% of employees with disabilities. However, the law allows employers to fulfil this obligation in other ways – by payment to the state budget or purchasing products from employers who employ more than 50% of employees who are persons with disabilities. Currently, in the Czech Republic, most employers prefer the payment to the state budget.

A table on the requirements for employers concerning employment of persons with disabilities in 2010⁷⁶

Number of employees	Alternative 1: Number of PWD an employer must employ	Alternative 2: a fee paid by the employer (amount)	Alternative 3: purchase of products from protected workshops (value per year)
25	1	57 240 CZK	160 272 CZK
50	2	114 480 CZK	320 544 CZK
100	4	228 960 CZK	641 088 CZK
200	8	457 920 CZK	1 282 176 CZK
300	12	686 880 CZK	1 923 264 CZK

120. The above table shows that the performance of legal obligations other than employment of people with disabilities may not be the most economical solution, not to mention the benefits related to the employment of people with disabilities (loyal and conscientious employees, social recognition, etc.).

121. There is a functional tool in the Czech Republic - **work rehabilitation⁷⁷**, which makes it possible to provide support to people with disabilities in finding, obtaining and maintaining

⁷⁶ The rights and obligations of the employer by employment of people with disabilities [online] Wheelchair League, 2010 [31 May 2011]. Available from: <<http://ligavozick.skynet.cz/ip/prace.php?oblast=9000030>>.

⁷⁷ § 69 Act no. 435/2004 Coll., Employment Act

employment. Work rehabilitation secures and pays the Labour Office of the Czech Republic. The number of persons with disabilities who used the work rehabilitation in the year 2010 increased compared to the year 2009, but is still not sufficient. In 2010, 120 persons with disabilities used work rehabilitation, which incurred costs of 3 594 000 CZK (146 100 EUR)⁷⁸. On 31. 12. 2010 69.5 thousand job seekers with disabilities were registered by labour offices⁷⁹; the amount of work rehabilitation provided is very low. From the experience – from the representatives of the agencies supporting employment – it is evident that the branches of the Labour Office of the Czech Republic (with a few exceptions) do not offer and provide work rehabilitation actively.

122. Recommendation:	<ul style="list-style-type: none"> ❖ The law shouldn't exclude anyone from the labour market. ❖ The state should encourage employers to employ people with disabilities, and this shouldn't constitute a disproportionate burden for them. ❖ The law should not allow discrimination against persons with disabilities in remuneration for their work. ❖ Keep people with health disadvantages within the law pertaining to disability. ❖ The state should encourage employers to employ people with disabilities rather than pursuing the other avenues available to fulfil their legal obligations. ❖ The Labour Office should be more active by offering and providing work rehabilitation to people with disabilities.
-----------------------------	--

Article 28: Adequate standard of living and social protection

123. As said before, the introduction of the 1st degree of invalidity causes material poverty for persons with no other sources of income. Furthermore, a long-term unemployment results in the loss of invalidity pension for people with disabilities, as payments for social and health insurance is a decisive factor in the decision on the amount of invalidity pensions, survivor, widow pensions or orphan pension for children. As a result of extending the required period of insurance, then one can expect a loss of entitlement to a retirement pension. Also the position of families with handicapped children is worse. In this respect, we refer to the previously mentioned loss, due to the shortening of the receipt of parental allowance for families with a disabled child from 7 to 4 years, which will result in a loss of 4 600 CZK (184 EUR) per month. The socially weak families will lose further income due to the abolition of the social allowance provided because of disability.

124. The health care reform currently being prepared will also bring serious social consequences. The draft amendment on public health insurance may increase the costs for families with children and persons with metabolic disorders each year by 100 000 CZK to 350 000 CZK (4 000 - 14 000 EUR) for the necessary foodstuffs, which are practically the only treatment option.

⁷⁸ Analysis of the evolution of employment and unemployment in 2010 [online] Prague, 2011, page. 52 [31 May 2011]. Available from: <<http://www.mpsv.cz/files/clanky/10811/analyza.pdf>>.

⁷⁹ Analysis of the evolution of employment and unemployment in 2010 [online] Prague, 2011, page. 32 [31 May 2011]. Available from: <<http://www.mpsv.cz/files/clanky/10811/analyza.pdf>>.

