NGO information to the UN Human Rights Committee

For consideration of the Third Periodic Review of the Czech Republic under the International Covenant on Civil and Political Rights

Submitted by the Mental Disability Advocacy Center (MDAC), European Disability Forum, League of Human Rights (LIGA)

14 June 2013

1. This submission is to assist the Human Rights Committee in its consideration of Czech Republic’s Third Periodic Review, in response to the List of Issues identified by the Human Rights Committee with regards to the enjoyment of rights enshrined in the International Covenant on Civil and Political Rights (ICCPR) by people with disabilities. The submission is made by the Mental Disability Advocacy Center (MDAC), European Disability Forum (EDF) and the League of Human Rights (LIGA).

2. MDAC made a submission to the Committee on 28 December 2012 for its consideration of its List of Issues for the Czech Republic. This submission will follow up on the List of Issues made public by the Committee highlighting relevant standards established by the UN Convention on the Rights of Persons with Disabilities (CRPD), which the Czech Republic ratified in 2009, with regards to the legal capacity, the right to vote, detention, freedom from torture and ill-treatment, and discrimination in education.

3. The CRPD is binding international law which sets out the optimal and most highly protective standards on the human rights of persons with disabilities and as such its standards on the rights of people with disabilities should be mainstreamed across the UN human rights system. In particular, these are the correct standards to be followed by the Human Rights Committee to ensure that persons with disabilities enjoy all rights guaranteed by the Covenant on an equal basis with others, as required under ICCPR Article 2. We urge the Committee to review the Czech Republic’s compliance with the Covenant in a manner consistent with and supportive of the CRPD and mainstream the rights of people with disabilities in its recommendations to the Czech government.

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1 The Czech Republic’s ratification of the CRPD in 2009 was published in the Treaty Collection under no. 10/2010.
ISSUE 1: Equality before the law (Arts. 16 and 26 of the ICCPR)

1. In February 2012 the Czech President signed a new Civil Code into law, which will come into force in January 2014. The previous law allowed courts to deprive people with disabilities of legal capacity and place them under full guardianship. The new law abolishes full deprivation of legal capacity, but retains partial guardianship in which the judge can decide which human rights people are deprived of. This is still not in accordance with international standards. At the end of 2010 (the latest data available) 25,975 people were fully deprived of legal capacity and a further 5,220 restricted partially, according to government data. Each year, courts strip around 2,000 more people of their legal capacity. Today, very few of these people are not allowed to manage their own finances, they are not allowed to decide where and with whom to live, consent to healthcare decisions, to marry or even to vote. Even after the new law comes into force, a judge can decide on these areas, which still remains problematic when analysed through the lens of the ICCPR.

2. Article 12 of the UN Convention on the Right of Persons with Disabilities is entitled “Equal recognition before the law” obliges States to “recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life”. (Art. 12(2)). People with disabilities are not expected to act alone, but if they need support then, the State is obliged to “take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity” (Art. 12(3)). Support must respect the autonomy, will and preferences of the individual.²

3. In 2012 the UN Committee on the Rights of Persons with Disabilities made clear that States should replace laws, policies and practices which permit guardianship and trusteeship (partial guardianship) for adults, and instead recognise the legal capacity of everyone with disabilities and the right to exercise it.³

4. There is an intimate link between guardianship and institutionalisation: many people in the Czech Republic are placed in psychiatric hospitals or social care institutions because someone else (the guardian) has taken the decision to put them there. In its 2008 judgment of Shhtukaturov v Russia, the European Court of Human Rights stated that a mental illness cannot be the sole reason to justify deprivation of legal capacity and that such deprivation is not a ground to deprive a person of their liberty.⁴ In March the UN Special Rapporteur on Torture called on states to abolish any legislation allowing for the institutionalisation of people on the basis of their disability.⁵ It would be important for the Human Rights Committee to echo these standards.

5. Legal capacity is a cross-cutting human rights provision and is the precursor to enjoyment of all other rights for many people. International human rights law demands that States ensure the full legal capacity of people with disabilities, and to

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² See also report of UN Special Rapporteur on Torture, 28 July 2008, A/63/175, paras. 44 and 73.
³ CRPD Committee concluding observations regarding China; 17-28 September 2012, para. 22.
⁴ Shhtukaturov v Russia, judgment of the European Court of Human Rights, Application No. 44009/05, 27 March 2008.
⁵ Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez from 1 February 2013, A/HRC/22/53.
find alternatives, such as advance directives, enduring powers of attorney, and supported decision-making.

