



**International Convention for
the Protection of All Persons
from Enforced Disappearance**

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Consideration of reports of States parties to the Convention

**Replies of Czechia to the list of issues in relation to
its report submitted under article 29 (1) of the
Convention***

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* The present document is being issued without formal editing.



I. Introduction

1. The Czech Republic hereby submits the replies to the List of issues (CED/C/CZE/Q/1) in relation to its initial report on the implementation of International Convention for the Protection of All Persons from Enforced Disappearance (CED/C/CZE/1).

II. Replies to the list of issues (CED/C/CZE/Q/1)

Reply to paragraph 1 of the list of issues

2. The direct applicability of the Convention depends on the self-executing nature of its provisions. The law does not set any criteria and so each provision will be assessed by the courts in individual cases. However, even if the provision is not self-executing, national law has to be interpreted according to it with the most possible respect.

3. Due to the recent date of the ratification of the Convention, courts did not have yet the possibility to invoke the Convention.

Reply to paragraph 2 of the list of issues

4. The national report has been prepared mainly by public authorities. However, reports and experiences of the Public Defender of Rights have been taken into account. Their activities in relation to the Convention concern mainly migrant issues. The Defender is mandated to oversee forced returns during administrative or criminal removal procedures. He is also active in other migrant administrative procedures concerning asylum, detention or residence permits. Finally, he also visits detention centres for illegal migrants as the National Preventive Mechanism according to OP-CAT.

5. The mandate of the Public Defender of Rights is in general mostly in conformity with the Paris Principles. Possible modifications have been recently analysed by the Office of the Government. However, the Government has not yet decided on the steps to take.

Reply to paragraph 3 of the list of issues

6. There have been no disappeared persons in the State Party in the reporting period. The number of victims of crimes covering the definition of enforced disappearance according to the Convention is set in the Annex.

Reply to paragraph 4 of the list of issues

7. As mentioned in the report, Czech law does not allow to justify enforced disappearance or any other crime by exceptional circumstances described in the Convention. The Criminal Code knows traditional justification like self-defence or necessity, however those exceptions are practically inapplicable to enforced disappearance or other similar crimes.

8. The COVID-19 pandemic did not in any way affect the work of law-enforcement authorities in the Czech Republic and they continued to perform their tasks. A special legal regulation allowed to extend the deadlines in criminal procedure for victims and other participants if they could not be met due to the pandemic. The same applied for victims in compensation procedures.

Reply to paragraph 5 of the list of issues

9. The crimes of deprivation and restriction of personal liberty aim directly at any violation of personal liberty. The crime consists of any form of illegal imprisonment, other

deprivation or limitation in personal liberty of any kind, be it temporal or long-term. The violation of personal liberty is the major element of the crime and the fact of non-recognition or concealment could be regarded as an aggravating circumstance. The crime of the involuntary transfer covers involuntary cross-border movement of a person. A kidnapping in Czech criminal law covers only the kidnapping of a dependent person (e.g. a child) as the kidnapping of an adult would be covered by the mentioned attacks on personal liberty, the crime of hostage taking or blackmail. Some cases of deprivation or restriction of personal liberty connected with sexual exploitation, trafficking in organs, slavery, forced labour or other exploitation are covered by the crime of human trafficking. The committing of those crimes by public actors can be punished as an aggravating circumstance or as a special crime of abuse of power. According to Czech authorities, these regulations allow the sanctioning of all relevant criminal acts so the introduction of a special crime of enforced disappearance is not considered necessary at the moment.

Reply to paragraph 6 of the list of issues

10. The basic penalties for deprivation and restriction of personal liberty are up to two years of imprisonment for restriction and from two to eight years for deprivation. Special circumstances like bodily harm, discriminatory motive, organised crime or aim of benefit increase the penalty up to eight or twelve years and the death of the victim up to ten to sixteen years. The involuntary transfer is punished in the same way as deprivation of liberty, hostage taking in general also with the maximum penalty of eighteen years in case of death. Human trafficking penalties start at two to ten years and go up to eighteen years in case of death. The law does not directly regulate the consequences of aggravating circumstance on sanctions but obliges the court to take them into account when imposing the sentence in the upper scale of the penalty rate.

Reply to paragraph 7 of the list of issues

11. No such acts have been recorded.

Reply to paragraph 8 of the list of issues

12. The crime of attack against humanity in Czech law covers also “deprivation of personal liberty, introduction into an unknown place or any other restriction of personal liberty with consequent involuntary disappearance of persons in the context of a large-scale or systematic attack against the civilian population”. Such an attack is punishable with twelve to twenty years of imprisonment or even the exceptional sentence of twenty to thirty years or life-long imprisonment.