- 125.** Another impact of the health reform on the social sector is the increase of the amount paid for a stay in the hospital from 60 CZK per day to 100 CZK per day (2.4 – 4 EUR). The problem is that, unlike other states, payment is not limited to a certain amount of time. The impact of illness on the family with one breadwinner can be illustrated by the example of when the breadwinner with net income of 15 000 CZK (600 EUR) gets sick, and is hospitalized. His income from health insurance is at the rate of 60%, i.e., 9 000 CZK (360 EUR) per month, and from that 3 000 CZK (120 EUR) must pay only for the stay in the hospital. According to the survey carried out by the reputable agency STEM (Centre of empirical research) and Czechoslovak Commercial Bank (ČSOB), half of domestic households would not last longer than 3 months. Of that, 8% less than 1 month. The survey was conducted from July to September 2010 on a sample of 1 600 respondents over 18 years old.
- 126.** We consider the legislation of “contribution to care”⁸⁰ to be a problem, as it is closely connected with the right of people with disabilities to live in the community. Problems were identified by the representative of the Ombudsman, in particular, i) delays, (ii) the actuality of the health status of the applicant and (iii) discrepancies between the results of social investigation and the assessment physician. The representative of the Ombudsman **Delays** in the granting of a contribution to care followed up. According to the representative, the Assessment Commissions of the Ministry of Labour and Social Affairs registered to 31. 5. 2009 a total of 2482 cases which have not been discussed within the time limit. Although the Ministry managed to significantly reduce the number of pending applications since 2008, the statutory periods have not been fulfilled, and in particular the proceedings in the Czech Social Security Administration (on the side of the assessment physicians) are delayed. The investigation of specific cases shows that the procedure of granting contribution to care, but in particular the processing of an appeal against a decision, lasts several months. These delays often lead to a further deterioration of the health status of the applicant. The exceptions are not cases where the applicant dies during the proceedings for the contribution. In connection with the delay, the representative of the Ombudsman has repeatedly pointed out **the need to assess each applicant's current health status**. The permanent problems are **discrepancies between the results of social investigation, the result of assessment physician and the facts**. While in the case of decisions on the invalidity of the applicant, the physician must see and review the applicant, when deciding on the contribution to care; only a social worker is in contact with the applicant, whose findings are the basis for an assessment of the medical assessment service. The assessment physician then assesses only from the written documents and medical reports. In this method of assessment, with regard to the lack of knowledge, all the consequences of the diagnosis to a specific person cannot be taken into account.⁸¹
- 127.** The special groups, which relatively often suffer mistakes in the assessment, are persons suffering from mental illness or mental disability, people with internal disorders and people those with moderate and severe brain injuries. When evaluating their self-sufficiency and the capacity to perform acts of self-care, social workers and assessment physicians very often underestimate the need for assistance or at least oversight from other people. Persons with mental disabilities are in many cases able to physically handle the assessment, but are not able to recognize the need for such action by themselves. According to the representative of the Ombudsman, it is necessary that the social workers or doctors don't rely only on the statements of the person that the assessment will handle, but to verify such a degree of autonomy within the framework of social investigation, which should include the opinion of the specialists, if

⁸⁰ Providing of care allowances are governed by Act. No. 108/2006 Coll. on social services.

⁸¹ Proceedings of the contribution to care are long and do not reflect the real state [online] 2011. Public Defender of Rights [2011-06-14] Available at: <http://www.ochrance.cz/tiskove-zpravy/tiskove-zpravy-2010/rizeni-o-prispevku-na-peci-jsou-dlouha-a-nezohlednuji-skutecny-stav-zadatele/>

necessary, a physician with appropriate attestation for example the doctor, with the appropriate attestation. The specialist should also be a member of the Assessment Commissions of the Ministry of Labour and Social Affairs, at least in case of an appeal against the decision from the applicant. In the case of children and persons with mental disabilities, and for persons with brain injuries, the existing point system appears inadequate to state their status in the broader context. As a result of that, the contribution to care is not granted to them or a lower contribution is granted; though they usually require constant supervision and the assistance of another person.