Recommendation #1: In accordance with Article 16, ICCPR, recognize that fully respecting each person’s legal capacity is an essential element in the exercise of all human rights including the right to vote and the prevention of arbitrary detention and torture and ill-treatment. Call on the Czech Republic to ensure the enjoyment and exercise of legal capacity on an equal basis with others by the repeal of laws allowing substituted decision-making, including offending provisions of the newly adopted Civil Code. The Czech government must invest in and provide a range of accessible voluntary supports and accommodations that enable individuals to exercise their legal capacity and that fully respect their individual autonomy, will, preferences, privacy and dignity.

Recommendation #2: Adopt measures to repeal the laws, policies and practices which permit guardianship and trusteeship and take legislative action to replace regimes of substituted decision-making (guardianship/trusteeship) by supported decision making in the exercise of one’s legal capacity in accordance with Article 12 of the CRPD. Extend this to all rights, including inter alia the right to give and withdraw informed consent for medical treatment, give evidence in a court proceeding, choose one’s partner, conduct one’s banking and financial affairs.

Recommendation #3: In consultation with DPOs, prepare a blueprint for a system of supported decision-making, and legislate and implement it (through training of judicial and administrative officers, and other measures and mechanisms) which includes:

a) Recognition of all persons’ legal capacity and right to exercise it;
b) Accommodations and access to support where necessary to exercise legal capacity;
c) Arrangements for and legal recognition of supported decision-making;
d) Application of recognition of legal capacity and a supported decision-making mechanism across all areas – health decisions, finances, etc.;
e) Eliminating situations in which a person’s legal capacity can be denied or limited.

ISSUE 2: Political participation (Arts. 2 and 25 of the ICCPR)

Please provide information on the new Czech Election Code and in particular on how its provisions ensure that all citizens with disabilities of voting age have the right to vote and take part in public life on the same basis as others. [List of Issues, para 9]

6. The proposal for the New Election Code was published for consultation by the Ministry of the Interior on 14 May 2013. The new system would allow a court to assess the a person’s ability to vote during a guardianship proceeding. The court could decide to withhold the person’s right to vote or right to be elected a member of European Parliament, president, senator, regional official, and so on. This is plainly arbitrary as there is no such thing as a test for voting, and it will be carried out on judicial hunch: hardly a strong way to limit someone’s democratic rights. The test will
constitute direct discrimination on the basis of disability, as there is no procedure in Czech law for assessing the capacity to vote of people not labelled with disabilities. The CRPD sets out that everyone with disabilities (including those with intellectual impairments or mental health problems) have the right to vote on the same basis as other citizens (Art. 29). The Committee of Ministers of the Council of Europe affirmed this in a November 2011 document which stated that the right to vote, “should not be deprived of this right by any law limiting their legal capacity, by any judicial or other decision or by any other measure based on their disability, cognitive functioning or perceived capacity”. The Venice Commission of the Council of Europe the next month stood behind this notion in stating that, Universal suffrage is a fundamental principle of the European Electoral Heritage. People with disabilities may not be discriminated against in this regard, in conformity with Article 29 of the Convention of the United Nations on the Rights of Persons with Disabilities and the caselaw of the European Court of Human Rights.”

7. The UN Committee on the Rights of Persons with Disabilities has echoed these sentiments, stating that “denial of the right to vote based on individualised decisions taken by the judge” is a violation of Article 29 of the CRPD. Similarly, in a “Thematic Study” on political participation of people with disabilities the OHCHR stated that Article 29 of the CRPD “does not foresee any reasonable restriction, nor does it allow any exception for any group of persons with disabilities. Therefore, any exclusion or restriction of the right to vote on the basis of a perceived or actual psychosocial or intellectual disability would constitute “discrimination on the basis of disability” within the meaning of Article 2 of the Convention.”

8. The right to vote and stand for election should never be subject to a judicial test, a notion which constitutes disability-based discrimination as it will only apply to people identified as having intellectual or psycho-social disabilities. As the Council of Europe’s Commissioner for Human Rights pointed out in March 2011, there is “no room for procedures in which judges or medical practitioners would assess the voting competence of a person and then give a green light—or not”.