Reply to paragraph 9 of the list of issues

13. As mentioned in the report, Czech criminal law covers criminal responsibility for preparation, attempt, organisation, incitement, aiding or abetting, as well as complicity so all elements of the Convention should be covered. The participants are criminally responsible in the same way as the perpetrator and can receive the same sentences. The law also motivates the participant to avoid criminal responsibility by informing the authorities before its commitment or preventing the crime in any other way. The fulfilment of orders does not automatically lead to justification but can be taken into account when assessing the responsibility and calculating the sentence. But in general, the subordinate must not fulfil an order leading to the commitment of a crime. Such a case cannot also lead to any prosecution for disobedience as stipulated in relevant regulations on armed and security forces.

Reply to paragraph 10 of the list of issues

14. The report describes in paragraph 24 limitation periods for deprivation of personal liberty between 10 – 15 years. The period for limitation ranges between 3 – 10 years. In case of human trafficking, it would be 15 years. According to Section 35 (a) of the Criminal Code most crimes against humanity, peace and war crimes, incl. attack against humanity as described above, are excluded completely from limitation. According to Section 34 (2) of the Criminal Code, the limitation period starts from the end of the criminal act, e.g., the moment the offence ceases.

15. The same limitation periods apply to rights of the victim to join the criminal procedure and claim damages. In civil proceedings, the limitation period is 3 years since the discovery of relevant facts (the damage and its perpetrator) If the victim wishes to ask for public financial assistance, a maximum period of 5 years since the commitment of the crime applies.

Reply to paragraph 11 of the list of issues

16. As explained in the report, Czech criminal law has competence in all the situations covered by Art. 9 (1) of the Convention. In the case of a foreign perpetrator according to Art. 9 (2), the Czech Republic can either extradite him to his country of origin, or, if the country requests so, start the criminal procedure itself. The precondition is however that the act in question is a crime in the Czech Republic as well as in the other country. The exception is the crime of attack against humanity where the prosecution can be started in any case.

Reply to paragraph 12 of the list of issues

17. There is no special military judicial system in the Czech Republic. The Military Police exercises the role of law enforcement authorities in proceedings on crimes committed by armed forces or in connection with the military. Their competences remain the same as by the ordinary authorities.

Reply to paragraph 13 of the list of issues

18. The legal regulation of limiting personal liberty to bring the perpetrator to justice and prevent absconding, influence on witnesses or continuation of the crime has been described in the report. The perpetrator of an enforced disappearance is then subject to a standard criminal procedure as in case of any other crime and standard inquiry measures are applied. The perpetrator does not need to be held in custody during the proceedings but has to cooperate with the law enforcement authorities and may be subject to judicial supervision, a bail or a travel ban.

19. The right to consular protection is included in the rights of the person detained or placed in custody. Each foreigner has the right to immediately notify his consular authorities or ask them to be notified by the law enforcement authorities. They shall also be notified about his release. He has the right to be in contact with them., the communication cannot be surveyed and has to be provided free of charge. He has to be informed of this right by the law enforcement authorities

Reply to paragraph 14 of the list of issues

20. There have been no cases of enforced disappearance in the Czech Republic since the submission of the report. The numbers of cases of other crimes are included in the Annex.

21. Any case of enforced disappearance or other violation of personal liberty is investigated in standard criminal procedures. The law enforcement authorities are in no way limited in their access to places of detention like prisons. On the contrary, each prison is under the supervision of the local district public attorney, who oversees the legality of detention and treatment of prisoners. The same applies to relevant documentation.

22. One of the major principles of any criminal investigation is the objectivity and impartiality of the law enforcement authorities. Any person in any position at risk of biased approach to the investigation has to be excluded from it and the outcomes of her activities cannot be used in the proceedings.

Reply to paragraph 15 of the list of issues

23. As explained in the report, a criminal complaint on enforced disappearance can be made by anybody without formal conditions or limitations, incl. the victim. The victim has the right to be informed about the outcome of the proceedings and can fill a complaint against its postponement, discontinuance, interruption or submission to another authority. The complaint is being dealt by the public attorney.

24. The law enforcement authorities are also obliged to collect and inquire ex officio any information or allegation that a crime has been committed incl. an enforced disappearance, in the absence of a complaint. The law enforcement authorities shall proceed swiftly without undue delays with respect to rights and freedoms of participants.