128. Recommendation	<ul style="list-style-type: none"> ❖ To ensure the financing from public health insurance of the food products those are practically the only treatment options. ❖ To limit the period of payment of fees for hospital stays to 1 month. ❖ The state should provide funding support to a person with a disability to ensure independent living and full participation in society on the basis of an individual plan and a qualified assessment of needs. ❖ The financial resources should be addressed directly to the person with the disability, rather than providers of the services through subsidy.
----------------------------	---

Article 29: Participation in political and public life

129. The right to vote, as guaranteed under Article 2 of the Bill of Fundamental Rights and Freedoms, is one of the ways an individual can realize his or her active status against public authorities. This right guarantees participation in political and public life, in other words it enables active participation of the individual on the formation and existence of public authority.⁸² In any democratic society the right to vote is of key importance. In the Czech Republic, deprivation of legal capacity (see above comments on Article 12) constitutes impediment to the right to vote under Article 2 (b) of the Parliamentary Code on Elections no. 247/1995. In a similar fashion this impediment is recognised under Article 4 (2)(b) of the Code on Elections to the Regional Parliaments no. 130/2002, further under Article 4 (2)(b) of the Code on Elections to the Communal Parliaments no. 491/2001 and under Article 5 (2)(b) of the European Elections Code no. 62/2003. The impediment to the right to vote simply means that every person deprived of legal capacity cannot exercise his or her right to vote.

130. In June 2011 there were 25 975 persons deprived of legal capacity in the Czech Republic. All these persons cannot vote because they were put under plenary guardianship. On 12th July 2010 the Constitutional Court delivered judgment in the case of Mr. S., who was deprived of legal capacity and could not actively participate in elections to the Senate, the second chamber of the Parliament. The applicant requested the Constitutional Court abolish controversial provision of impediment to the right to vote based on deprivation of legal capacity.⁸³ The Constitutional Court did not comply with the applicant's request, however it stated that in any proceeding on

⁸² Decision of the Constitutional Court ,no. II. ÚS 540/02 of 19 October 2004.

⁸³ Decision of the Constitutional Court, no. IV. ÚS 3102/08 of 12 July 2010.

incapacitation, the general courts are obliged to assess carefully whether the person concerned has the capacity to understand the meaning, purpose and consequences of elections. Every decision of the general courts must be properly justified. Thus, beyond all understanding, the Constitutional Court tended to hypothesis that rationality of a voting act can be individually assessed.

131. Organizations representing persons with disabilities strongly disagree with the above mentioned ruling of the Czech Constitutional Court. According to their opinion, the Constitutional Court completely misunderstood the meaning and purpose of Article 29 CRPD. The legal order should not provide for disability based impediments to the right to vote; not even on the basis of an individual assessment. It's impossible to individually assess rationality of a political choice in a guardianship proceeding, because it would affect exclusively persons with disabilities. On the other hand, there are emerging questions regarding possible abuses of plenary guardianship for a political struggle.

132. For persons with disabilities it is difficult to participate in elections due to the complexity of information relevant for casting votes and the voting process as such. Another identified barrier was inaccessibility of polling stations and the voting process for persons with limited abilities to move and persons with visual and hearing impairments and intellectual disabilities.⁸⁴ Because of the complexity of the issue and its extent, which is fairly extensive and demanding to understand, information about all aspects of elections and voting process are hardly understandable by persons with intellectual disabilities. These problems were experienced also by other groups, especially by persons with visual and hearing impairments and other disabilities, who complained about inaccessibility of information about all aspects of elections.