Recommendation #4: Repeal provisions in the new version of Election Code which excludes from the right to vote and stand for election persons whose legal capacity has been restricted which is in violation of the right to political participation as set out in Articles 2, 25 & 26 ICCPR. Do not allow a judge to remove the right to vote of any citizen on the basis of perceived disability, incapacity or incapability to vote.

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6 Council of Europe, Committee of Ministers, “Recommendation CM/Rec(2011)14 to member states on the participation of persons with disabilities in political and public life”, 16 November 2011, para. 3.
8 Concluding observations regarding Spain, 19-23 September 2011, para. 47
10 Thomas Hammarberg, “Human Rights Comment: Persons with disabilities must not be denied the right to vote”, 22 March 2011
ISSUE 3: Non-discrimination in education (Art. 2 of the ICCPR)

Please indicate whether Roma children continue to be overrepresented in “special schools” or “practical elementary schools” (CCPR/C/CZE/3, para. 247) and separated from other children in mainstream schools. Please explain how this policy complies with Covenant rights. In this context, please provide further information on the execution of the National Action Plan for Inclusive Education (CCPR/C/CZE/3, para. 248) and comment on information that lack of financial resources and the resignation of members of the Ministry of Education’s working group tasked to implement the National Action Plan for Inclusive Education has resulted in difficulties in its implementation. [List of Issues para 7].

9. More than 80% of children intellectual disabilities are segregated from other children and placed in special schools in violation of the government’s obligations under binding international law with regards to non-discrimination and the right to inclusive education. 11

10. Although in 2010 the Government of the Czech Republic has adopted the National Action Plan for Inclusive Education (NAPIE) that would set forth the plan for a transition from segregated to inclusive education, its implementation was discontinued under the current Government.

11. In May 2013 the Ministry of Education prepared an amendment of the Education Act, which explicitly gives the authority to regional governments to set up segregated schools, classes or groups for children with intellectual disabilities within mainstream schools. The proposal will now be submitted to the Chamber of Deputies.

12. Article 24 of the CRPD sets out the obligation “to ensure an inclusive education system at all levels and life long learning directed to... [t]he full development of human potential and sense of dignity and self-worth, and the strengthening of respect for human rights, fundamental freedoms and human diversity...”. [emphasis added] States must “allocate sufficient resources for the development of an inclusive education system for children with disabilities” and “provide students with disabilities with the required support within the general education system”. 12

13. Segregated education results in higher costs associated with a parallel segregated system; poorer educational and long-term social and economic outcomes for children with disabilities placed in segregated systems compared to children with disabilities included in regular education; and systemically-produced marginalisation because non-disabled children do not evolve empathy, understanding and respect for diversity to the same extent when learning alongside their disabled peers in inclusive settings. 13

14. It its imperative that the government amends the Education Act to ensure the right to education in an inclusive manner to all children with disabilities, in full compliance with the CRPD and the ICCPR.

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11 According to Statistic Yearbook in Education of 2012/2013, only 3 719 out of 18 475 of children with intellectual disabilities were educated in mainstream schools. http://toiler.uiv.cz/rocenka/rocenka.asp

12 CRPD Committee, concluding observations on Hungary, 22 October 2012, CRPD/C/HUN/CO/1, para. 41.

Recommendation #5: Adopt measures in the law to eliminate discrimination in education and ensure the implementation of inclusive education for all children including children with disabilities. Measures to achieve this non-discrimination include the obligatory training of all teachers (beyond special education teachers), to require individual education plans for all students, ensure the availability of assistive devices and support in classrooms, educational materials and curricula, the accessibility of physical school environments, awareness-raising on the right to inclusive education directed to children, families and communities, and allocate budget for all of the above.

