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Brno 30. 3. 2021

Dear European Ombudsman,

On behalf of the Public Defender of Rights Stanislav Křeček, who has delegated to me certain areas of his competence, including the protection of the rights of people with disabilities¹, I am responding to your request relating to the implementation of the right to independent living and the commitment to end institutional care in the Czech Republic.

The Public Defender of Rights has been established as the independent monitoring body for the United Nations Convention on the Rights of People with Disabilities (hereinafter the "Convention") pursuant to the Article 33/2 of the Convention since 1st January 2018 in the Czech Republic. In the scope of the mandate as monitoring body the Defender is also systematically dealing with the theme of deinstitutionalisation. Since the beginning of my term as a Deputy of the Public Defender of Rights (2020) I have carried out, for example, two researches on this topic:

- *The client's life in residential care homes for persons with disabilities², and*
- *The right to live independently: the transformation of social services in regions of the Czech Republic³*

I also performed preventive systematic visits to social services facilities to promote respect for client's fundamental rights.⁴

Based on my expertise and experience in the field of deinstitutionalisation, I would like to point out a number of issues (also related to the use and the absorption of the EU funds) in the Czech Republic:

The issue: no national deinstitutionalisation strategy currently in place

Even though the Czech Republic officially subscribes to the idea of deinstitutionalisation, it has not yet adopted a **long-term strategy with a clear timeframe and allocations of funding**

¹ Section 2 (4) of the Law 349/1999 Coll. on the Public Defender of Rights.

² Available at (in Czech): https://test.ochrance.cz/fileadmin/user_upload/CRPD/Vyzkumy/6-2019-domovy-pro-osoby-s-postizenim.pdf.

³ This research will be officially released on Ombudman website in a few months.

⁴ As the National Preventive Mechanism under the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, the Defender also performs preventive systematic visits to places where freedom of persons could be restricted and seeks to promote respect for their fundamental rights. The Public Defender of Rights has delegated this kind of his competence to his Deputy in 2020.

(even beyond EU funding). No government paper⁵ contains the final goal of the deinstitutionalisation process, i.e. complete replacement of institutional care by services provided in a community in respect of all departments (social services, healthcare facilities, child services, etc.).

The issue: no comprehensive calculation of deinstitutionalisation costs

As mentioned above, the Czech Republic has no deinstitutionalization strategy that sets out an agreed timeline and is underpinned by an agreed budget. In my opinion, the Czech Republic cannot fully take advantage of EU funds for deinstitutionalisation process without a national deinstitutionalisation strategy identifying areas and activities potentially funded by EU funds. The Czech Republic should also need to be aware how much money is necessary to allocate from national budget.

The issue: no legal definition of an “institution” or a “community-based care”

The Czech Republic has not adopted any legal definition of an “institution” or a “community-based care”. The Czech Ministry of Labour and Social Affairs provides definitions in some of its non-legal documents (analysis, researches, guidelines). Nevertheless, these definitions of an “institution” or a “community-based care” have not been commonly used or accepted by responsible entities (i.e. social service providers or regions responsible for the provision of social services in their areas). In addition, the definition of institution used by the Ministry is mainly based **on the number of clients** living in the institution⁶. This is not in line with the Convention's approach emphasizing not only the need to have a small number of clients in social service facilities but also the need to provide fully individualized client-oriented social services (without institutional care elements).⁷

The issue: the potential use of EU funds to reorganise institutions, rather than transition to family and community-based living

⁵ There has been a series of National Disability Plans since the 1990s. The most recent plan is the *National Plan for the Promotion of Equal Opportunities for Persons with Disabilities 2021–2025*. The most recent disability relevant strategy is also the *National Strategy for Development of Social Services 2016 – 2025*. There is also the *Action plan for transition from institutional care to community support 2020 – 2022*. Although it should have been completed a long time ago, the Action plan is still being drafted. The Czech Republic also has the strategy for older people. *The Strategy for Preparation of the Society for Ageing 2019–2025*, while underlining the importance of creating community-based support, does not include the closure of institutions as well.

⁶ An institution is defined as a residential social services facilities with more than 19 clients. More details available at (in Czech): The National Center for the Support of the Transformation of Social Services. Institutional social services in the Czech Republic: Overview and characteristics of selected social services. In: The National Center for the Support of the Transformation of Social Services [online]. 2019 [quoted 20. 3. 2021]. Available at: <http://www.trass.cz/wp-content/uploads/2016/02/celorepublikova-analyza.pdf>.