25. The protection of witnesses and complainants has been described in the report. The witness can have their identity concealed during the proceedings in the records and during testimonies. Other measures include personal protection, relocation or the provision of a new identity. These measures are approved by the minister of the interior at the request of law enforcement authorities with the person's consent. The witness can also ask about information on the release or absconding of the accused of the perpetrator and in case of danger, the law enforcement authorities shall adopt protection measures ex officio. Crime victims have the same possibilities incl. a court injunction against a perpetrator.

Reply to paragraph 16 of the list of issues

26. The system of international judicial cooperation in criminal matters has been described in the report in pars 49 to 59.

Reply to paragraph 17 (a) of the list of issues

27. For the Czech Republic, of importance is the factual description of the criminal act, not its formal qualification. Thus, if the crime of enforced disappearance is qualified in Czech legislation by other crimes as described in par 6 of the report, the condition of mutual criminal liability is met as the actions in question are criminalised in both countries, albeit under different names and qualifications.

Reply to paragraph 17 (b) of the list of issues

28. For the Czech Republic, the situation described in the previous paragraph is in line with its obligations from the Convention and there are no plans for change at the moment. Extradition treaties or agreements, to which the Czech Republic is a party, do not, in most cases, contain a list of extradition crimes. Instead, they are based on the principle of mutual criminal liability, as described in the previous paragraph. So the extradition for the crime of enforced disappearance would be based on the same principle.

Reply to paragraph 17 (c) of the list of issues

29. The rules on expulsion, return, surrender or extradition of a person have been described in par. 60 – 66 of the report. In criminal proceedings, it is primarily the court to decide about criminal extradition. The decision on administrative expulsion and return of the foreign police may be subject to judicial review with suspensive effect. In all proceedings, the principle of non-refoulement is strictly applied. Its formulation, despite some difference, go in the same direction. Par 179 (2) of the f the Act on the Residence of Foreign Nationals in

its definition of real risk refers to Art. 3 of the European Convention on Human Rights and Fundamental Freedoms as interpreted in the jurisprudence of the European Court for Human Rights. Par 91 (1) (o) of the Act on International Judicial Cooperation in Criminal Matters refers to the contradiction with the international human rights obligations of the Czech Republic preventing the extradition. Another impediment is then the risk of persecution as described in the report.

Reply to paragraph 17 (d) of the list of issues

30. According to par. 91 (1) (h), assurances are accepted only in cases of a possible death penalty, not in any other issues (e.g., breaches of international human rights norms).

Reply to paragraph 17 (e) of the list of issues

31. As mentioned already, all decisions on expulsion, return, surrender or extradition are subject to judicial review. A court action has also automatic suspensive effect. In the criminal proceedings, a complaint against the extradition can be submitted to the superior court by the person concerned, also with suspensive effects.

32. The regulation of par 3d (2) of the Asylum Act, which does not allow the removal of an asylum applicant from the territory based on any judicial and administrative decision, is not in contradiction with par 350b (4) of the Criminal Procedure Code which only puts this provision into practice by ordering the judge to suspend the execution of the extradition sentence, either ex offio or upon request by the applicant.

Reply to paragraph 17 (f) of the list of issues

33. As stated at the end of par. 62, if the foreigner cannot benefit from the non-refoulement protection in the Czech Republic, he can seek protection of another state within 60 days. If he is not successful, he can obtain a tolerance visa for residence for 90 days.

Reply to paragraph 18 (a) of the list of issues

34. The protection against secret detention has been described in pars 67 – 93 of the report. We are not aware of any allegation of secret detention in the context of terrorism.

Reply to paragraph 18 (b) of the list of issues

35. Attendance and visitation rights are described in par. 76 – 87 of the report. All establishments have their regulation on visits and controls. Next to prisons and police cells described in the report, the same applies to foreigner control areas, detention facilities or asylum centres, where visits are permitted in line with the internal regulation. The foreigner has the right to visits at least 4x a week for one hour by max. 4 persons. He has also the right to visits by his legal representative, embassy (consular) officers or assisting organisations and these visits are not limited in frequency or time. In facilities for foreigners waiting for administrative expulsion, free legal aid is accessible. The regimes in psychiatric hospitals may be subject to regulations according to the state of health of the patient, but in general, he has also the right of visits and assistance. The same applies to social care homes. The limitations described in the report are taxative and as also stated, the visits by legal representatives are not limited in time or frequency.