133. Recommendation	<ul style="list-style-type: none"> ❖ It's necessary to amend all election codes, so the law does not provide for impediments based on deprivation of legal capacity. Moreover, it is necessary to underline that the Czech Republic must not adopt any provisions on individual assessment of a capacity to vote. ❖ The law should provide for assistance and respectively other forms of reasonable accommodation during the elections. ❖ Information about the election process should be available, accessible and disseminated through accessible formats on a local and national level, so the voters could vote as independently as is possible. Inter alia, it should relate this information: <ul style="list-style-type: none"> ▪ how one can register for voting ▪ what political parties one can vote for ▪ what the political system looks like ▪ what kinds of elections there are ❖ Citizens should be allowed to vote through electronic means or computer in the polling station. It is necessary to guarantee that these possibilities are available in accessible formats: easy to read, large fonts, audio, video, sign-language, other languages common in the EU and possibility to use technology simulating human speech for persons with visual impairments.
----------------------------	---

⁸⁴ Recommendation for accessible elections in Europe, Inclusion Europe 2011, available at: http://www.inclusion-europe.org/uploads/doc/ADAP/ETR_Policy_Recommendations_EN.pdf

	❖ The state should ensure that members of the voting commissions are properly educated.
--	---

Article 30: Participation in cultural life, recreation, leisure and sport

- 134.** Development in this area can be described as continuous and positive. The access to cultural events is provided practically for all the people with disabilities. All the literary works from 20ties of the last century onwards and magazines are published in Braille and acoustic version. More common is also haptic presentation of works of art is also more common and most of the movies and TV can be viewed with subtitles. Not all the architectural monuments are barrier-free, which is mostly due to the lack of resources and a legal protection Even the own creative activity of people with disabilities is supported by financial contributions.
- 135.** Discounts on admission for people with disabilities and, if necessary, also for their guide to museums and galleries is also very common. Access to cultural heritage and participation in cultural life is an integral part of national plans adopted by the Government to improve the status of people with disabilities, e.g. the current "National Plan for creating equal opportunities for persons with disabilities for the period 2010 - 2014".
- 136.** As for recreation, leisure-time activities and sports, there are several independent unions of sportsmen with disabilities, whose work is partially supported by state funds. Basically, this area is not the subject of state interference with the exception of the creation of legislation requiring the accessibility.
- 137.** The situations in which are families and children discriminated against, includes both formal and informal education as well as sports and recreational activities. Children with disabilities have often no opportunities to participate in regular leisure activities. In some cases the students with disabilities are unable to attend cultural or sport events organized by their schools despite the fact that these actions are an integral part of their education due to inaccessibility of the place or means of transport or lack of teachers,. There is a real lack of opportunities for interaction of children with intellectual disabilities with their peers. The policies and programs aimed at specific needs of young people with disabilities are rare and limited. This may be due to prejudices, inaccessibility of information or venues or just because these children are overlooked. In addition, this fact affects the lives of families with children with disabilities, because it leads to discriminatory situations, e.g. a child who attends regular can stay in school until 3 p.m., but a child in practical school needs to be picked up at 12 a.m.⁸⁵ This constitutes a burden for the parents, who have to shorten their work times. Special schools should offer of leisure activities for children, or school club, just as in ordinary schools. The absence of these opportunities discriminate children with disabilities and their families, especially mothers, who can not work.

138. Recommendation:	❖ The state needs to properly implement all the measures of „National Plan for creating equal opportunities for persons with
-----------------------------	--

⁸⁵ See examples from article: Šiška J., Latimier C., Rights of children with disabilities in Czech Republic in the context of the United Nations Convention on the rights of people with disabilities, Social work, no. 2/2011, page 113.

	<p>disabilities for the period 2010 – 2014“concerning the cultural, leisure and sport activities.</p> <ul style="list-style-type: none"> ❖ Czech Republic needs to ensure the compliance of legislation in eliminating barriers in all buildings used by people with disabilities. ❖ School afternoon activities (school clubs) for children with disabilities should be established.
--	---

<h2 style="margin: 0;">Article 31: Statistics and data collection</h2>
--

139. In the Czech Republic there are no legal provisions providing explicitly for an obligation to collect and process complex data about persons with disabilities. The only relevant document is the Government’s decree of 2005. The decree obliged the Czech Statistical Office, together with the Ministry of Health, the Ministry of Education and the Ministry of Social Affairs to create a consistent system of statistical information about persons with disabilities. In 2007 the statistical survey was carried out however it was decided that the planned 2011 survey will be put away.