⁷ “Although, institutionalized settings can differ in size, name and setup, there are certain defining elements, such as: obligatory sharing of assistants with others and no or limited influence over by whom one has to accept assistance, isolation and segregation from independent life within the community, lack of control over day-to-day decisions, lack of choice over whom to live with, rigidity of routine irrespective of personal will and preferences, identical activities in the same place for a group of persons under a certain authority, a paternalistic approach in service provision, supervision of living arrangements and usually also a disproportion in the number of persons with disabilities living in the same environment.” Quoted from: CRPD Committee. General Comment No. 5 – Article 19: Living independently and being included in the community [online]. New York: United Nations, October 2017 [quoted 20. 3. 2021]., CRPD/C/18/1, para. 16 (c). Available at: <https://www.ohchr.org/en/hrbodies/crpd/pages/gc.aspx>.

From my experience the inconsistency in how to define an “institution” in the Czech Republic might cause a high risk of usage EU funds to just “reorganise” institutional care. Since we do not clearly know what an “institution” and an “institution type of care” is, it is still possible that many of the project funded by EU funds will focus on institutions (on restructuring institution buildings or the development of smaller residential facilities - “smaller institutions”), instead of financial support of a community-based services, which is completely unacceptable. Moreover, there is also no official clarification on what might be considered as a **necessary investment** in the sustainability of institution buildings until their closing down (i.e. necessary repairs to buildings).

For example, the organization Community Living for Europe: Structural Funds Watch highlights that funding from other Operational Programmes – notably Environment – are being used to renovate institutions. The Community Living for Europe also explicitly mentions the case of the Czech Republic in one of its analyses (2018): *„ESIF worth 14,280,000 CZK (€570,000), channelled through the Operational Programme Environment, has been spent on improving the energy efficiency of the buildings of four institutions for children“*.⁸

The issue: no comprehensive data on deinstitutionalisation

Since the regions in the Czech Republic are responsible for the availability of social services on their territory⁹, in 2019 I asked them for the information on how many institutions and how many community-based social services are provided on their territory. The analysis of their responses revealed particular gaps in data collection concerning deinstitutionalisation in the Czech Republic. Some regions did not systematically monitor the numbers of clients who came to or left residential social services at all. When collecting data, there was also no uniform approach between regions, which social services could be counted as institutional or community-based ones. This means that the lack of accepted and shared definitions of what constitutes institutions or community-based services poses a challenge for the collection of comprehensive data.

Furthermore, the national-level data collected by the Czech Ministry of Labour and Social Affairs does not comprehensively monitor the progress of the deinstitutionalisation process. For this reason, it is not possible to accurately evaluate whether the deinstitutionalisation is being successful in the Czech Republic.

The issue: the use of the REACT-EU funding to increase the capacity of residential social services

⁸ Oana Gîrlescu. Inclusion for all: achievements and challenges in using EU funds to support community living [online]. Brussels: Community Living for Europe: Structural Funds Watch, November 2018 [quoted 20. 3. 2021]. Available at: https://eustructuralfundswatchdotcom.files.wordpress.com/2019/09/strucutral-funds-watch_inclusion-for-all.pdf

⁹ There are 14 regions in the Czech Republic.

As part of my activities¹⁰, in January 2021 I received the information that the Czech Ministry of Labour and Social Affairs plans to use the REACT-EU funding (among other projects) **to increase the capacity of residential social services**.¹¹ Under this program, a total of 3 billion Czech crowns are planned to be released until 2023 in the Czech Republic.

The Czech Republic and the EU have ratified the Convention, which guarantees the right to live in a community (outside the institution) and the right to access community-based social services (Article 19). In accordance with the Article 19, both the EU and the Czech Republic are legally obliged to actively strive for the **full closure of large-capacity residential social services** and the following **existence of residential social services only with a small number of clients**.¹² I cannot imagine any possibility of a potential increase in the capacity of residential social services in line with the legal obligations of the EU and the Czech Republic under the Convention.

In addition, my research from 2020¹³ shows that almost a third of the residential care homes for persons with disabilities, that participated in the research,¹⁴ are those with a capacity of more than 76 clients. Also, four of the five homes set up by the Ministry of Labour and Social Affairs even have a capacity of more than 100 clients, in one case 192 clients. Also, for this reason, increasing the capacity of residential social services in the Czech Republic is really unacceptable.

Consequently, at the end of March 2021, I asked the Minister of Labour and Social Affairs Ms Maláčová to explain to me this inadmissible way of using REACT-EU funding. Also, in mid-February, two organizations¹⁵ advocating for persons with disabilities addressed Minister Maláčová in the same matter (their open letter is attached to this document).¹⁶ In this letter, they draw attention to the planned grant calls under the RE-ACT funding, which, in their opinion, significantly favour the building, reconstruction or increasing the capacity of

¹⁰ The information was provided by representatives of the Ministry of Labor and Social Affairs on 28 January during one of their regular videoconferences, in which, for example, social service providers or representatives of the Office of the Public Defender of Rights participate.