36. It is true, that during the COVID-19 pandemic, visits to closed establishments had to be limited or suspended due to the high risk of contagion, especially among prison population or elderly residents of care homes at the start of the pandemics. In those times, measures were taken to allow for a remote contact with counsels or relatives via teleconferencing tools (e.g. Skype). The necessary technology has been distributed among the establishments. Later, as

the vaccination progressed (starting with the vulnerable elderly population), visits were possible with COVID-passes or subject to testing. No jurisprudence on this topic is available.

Reply to paragraph 18 (c) of the list of issues

37. The judicial review of detention of foreigners or asylum seekers can be primarily exercised only by the detained person. This remedy is supported by the supervision of prisons facilities by the public prosecutor. Any limitation of the rights of the detained person would constitute the violation of official duties which may amount to a disciplinary offence or even a crime.

Reply to paragraph 18 (d) of the list of issues

38. The registers mentioned in pars 92 and 95 are the same. In a similar manner, persons detained in police cells or foreigner detention centres are also registered in special evidences which include the information stated in Art. 17 (3) of the Convention. The relevant authorities are obliged to list all the relevant information on every detention in the registers. Any omission to include the obligatory information on detention, to state or communicate falsified information or to withhold information can constitute a disciplinary offence.

Reply to paragraph 18 (e) of the list of issues

39. The conditions of access to information on detained persons has been described in par. 95 of the Report in relation to prison facilities. The person can fill a complaint if the information is withheld. Any illegal limitation in information is again punishable as disciplinary offence. The access to information on detention in police cells has been described in par. 76 of the report. Similar regulations apply on the access to information on detention in foreigner detention centres. In all facilities, the personnel has to enable the detained person to correspond with the outside world – public bodies, international organisations, relatives etc. In psychiatric hospitals as in other medical facilities, all close persons to the patient have the right to obtain information about his hospitalisation, state of health, treatment etc., incl. involuntary hospitalisation. Again, in case of withholding information, the person can fill a complaint.

Reply to paragraph 18 (f) of the list of issues

40. No other control mechanisms as those described in pars 88 – 91 exist in the Czech Republic.

Reply to paragraph 18 (g) of the list of issues

41. The Criminal Proceedings Register contains information on the release of persons from prison facilities. But similar registers operating on the same principles are used in police cells as well as foreigner detention facilities. All shall ensure regular monitoring of detention facilities with check-ups and immediate release of those persons whose detention is no longer required by the law.

Reply to paragraph 19 of the list of issues

42. The Police of the Czech Republic operates the National DNA database, which contains, among others, the DNA profiles of missing persons, their relatives as well as unidentified death persons, which is used in the search of missing persons as well as their identification or the identification of persons of unknown identity or death bodies. This identification forms part of the official police inquiry, where the police is authorised to obtain

all the relevant information. When the person is identified, their relatives are immediately informed and after necessary procedures (e.g. an autopsy) they are delivered the body.

Reply to paragraph 20 of the list of issues

43. The treatment of detained persons in line with human rights standards is the subject of continuous life-long training among law enforcement authorities. The training focuses on the rights of detained persons, communication with them and their instruction about rights and obligations as well as on the prohibition of their ill-treatment. Besides the information provided in par. 100 of the report., the treatment of detained persons is incorporated in the obligatory basic training for policemen, including international standards (e.g., the CPT) and relevant jurisprudence (e.g. the ECtHR). The other place of education is the Judicial Academy focusing on judges, public prosecutors and other judicial personnel. The Academy provides courses on criminal law standards including personal liberty limitations and their judicial oversight. Special courses focus on human trafficking, vulnerable victims of crime, Roma victims and perpetrators, or migration, in cooperation with external experts as well as international organisations like the Council of Europe. Medical personnel or social workers are being trained on the detection of marks of ill-treatment, victimology or discrimination, communication with vulnerable groups, mental disability or gender-based violence.

Reply to paragraph 21 of the list of issues

44. The definition of victim in the Act on Victims of Crime, as described in par. 104 of the report, is in full conformity with the Convention. The disappeared person suffered logically personal injury, material or immaterial harm. Any other person suffering similar consequences from the crime is also a crime victim. According to Art. 2 par. 3 of the Act on Victims of Crime, in case of the death of the victim, the victim status extends to any ancestor or descendant, sibling, husband or partner or dependent person in care.