140. Available data cover only several issues, e.g. employment of persons with disabilities or education. However, from 2012 employers will not have an obligation to announce available positions to the Labour Office, especially positions suitable for persons with disabilities. This change is perceived as very problematic because it will be difficult to prove the unequal position of persons with disabilities regarding availability and accessibility to the labour market. Further, organizations representing persons with disabilities found a lack of adequate data regarding absolute numbers of children with disabilities in comparison with numbers of children with disabilities educated in a segregated education system. It is thus impossible to estimate what the percentage of children with disabilities excluded from the regular education system is. Another major problem is that there are no statistics available regarding numbers of institutionalised persons with disabilities in social care institutions and psychiatric hospitals.

141. There is a complete lack of complex data, which are either unavailable or inaccessible, including areas where the Czech Republic is taken steps to implement the CRPD, i.e. guardianship reform or deinstitutionalisation process. The lack of data makes expert discussion about problems of persons with disabilities very difficult and creates barriers for participation in the process of CRPD implementation. Besides unavailability, we perceive that existing data are also inaccessible, because of fragmentation between different government bodies. For example League of Human Rights and MDAC must ask the Ministry of the Interior every year under the Free Information Act to provide them with data on absolute numbers of persons under guardianship. Other government bodies do not have this data in their disposal, only through League of Human Rights and MDAC. This is a clear example of a failure to coordinate the dissemination of relevant data. Regarding accessibility, it is problematic that data are not accessible from one place, there is no web site, and even the focal point responsible for CRPD implementation does not have its specific web site. Regretfully we must conclude that the Czech Republic fails to fulfil its obligations under article 31 CRPD.

142. Recommendation:	<ul style="list-style-type: none"> ❖ It is necessary for the Czech Republic to ensure that relevant information, including statistics and research findings, are obtainable, so these data will enable authorities to formulate and implement policies addressing the CRPD obligations.
-----------------------------	--

	<ul style="list-style-type: none"> ❖ The Czech Republic should design one central portal, accessible to all persons with disabilities, where all relevant data necessary for effective implementation of the CRPD and participation of persons with disabilities would be stored.
--	--

<h2 style="margin: 0;">Article 33: National implementation and monitoring</h2>
--

143. Currently in the Czech Republic, the designation or establishment of a monitoring body under article 33 (2) CRPD is especially. The Ministry of Social Affairs had drafted a proposal; however this was without proper consultations with civil society. Various comments and amendments were discussed before the Government’s committee for persons with disabilities, which is an official body linked through financial and personal means directly with the government of the Czech Republic. Though the National Disability Council as umbrella organization was invited, the hearings were not public and wider civil society could not participate. The first proposal presented by the Ministry of Social Affairs is not publicly available, however according to unofficial information; the monitoring body should consist of representatives of particular government bodies, social partners and representatives of organisations representing persons with disabilities. We are afraid that the monitoring body in this constellation would not satisfy the Paris Principles requirements and the purpose and meaning of Article 33 (2) CRPD. Especially due to the fact that the government’s representatives are planned to be involved directly as a coherent part of the monitoring body. However this former proposal was put away by the Ministry of Social Affairs and currently a new proposal is being drafted. Nevertheless again wider civil society was not invited to participate in this process.

<p>144. Recommendation:</p>	<ul style="list-style-type: none"> ❖ The Czech Republic is obliged to designate or establish an independent monitoring body which will monitor implementation of CRPD. The monitoring body should be fully in compliance with the Paris Principles, according to article 33 (2) CRPD. ❖ The civil society, especially organisations of persons with disabilities and organisation promoting rights of persons with disabilities must be invited to take part in all meetings regarding designation or establishment of the monitoring body and they must have opportunity to comment upon the proposal in all preparatory stages
------------------------------------	--

Graphs and tables

Table no. 1 Part 1: The decisions on the legality/illegality of involuntary hospitalisation in the health care institution, and the decisions on the admissibility of further detention and the number of appeals in 2009.