¹¹ The REACT-EU funding is intended to increase the capacity of residential services as well as to support social prevention services in the Czech Republic etc.

¹² Residential social services with only a small number of clients, **where they approach clients truly individually**.

¹³ The Client's life in residential care homes for persons with disabilities. Available at (in Czech): https://test.ochrance.cz/fileadmin/user_upload/CRPD/Vyzkumy/6-2019-domovy-pro-osoby-s-postizenim.pdf.

¹⁴ The survey involved 156 residential care homes for people with disabilities out of the number of 205 homes (76%) registered at the time of the research in the official National Register of Social Services Providers.

¹⁵ The organization „Alliance for Individualised Support“ affiliate 50 parental, patient and umbrella organisations. Their goal is to achieve the changes in the social system of the Czech Republic in the direction of individualised support and care. The organization „Unity for deinstitutionalisation“ is an organization uniting community services, professionals, carers and organizations in the effort for social change in the field of social and health services, school facilities. They advocate deinstitutionalisation, i. e. leaving institutional care and moving to affordable and individual support in the community.

¹⁶ What is more, these organizations also sent this letter to the European Commission (DG Employment).

residential social services compared to community-type services. However, no official response from the Ministry to the organizations' initiative is known so far.

The issue: small social services providers face barriers to drawing money from operational programs funded by the EU

Moreover, in the above-mentioned open letter, organizations also warned that smaller social services providers often face problems due to high co-financing requirements restricting their ability to access funding calls. Smaller social services providers are mainly operated by NGOs, do not have sufficient financial resources, are not interesting for banks, investors, sponsors etc. That is why, the condition of financial participation (i.e. the 25%) might be unattainable for them.

The issue: no systematic involvement of representative organisations of persons with disabilities in the design, implementation, monitoring, and evaluation of the operational programmes

It is necessary to actively involve representative organisations of children, persons with disabilities and older people, including those in institutions, throughout the design, implementation, monitoring, and evaluation of regulations governing the management and distribution of ESIF throughout their programming cycle **through transparent, accessible, and inclusive procedures**. However, there are no rules guaranteeing the systematic involvement of these organizations in the Czech Republic.

Also, for example, the REACT-EU allocation plan for social services (2021-2023) has not been publicly presented by the Ministry of Labour and Social Affairs through its website or other publicly accessible channels. On the contrary, the Ministry has published the plan as part of its regular videoconferences¹⁷ with social services providers and other entities, which I do not find to be completely transparent and accessible for representative organizations or persons with disabilities.

The conclusion

To sum up, on the basis of all the issues mentioned above, I would like to briefly highlight a few points that could make the use of EU funds for deinstitutionalisation in the Member States more efficient, specifically:

- **To adopt the universal definition of an “institution” or a “community-based care” on the EU level.** The definition needs to be applied when setting the conditions for drawing money from EU funds to ensure that the money will not be used to build and renovate institutions or increase their capacity. The definition should also take into account not only the number of clients but also the way social services are provided.
- **To ensure that small social services providers, typically community-based ones, will not face requirements which restricts their ability to access funding calls** (i.e. high co-financing condition).

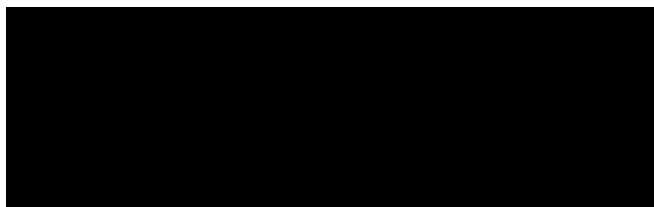
¹⁷ On 28th January 2021.

- **To ensure that the civil society (also persons living in institutions) is meaningfully involved in the design, implementation, monitoring, and evaluation of the operational programmes.**
- **To ensure that the system for monitoring the use of EU funds is as effective as possible, since practical examples show that this is not often the case.**
- **To ensure the effective functioning of the complaint mechanism for reporting abuses of funds to the European Commission.**

Dear European Ombudsman, in conclusion, I would like to thank you very much for your initiative related to the role of the Commission in ensuring that Member State governments spend ESI funds with a view to promoting independent living for persons with disabilities and older persons. I really appreciate your effort.

I believe the deinstitutionalisation process is a very crucial issue in the Czech Republic on which I must focus. That is why, I welcome the creation of a “monitoring committee” at national level, which would examine the performance of EU-funded programmes (also related to the deinstitutionalisation). Generally, I consider feasible and desirable for Ombudsman or his Deputy to participate in such kind of national monitoring committee.