Reply to paragraph 22 of the list of issues

45. At first, it should be stressed, that the victim of crime themselves cannot initiate criminal proceedings. This can be only done by the public prosecutor. The victim can fill a criminal complaint to start the procedure, but the initiation is at will of the prosecutor, though they are officially bound to prosecute any crime discovered. The victim then can join in the started criminal procedure and formulate their claims. If no criminal proceeding is started, the victim can claim compensation in civil courts.

46. Most compensatory claims are subject to statutory limitations both in criminal proceedings and civil proceedings of max. 10 years since the act in question. However, claims arising from harm to life, liberty and health are subject to a limitation period of 3 years since their discovery. Cessation, non-repetition and restitution claims are not subject to any limitation periods.

47. The state assistance to victims of crime has been described in pars. 112 and 113 of the report. The aim of the assistance is to allow the victim to compensate the social consequences of the crime resulting in economic hardship and covering income loss, medical expenses, therapy or other assistance to overcome the crime impacts or the loss of the carer and breadwinner. Next to financial assistance, victims are entitled to professional assistance comprising of legal advice, psychological and other support and restoration programmes which are provided free of charge to vulnerable victims as defined in par 104 of the report.

48. The victim of crime can participate in the criminal proceeding and can obtain all relevant information, view the files, being heard in the court etc. Even if they do not join the adhesion procedure, they can ask for information about the crime, its investigation, the accused, the victim, the state of play etc. From all these sources, the victim can obtain all necessary information to know the truth about the crime and the fate of its victim.

Reply to paragraph 23 of the list of issues

49. The search for missing persons is one of the core tasks of the Czech Police. Their role is to find the missing person, to establish their whereabouts or fate as well as to identify any found dead bodies, body parts or remains and establish the cause and circumstances of their demise. Any person can inform the police about the missing person and the police starts an immediate enquiry. There are no time frames set for the investigation. During it, the police has access to any possible information like telephone and internet traffic data, banking data or data on provision of health and social services. As stated in par. 124 of the report, police officers have the authority to inspect vehicles, request explanations from individuals or check the identity of persons. Other public and private bodies have a duty to cooperate. All information is confidential and can be used only for the investigation.

Reply to paragraph 24 of the list of issues

50. The declaration of disappearance is intended to facilitate the operation of the daily life affairs of the disappeared person, mainly in property matters, where a curator is appointed by the court to administer their affairs in their absence in their best interest. Other issues like the civil status matters or public entitlements (e.g. marriage, family relations, pension entitlements etc.) remain untouched. In fact, the curator replaces temporarily the missing person during their absence, but their situation and rights shall remain at the most possible untouched to allow for their smooth return and reintegration. There is no legal time limit for the duration of the state of disappearance, though with the time, the situation may become complicated in practice.

51. If the person is not discovered alive in a reasonable time, the next step may be the declaration of death. This declaration can be made by the court if there is serious doubt about the missing person being still alive. There is a minimum legal waiting period of 5 years to declare a missing person death to allow for sufficient effort in their discovery. If any report of the missing person surfaces, this period is prolonged by a minimum of 7 years. The declaration can be sought again by any person with legal interest in solving the situation (e.g. a relative). The court sets the date of death, which the person ought not to have survived. Starting with this date, all usual post-mortem procedures begin, mainly the inheritance procedures. The marriage of the death person ends also with the date of death. If the death person is subsequently discovered as being alive, the declaration of death becomes null and void and all its effects are suspended, e.g., the person re-enters all its legal status and positions (mainly proprietary ones). But their marriage is not recreated ex lege.

Reply to paragraph 25 of the list of issues

52. Czech law knows the crimes of kidnapping of a minor from the care of the person in charge and their placement in a care of a foreigner for adoption or a similar purpose. Those crimes can be punished with up to 3 years of imprisonment, in serious cases up to 10 years. If other elements like forced labour, sexual abuse or other exploitation are involved, the crime can be qualified as human trafficking with up to 15 years of imprisonment. Minor transgression like illegal adoption procurement are punished by monetary fines.

53. The reason for the annulment of the adoption can be any important reason on the side of the adoptive parent or the adoptee, incl. any illegal activity in the adoption process. This reason can be invoked anytime without temporary limitations. By the annulment of the adoption, all legal ties between the adoptive parent and the adoptee are broken and all previous ties with the original family established. However, property regimes and relations remain intact.

54. Measures for the protection of children against illegal adoption have been described in pars 117 – 122 of the report.