COURT	Brno	Bruntál	Český Krumlov	Havlíčkův Brod	Hradec Králové	Jeseník	Jihlava	Kroměříž	Litoměřice
Legality of involuntary hospitalisation									
Total	2647	235	31	956	502	40	442	1439	543
Legal	N/A	235	31	951	502	40	442	1206	443
Illegal	N/A	0	0	5	0	0	0	0	0
Discontinued	2354?	235	7	897	428	41	793	233	380
Lawyer appointed	2482	235	31	987	766	32	844	1117	443
Admissibility of further detention									
Total	278	5	3	N/A	6	0	57	43	20
Legal	N/A	3	1	207	5	0	33	40	18
Illegal	N/A	0	0	0	0	0	0	0	0
Discontinued	N/A	2	2	N/A	1	0	24	3	2
Appeal									
Against the legality	11	0	0	5	7	N/A	3	3	2
Against the illegality	0	0	0	0	0	N/A	0	0	0
Against discontinuance	0	0	0	8	7	N/A	0	2	0
Against admissibility	8	0	0	1	0	N/A	0	0	1

Table no. 1 Part 2: The decisions on the legality/illegality of involuntary hospitalisation in the health care institution, and the decisions on the admissibility of further detention and the number of appeals in 2009.

Soud	Louny	Mladá Boleslav	Nymburk	Olomouc	Opava	Plzeň Jih	Praha 8	Strakonice	Vyškov	CELKEM
Zákonnost převzetí										
Celkem	65	387	181	959	1152	1515	1269	69	159	12591
Zákonné	65	387	67	811	1152	1514	1269	58	159	9332
Nezákonné	0	0	0	0	0	1	0	0	0	6
Zastaveno	0	237	67	60	1139	1333	1207	71	0	6231
Ustanovení advokáta	65	386	67	726	1152	1605	1269	53	159	12419
Přípustnost dalšího držení										
Celkem										
Přípustné	1	13	0	19	24	399	62	6	0	831
Nepřípustné	0	0	0	0	0	0	0	0	0	0
Zastaveno	41	0	0	852	1139	2	0	2	162	2232
Odvolání										
Proti zákonnosti	4	3	0	1	15	17	39	0	0	110
Proti nezákonnosti	0	0	0	1	0	0	0	0	0	1
Proti zastavení	0	0	3	0	1	3	0	0	0	24
Proti přípustnosti	0	0	0	1	0	0	0	0	0	11

Source: Statistics of the general courts, information provided to the League of Human Rights and MDAC on the request for information.

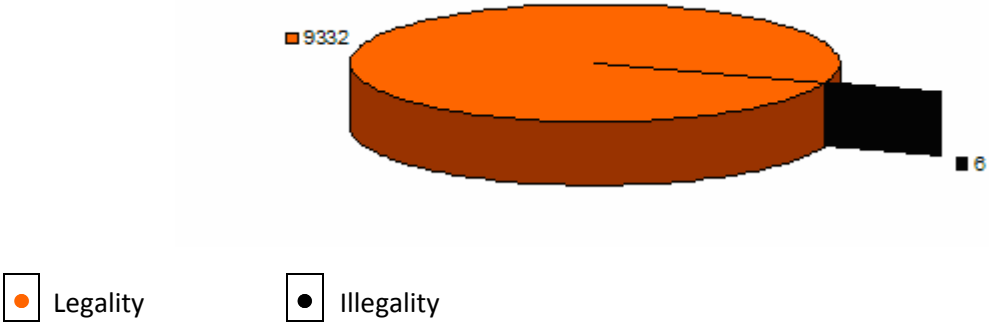
Table no. 2: Number of pupils with disabilities and disadvantages in special classes and individually integrated in 2003 – 2011

		2003/04	2004/05	2005/06	2006/07	2007/08	2008/09	2009/10	2010/11
Disabled and disadvantaged pupils in total		99 386	96 263	89 527	82 080	76 294	72 854	71 801	70 723
there	in special classes	46 268	45 006	43 971	42 098	40 209	38 504	37 040	34 497
	individually integrated pupils in mainstream primary school classes	53 550	51 587	45 556	39 982	36 085	34 350	34 761	36 226
Percentage of the total number of pupils in primary schools									
Disabled and disadvantaged pupils in total		10,0%	10,0%	9,8%	9,4%	9,0%	8,9%	9,0%	9,0%
pupils in special classes of primary schools		4,6%	4,7%	4,8%	4,8%	4,8%	4,7%	4,7%	4,4%
individually integrated pupils in mainstream primary school classrooms		5,4%	5,4%	5,0%	4,6%	4,3%	4,2%	4,4%	4,6%