ISSUE 4: Torture, or cruel, inhuman or degrading treatment and punishment and deprivation of liberty (Art. 7 and 9)

With regard to the State party’s information that cage/net beds are not an acceptable means of restraint in health care facilities (CCPR/C/CZE/3, paras. 110-111), please comment on reports that they are still in use as a means of restraint in social care homes and psychiatric institutions. [List of Issues, para 16]

15. Around 25,000 people are hospitalised in psychiatric hospitals or psychiatric wards in general hospitals in the Czech Republic each year,14 where they are often restrained and kept secluded in ‘cage beds’ (beds with a netted caging on the sides and on top to confine the person inside) for lengthy periods of time. In social care institutions people are lawfully subjected to manual and chemical restraints as well as seclusion (article 89 of the Social Care Act). In psychiatric facilities it is still allowed to use manual restraints, belts or straps, cage bed, protective jacket, pharmaceutical restraint or combination of means above (article 39 of the Health Services Act).

16. In 2013 MDAC conducted two one-week monitoring missions to document testimonies of cage bed victims. We found that cage beds as well as other means of restraints are still excessively used in the Czech Republic, including their use to restrain elderly people to stop them getting out of bed at night, and as a process on admission to a psychiatric hospital. We also found cage beds used as punishment, in total contradiction to established human rights standards. We will be publishing a comprehensive report about our monitoring missing in July.

17. In January 2012, a woman in the Dobřany psychiatric hospital hanged herself in a cage bed after only hours of being confined there.15 Similar deaths in cage beds have been reported in the Czech Republic in recent years. These deaths often remain without proper investigation and no one is held accountable.

18. In his March 2013 thematic report on torture and ill-treatment in healthcare settings Juan Mendez, UN Special Rapporteur on Torture, called on States to ban any form and duration of restraints and seclusion of people with disabilities, including the use

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of cage beds and forced medication. Mr Mendez’s statements are affirmed by two landmark judgments of the European Court of Human Rights in 2012.\(^{16}\)

19. The CRPD grounds this, and reiterates ICCPR standards. It sets out that no one should be deprived of their liberty on grounds of disability (Art. 14) and that all health care services must be provided with the consent of the person concerned (Arts. 17 and 25), and people with disabilities have the right to their physical and mental integrity (Art. 17).\(^{17}\) Under the CRPD states are obliged to ensure the right to be free from torture and ill-treatment (Art. 15) as well as exploitation, violence, and abuse (Art. 16).

Recommendation #6: Repeal legal provisions which allow forced and non-consensual medical interventions against persons with disabilities, including institutionalisation the use of restraint and seclusion, and recognise these practices as ill-treatment (and, in some cases, torture).

### ISSUE 5: Deprivation of liberty (art. 9 and 10)

What is the status of the new law on health services which, according to the state party’s follow-up report, was supposed to, inter alia, amend the conditions for involuntary hospitalization? Has the Centre for Legal Aid been established, with the purpose of providing legal aid to persons without full legal capacity (CCPR/C/CZE/CO/2/Add.1, para 13.)? If so, please provide information on the number of cases of involuntary hospitalized registered to date and indicate in how many cases legal aid has been granted and with what outcome. [List of Issues, para 14]

What steps has the State party taken to ensure that social care services are provided on the basis of free and informed consent and that people with disabilities are protected against arbitrary deprivation of liberty in social care settings? Please also indicate whether an independent inspection mechanism is in place to monitor. [List of Issues, para 15]

20. Around 24,000 people with disabilities live in residential social care institutions and another 25,000 are admitted to psychiatric hospitals or wards every year. State policies favour institutions over services in the community, a bias towards most-restrictive practices, which is a violation of standards set out by the ICCPR and the CRPD.\(^{18}\)

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\(^{16}\) In *Bures v. Czech Republic* (Application No. 37679/08, judgment 18 October 2012) the European Court of Human Rights found a violation of Article 3 (prohibition of torture and ill-treatment) of the European Convention on Human Rights as the applicant, a man with a psycho-social disability was held strapped down for three hours upon being brought to hospital. In *Stanev v. Bulgaria* (Application No. 36760/06, judgment 17 January 2012), the Grand Chamber found that conditions in a long-term social care institution amounted to an article 3 violation in the case of a man with a psycho-social disability kept there for over eight years.

\(^{17}\) Articles 14, 25, and 17 of the CRPD.