Yours sincerely,



Attachment

The open letter: Common position on the allocation of funds - Alliance for Individualised Support and Unity for deinstitutionalisation (Czech language)

Ms Emily O'Reilly
European Ombudsman
1 avenue du Président Robert Schuman
CS 30403
F-67001 Strasbourg Cedex

Responsible person for the inquiry:
Ms Maria Moustakali



VYJÁDRĚNÍ K NÁVRHŮM MPSV NA VYUŽITÍ PROSTŘEDKŮ Z PROGRAMU IROP

Apelujeme na efektivní využití prostředků IROP na infrastrukturu.

1. Za efektivní nepovažujeme současné návrhy MPSV na využití zmíněných prostředků ve prospěch rozšiřování a výstavby dalších velkých institucionálních zařízení sociálních služeb.

MPSV plánuje v průběhu roku 2021 vyhlásit dotační výzvy v programu IROP v celkové výši 3,103 mld Kč, s termínem dokončení projektů do konce roku 2023. Zásadní nedostatek vidíme v nepoměru návrhů na alokaci prostředků:

- zatímco **na terénní a ambulantní služby**, které jsou dlouhodobě nedostatečně rozvíjené a kapacitně nedostačující, má být určeno např. v programu ISPROFIN **43 mil. Kč**,
- na **výstavbu, rekonstrukci a zvyšování kapacit v pobytových sociálních službách** je vyčleněno v témže programu **1,20 mld Kč**.

Obdobně je tomu u plánované dotační výzvy v rámci programu Re-Act, ministerstvem navrhované procentní členění alokace je shodné.

2. Problematická je rovněž plánovaná výše spoluúčasti na financování – konkrétně v programu ISPROFIN by spoluúčast příjemce dotace měla být 25 % – ta totiž znevýhodňuje zejména menší poskytovatele služeb a nahrává velkým institucionálním poskytovatelům.

3. Investování do pobytových zařízení až s kapacitou 100 obyvatel považujeme obecně (i z prostředků EU) za neobhajitelné.

Požadujeme, aby pro Domovy pro seniory a Domovy se zvláštním režimem (budovy a vybavení) byla využita stejná kritéria (materiálně-technický standard) při rozhodování o investicích z IROP, tak jako pro ostatní cílové skupiny. Lidé s komplexními potřebami (křehcí senioři, lidé s duševním onemocněním a kombinovaným postižením) jsou pobytem ve velké instituci ohroženi nejvíce.

Podporujeme postoj a dopis Charity ČR ministryni práce a sociálních věcí Janě Maláčové ze dne 19.1.2020, ve kterém se vymezuje vůči plánování investic do pobytových sociálních zařízení. Charita ČR v dopise jasně odkazuje nejen na své dlouholeté zkušenosti s poskytováním široké škály sociálních služeb v rámci celé ČR, ale též na zkušenosti z posledního roku, kdy nás zasáhla pandemie COVID 19.

Současná situace v sociálních službách (umocněná pandemií) jasně ukazuje, že ústavní zařízení jsou nejzranitelnější v celém systému sociálních služeb a jejich uživatelé jsou přes veškerou snahu zřizovatelů a pracovníků nejen systematicky omezováni ve svých právech, ale i ohrožováni na zdraví a životě. Dlouhodobě apelujeme na to, aby vzniknul plán deinstitucionalizace sociálních služeb, podle kterého by se plánovaně a systematicky budovala síť dostupných terénních, ambulantních a komunitních pobytových služeb, a k tomu byly využity prostředky, mj. z programu IROP.

Za Jednota pro deinstitucionalizaci:

Zuzana Thürllová, místopředsedkyně

Za Alianci pro individuální podporu:

Agáta Jankovská, výkonná ředitelka

Aliance pro individualizovanou podporu sdružuje na padesát převážně patientských, rodičovských a zastřešujících organizací a spolků, které hájí zájmy osob se zdravotním postižením či chronickým onemocněním a vyššími nároky na podporu a péči a jejich pečujících. Aliance vznikla jako reakce na nedostatky v systematickém sledování potřeb těchto lidí a s tím související nedostatečnou dostupnost podpory a péče. Usiluje o zlepšení podmínek lidí s vyššími nároky na podporu a péči, a to bez ohledu na diagnózu či typ zdravotního postižení, i jejich pečujících.

Jednota pro deinstitucionalizaci, z. s. – JDI, z. s. je organizace spojující komunitní služby, odborníky, pečující osoby a organizace v úsilí o společenskou změnu v oblasti sociálních a zdravotních služeb, školských zařízení. A to směrem ke společenské soudržnosti, vyrovnání příležitostí a naplňování práv pro lidi se znevýhodněním (lidé s postižením, duševním onemocněním, ohrožené děti a křehcí senioři). Zasazujeme se o deinstitucionalizaci, tj. opuštění od institucionální ústavní péče a přechod na dostupnou a individuální podporu v komunitě.

V Praze, dne 19. února 2021