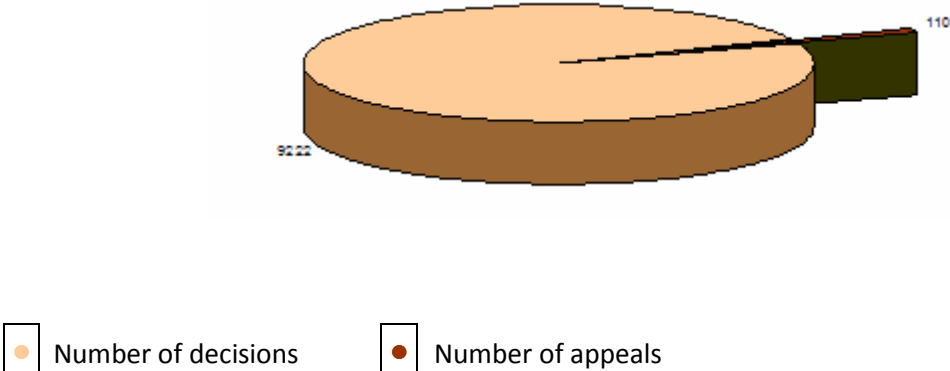
Table no. 3: Individually integrated

Type of disability		2003/04	2004/05	2005/06	2006/07	2007/08	2008/09	2009/10	2010/11
Individually integrated pupils in total		53 550	51 587	45 556	39 982	36 085	34 350	34 761	36 226
there	mental disability	383	557	697	825	962	1 069	1 091	1 119
	hearing disability	557	556	556	537	563	570	575	581
	visual impairment	436	416	414	401	373	381	374	401
	with speech defects	671	644	542	542	621	660	784	963
	physical disability	1 235	1 178	1 079	1 066	1 070	1 006	987	977
	combined disability	1 100	836	784	682	632	733	647	703
	with developmental disorders	49 168	47 400	41 346	35 742	31 593	29 520	29 744	30 744
	with medical diagnosis of autism	.	.	138	187	271	411	559	738

Graph no. 1: Number of decisions on legality and illegality of involuntary hospitalisation - 2009



Graph no. 2: Comparison of decisions on legality of involuntary hospitalisation and the number of appeals filed against these decisions – 2009



Sources

- Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine; Czech Republic ratified the Convention in 2001 and published it under No. 96/2001 Coll.
 - Resolution of the Czech National Council No. 2/1993 Coll., proclamation of the Charter of Fundamental Rights and Freedoms as part of the constitutional order of the Czech Republic, as evidenced by changes made by Act. No. 162/1998 Coll.
 - Constitutional Law No. 1/1993 Coll. Constitution of the Czech Republic
 - the government's draft of Civil Code (May 2011)
 - Decree No. 398/2009 Coll. on general technical requirements enabling the use of barrier-free buildings
 - Decree No. 73/2005 Coll. the education of children, pupils and students with special educational needs and gifted children, pupils and students.
 - Decree of the Ministry of Labour and Social Affairs No. 359/2009 Coll. establishing the percentage decline in work ability and disability requirements for assessment and provides assessment of work ability for disability
 - Act No. 108/2006 Coll. on social services
 - Act No. 117/1995 Coll. on state social support
 - Act No. 130/2002 Coll. on elections to regional councils
 - Act No. 155/1995 Coll. on pension insurance
 - Act No. 155/1998 Coll. on communication systems for deaf and deafblind people
 - Act No. 169/1999 Coll. on imprisonment
 - Act No. 20/1966 Coll. on health care
 - Act No. 247/1995 Coll. on elections to the Parliament of the Czech Republic
 - Act No. 293/1993 Coll. on custody
 - Act No. 378/2007 Coll. on pharmaceuticals
 - Act No. 40/1964 Coll. Civil Code
 - Act No. 40/2009 Coll. Penal Code
 - Act No. 435/2004 Coll. Employment Act
 - Act No. 48/1997 Coll. on public health insurance
 - Act No. č. 561/2004 Coll. Education Act
 - Act No. 62/2003 Coll. on Elections to the European Parliament
 - Act No. 94/1963 Coll. Family Act
 - Act No. 99/1963 Coll. Code on Civil Procedure
 - Act No. 243/2008 Coll. which is changing Education Act
-
- Constitutional Court Decision, 7 December 2005, file no. IV.ÚS 412/04
 - Constitutional Court Decision, 12 July 2010, file no. IV. ÚS 3102/08
 - Constitutional Court Decision, 19 October 2004, file no. II. ÚS 540/02
 - Constitutional Court Decision, 18 August 2009, file no. I. ÚS 557/09
-
- Analysis of the evolution of employment and unemployment in 2008 [online] Integrated Portal MPSV, 2010 [31 May 2011] Available from:
<http://portal.mpsv.cz/sz/politikazamest/trh_prace/rok2008/Anal2008.pdf>.