\(^{18}\) Article 14 of the CRPD confers on persons with disabilities, on an equal basis with others: the right to liberty and security of person. It also stipulates that the existence of a disability shall in no case justify a deprivation of liberty. Article 19 of the CRPD sets out the obligation of the state to ensure the right to
21. People with disabilities restricted in their legal capacity are easily placed into an institution by their guardian who can sign a contract thereof – this practice is still allowed by the new Civil Code. Others are placed into social care institutions by the municipality, if they are viewed as lacking capacity and do not have a guardian – these situations are not currently reviewed by the court. The proposal on the new Code of Non-contentious Proceedings included a special court review of detention in social care services (section 86) is currently in the Chamber of Deputies, however as the practice of judicial proceedings in deprivation of liberty in health setting shows, the reviews are almost always merely formal and thus ineffective, and there is no reason to believe that a new law will result in more effective hearings.

22. Czech law facilitates human rights violations which result in de facto detention (see the Stanev v. Bulgaria case). Once institutionalized, the person is barred from leaving the facility and returning home.19 The Czech Republic is making some progress on transforming social care into community-based services, but there are still few available and accessible services, and of these, many do not meet the needs of persons with disabilities and that respect their autonomy, choices, dignity and privacy. The state deinstitutionalisation project20 ended in 2013, and further funding has not been secured, which may lead to slowing down or suspension of the process with detrimental effects on people with psycho-social disabilities and intellectual disabilities in comparison to other ‘groups’, raising an issue of discrimination.

23. There is no Czech policy which sets out the political will to close down large and abusive institutions, contrary to Article 19 of the CRPD that specifically enjoins States to “take effective and appropriate measures to facilitate full enjoyment by persons with disabilities of this right and their full inclusion and participation in the community”. This was emphasised by the Council of Europe Commissioner for Human Rights in March 2012,21 and the OHCHR some months later.22 In its 2012 Concluding Observations on the Czech Republic, the CAT called on the government to ensure speedy deinstitutionalisation.23 Despite these calls from the international community, the government in its State report to the Human Rights Committee fails to even raise the point.

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19 As set out by Article 91 of the 2006 Act on Social Care Services.
20 “Support for transformation of social care services” as administrated by the Ministry of Labour and Social Affairs.
21 See Thomas Hammarberg’s 2012 Issue paper on “The Right of People with Disabilities to Live Independently and be Included in the Community”.
22 See for instance “Getting a Life - Living Independently and Being Included in the Community”, OHCHR Regional Office for Europe, April 2012; “Forgotten Europeans - Forgotten Rights, the human rights of persons placed in institutions”, OHCHR Regional Office for Europe.
23 The UN Committee against Torture in its June 2012 concluding observation on the Czech Republic asked the government to “[a]llocate appropriate funding for the implementation of the national plan on the transformation of psychiatric, health, social and other services for adults and children with intellectual or psychosocial disabilities to ensure a speedy process of deinstitutionalization to more community-based services and/or affordable housing.” Committee Against Torture, Concluding Observations with respect to Czech Republic, July 2012, para. 21(a).
24. The 2012 Health Services Act provides that a patient can be hospitalised against their will if “they pose immediate and serious danger to themselves or others and they suffer or appear to suffer from mental illness or they are under an influence of addictive substance, if the danger cannot be diverted otherwise” or “their health state require provision of urgent care and it prevents them from giving consent.” Such an approach however is inherently discriminatory on the basis of disability and contravenes the CRPD.

25. In his thematic report the UN Special Rapporteur on Torture reaffirmed standards of the CRPD and stated that “the severity of the mental illness cannot justify detention nor can it be justified by a motivation to protect the safety of the person or of others”. Elaborating on the report in his March 4 2013 statement to the Human Rights Council, he added “deprivation of liberty that is based on the grounds of a disability and that inflicts severe pain or suffering falls under the scope of the Convention against Torture.” The mandate further stated that “the obligation to end forced psychiatric interventions based on grounds of disability is of immediate application and scarce financial resources cannot justify postponement of its implementation.”

26. The line between voluntary and involuntary treatment is blurry in reality. A victim who has experienced recent psychiatric hospitalisation told MDAC the following:

The first problem is that upon the admission, you are not informed about why you are hospitalized or what is the difference between voluntary and involuntary hospitalization (this was very important for me) – they only give you a paper to sign. The doctor in the admission ward just chooses the department you will be hospitalized on. The consent therefore is not “informed”.