- Analysis of the evolution of employment and unemployment in 2010 [online] Integrated Portal MPSV, 2010 [31 May 2011]. Available from: <<http://www.mpsv.cz/files/clanky/10811/analyza.pdf>>.
- Ten Commandments of communication with patients with disabilities, prepared by NRZP: <http://www.rezidencnipecce.cz/archiv/priloha/priloha0602.pdf>
- Recommendation for accessible elections in Europe, Inclusion Europe 2011, available at:
- http://www.inclusion-europe.org/uploads/doc/ADAP/ETR_Policy_Recommendations_EN.pdf
- Jan Michalík, The family carrying for a family member with disability – do we know her? Contribution to the conference “Vulnerable child II”, Prague 2010
- The Concept of care for vulnerable children and children living outside their own families, adopted by the government in 2006
- The National Action Plan to transform and unify the system of care for children at risk for the period 2009 to 2011, adopted by the government in 2009
- Alternative Report to the Committee on the Rights of the Child on the Czech Republic by organisation V zájmu dítěte with the cooperation with Amalthea, Středisko náhradní rodinné péče, Člověk hledá člověka, 2010
- The rights and obligations of the employer by employment of people with disabilities [online] Wheelchair League, 2010 [31 May 2011]. Available from: <<http://ligavozick.skynet.cz/ip/prace.php?oblast=9000030>>.
- Proceedings of the contribution to care are long and do not reflect the real state [online] 2011. Public Defender of Rights [2011-06-14] Available at: <http://www.ochrance.cz/tiskove-zpravy/tiskove-zpravy-2010/rizeni-o-prispevku-na-peci-jsou-dlouha-a-nezohlednuji-skutecny-stav-zadatele/>
- Statistics of the general courts, information provided to the League of Human Rights and MDAC on the request for information, in 2009.
- Šiška J., Latimier C., The rights of children with mental disabilities in the Czech Republic in the context of the United Nations Convention on the rights of the child, Social work, no. 2/2011
- The State’s Third and Fourth Periodic Report to the UN Committee on the Rights of the Child (2008)
- Public Defender of Rights, Report on visits to social care homes for adults with physical disabilities, April 2006,. The report is available at: <<http://www.ochrance.cz/?id=101614>>
- Report on visits to psychiatric hospitals, September 2008. The report is available at: <http://www.ochrance.cz/fileadmin/user_upload/ochrana_osob/2008/SZ_psychiatricke_lecebny_08.pdf>;
- Report on visits in social care homes for persons with disabilities, 2009. The report is available at: <<http://www.ochrance.cz/?id=101624>>.Public Defender of Rights, Report on mental homes, 2009. Available at: <<http://www.ochrance.cz/?id=101624>>.
- The report on the fulfilment of recommendations of CPT from 2005
- The report for the government of the Czech Republic on the visit in the Czech Republic, which was made by the European Committee for the Protection from Torture and Inhuman or Degrading Treatment (CPT) on October 21 to 23 2009, pp. 7 – 8, In: <http://www.vlada.cz/assets/ppov/rlp/dokumenty/zpravy-plneni-mezin-umluv/Zprava-CPT-z-ad-hoc-navstevy-2009.pdf>