The practice was that the involuntary patients were longer in the admission (closed) wards (or they were placed in a closed ward for chronic patients directly) and then on half-closed wards, they did not get separate outing in the park. That is why many of the experienced patients signed the paper directly – maybe half of the psychotics upon recurrent admissions to psychiatric hospital.

The judicial review is mere formality: the court in Opava is on the same street as the psychiatric hospital only 2km closer to the centre of town. In 20 years I have not experienced that the court would reject somebody’s hospitalization. In years 2003 – 2010, in all the court papers that I have seen (that were mine) was the same signature. Allegedly it was not even from a judge, but from a secretary.

The courts do not protect us, the patients, at all. If somebody appealed against the decision, it was rejected. The signature on the decision was the same. It was only office machinery. In 20 years they have not been anyone who would come from the court to look at a person involuntary hospitalized.

I have not experienced a real court review in 20 years.

24 Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez from 1 February 2013, A/HRC/22/53.
And there was also no protection from “disproportional interference with health”: who did not sign the consent with electric shocks, got them anyways, because there is an article in the law saying that even if you don’t agree you can get electric shocks if it is necessary to save somebody’s life. I don’t know exactly what the wording of the article was, but even if we didn’t agree, we would always get the shocks.  

27. Confounded by a lack of regular public oversight, torture and ill-treatment are carried in both psychiatric and social care institutions out with impunity. The Czech Republic ratified the OPCAT in 2006 and designated the Office of the Ombudsperson as the National Preventive Mechanism (NPM), under the Law on Public Defender of Rights. The law however fails to include visiting psychiatric and social care institutions in the NPM’s mandate and determine the frequency of visits. As a result, the NPM has monitored very few of these institutions, leaving residents exposed to acts of torture and ill-treatment. This led the Committee against Torture in 2012 to recommend the state to ensure effective monitoring of psychiatric and social care institutions. To the best of our knowledge the government has not announced any changes to the NPM.

28.

Recommendation #7: Adopt measures to ensure that all health care and services provided to persons with disabilities, including all mental health services, are based on the free and informed consent of the individual concerned, and that the law does not permit involuntary confinement and involuntary treatment, including on the basis of consent provided by a legal guardian, and including involuntary outpatient treatment which is also a form of ill treatment which must be abolished. Ensure that humane, non-coercive and non-medication based treatment alternatives are made readily available.

Recommendation #8: Take effective steps to eliminate institutions and assist people in transitioning to community-based living alternatives where supports and services are provided that meet needs expressed by persons with disabilities which respect the autonomy, choices, dignity, and privacy of the person concerned.

Recommendation #9: Make necessary amendments to the Law on public Defender of Rights to ensure all non-traditional places of detention, in particular psychiatric facilities and social care institutions are regularly monitored by the NPM.

The Mental Disability Advocacy Center is an international non-governmental human rights organisation headquartered in Budapest, Hungary. MDAC has been working with Czech NGO partners since 2002. The organisation advances the rights of children and adults with

25 Unpublished interview, 6 June 2013.
26 So far the NPM has carried out only one comprehensive visit of chosen social care institutions for people with intellectual disabilities in 2009 and two visits of psychiatric hospitals in 2008 and 2010.
27 Committee Against Torture, Concluding Observations with respect to Czech Republic, July 2012, para 21(d).
intellectual disabilities and those with psycho-social (mental health) disabilities. MDAC does this through a combination of strategic litigation, research, advocacy and capacity-building, and the organisation has participatory status at the Council of Europe and special consultative status at the UN Economic and Social Council.

Dorottya Karsay
dkarsay@mdac.info
www.mdac.info

The European Disability Forum (EDF) is the independent European umbrella organisation representing 80 million disabled Europeans. EDF is the only European pan-disability platform run by persons with disabilities and their families. Created in 1996 by its member organisations, EDF ensures that decisions concerning persons with disabilities are taken with and by persons with disabilities.

An Sofie Leenknecht
Ansofie.Leenknecht@edf-feph.org
www.edf-feph.org

The League of Human Rights (LIGA) is a Czech human rights organisation, which advances the rights and freedoms of all people the Czech Republic. In our work, we mainly focus on the rights of especially vulnerable persons or persons facing social exclusion, such as the rights of children, persons with disabilities or victims of police violence. Our vision is just, free and engaged society for all.

Zuzana Durajová
zdurajova@mdac.info
www.llp.cz