



International Convention for the Protection of All Persons from Enforced Disappearance

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Committee on Enforced Disappearances

List of issues in relation to the report submitted by Czechia under article 29 (1) of the Convention*

I. General information

1. With regard to paragraph 4 of the State party's report (CED/C/CZE/1), please indicate whether national courts or administrative authorities can directly apply the provisions of the Convention. Please provide examples of any jurisprudence in which the provisions of the Convention have been invoked.
2. Please provide information on the participation of civil society organizations and the Public Defender of Rights in the preparation of the State party's report. Please also report on any activities carried out by the Office of the Public Defender of Rights in relation to the Convention. In that regard, please indicate whether there are any plans to seek the accreditation of the Office of the Public Defender of Rights with the Global Alliance of National Human Rights Institutions.

II. Definition and criminalization of enforced disappearance (arts. 1–7)

3. Please provide up-to-date statistical information, disaggregated by sex, age, ethnic origin and nationality, on the number of disappeared persons in the State party, specifying the date of their disappearance, the number of such persons who have been located and the number of cases in which there may have been some form of State participation within the meaning of article 2 of the Convention, including with regard to disappearances occurring in the context of migration and trafficking (arts. 1 and 24).
4. With regard to paragraph 5 of the State party's report, please indicate whether the State plans to explicitly prohibit in national legislation the invocation of exceptional circumstances as a justification for enforced disappearance. In that regard, please also provide information on the measures taken during the coronavirus disease (COVID-19) pandemic to ensure that the policies and actions of the State party are in conformity with its obligations under the Convention, in particular with regard to articles 1, 12 and 24 thereof (arts. 1, 12 and 24).
5. In the absence of a definition of enforced disappearance as an autonomous crime, please provide further information on the specific provisions invoked in national legislation to address cases of enforced disappearance as defined in article 2 of the Convention. In that regard, please indicate how those provisions would encompass the arrest, detention, abduction or any other form of deprivation of liberty and how the refusal to acknowledge the

* Adopted by the Committee at its nineteenth session (7–25 September 2020).



deprivation of liberty or the concealment of the fate or whereabouts of the disappeared person would be punished under domestic legislation. Please indicate whether the State party intends to adopt a definition of enforced disappearance as an autonomous crime, comprising all three constitutive elements of the crime in line with article 2 of the Convention (arts. 2 and 4).

6. With regard to paragraphs 17 to 22 of the State party's report, please clarify the maximum and minimum penalties provided for in the Criminal Code for crimes that could be invoked to handle cases of enforced disappearance and explain how the extreme seriousness of the crime is taken into account. Please also provide further information on the possible mitigating or aggravating circumstances, indicating the maximum and minimum penalties that would apply in such cases (art. 7).

7. Please indicate whether any complaints have been lodged regarding acts defined in article 2 of the Convention that were carried out by persons or groups of persons acting without the authorization, support or acquiescence of the State, including with regard to disappearances occurring in the context of migration and trafficking. If so, please provide data, disaggregated by the sex, age and nationality of the perpetrator, on the investigations carried out and their results, including the proportion of proceedings launched that resulted in convictions, and on the sanctions imposed on the perpetrators (arts. 3 and 12).

8. With reference to paragraphs 9 and 18 of the State party's report, please clarify whether the widespread or systematic practice of enforced disappearance is codified in national legislation as a crime against humanity. If that is the case, please provide the text of the relevant articles of the Criminal Code and provide further information on how the maximum and minimum penalties mentioned in paragraph 18 are applied (arts. 5 and 7).

9. With regard to paragraphs 10 and 11 of the State party's report, please explain how the legislation mentioned addresses all acts specified in article 6 (1) (a) of the Convention, and indicate whether any steps have been taken to expressly incorporate into national law the criminal responsibility of superiors as set out in article 6 (1) (b) of the Convention. Please provide information on whether national legislation prohibits invoking orders of a superior, including orders from military authorities, as a justification of enforced disappearance and whether the notion of "due obedience" as a defence in criminal cases has any impact on the effective implementation of that prohibition. Please indicate whether, in national legislation, it is guaranteed that persons who refuse to obey orders or instructions that prescribe, authorize or encourage enforced disappearance will not be punished, and provide information on any remedies available to subordinates against any potential disciplinary measures resulting from their refusal to carry out a criminal act ordered by a superior (arts. 6 and 23).

III. Judicial procedure and cooperation in criminal matters (arts. 8–15)

10. With regard to paragraph 24 of the State party's report, please explain how the statutes of limitations mentioned, ranging from 1 to 20 years, would be proportionate to the extreme seriousness of the crime of enforced disappearance and compliant with article 8 (1) (a) of the Convention. Please also provide the wording of section 35 (a) of the Criminal Code, and explain how it guarantees that no statute of limitations applies to enforced disappearance as a crime against humanity. With reference to paragraphs 25, 27 and 29 of the State party's report, please provide further information, including the text of relevant legislation, on how, in the absence of an autonomous crime of enforced disappearance, the State party guarantees that the crime is considered a continuous offence and that the statute of limitations starts from the moment the offence ceases. Please also explain how the State party guarantees that no statute of limitations applies for criminal, civil or administrative actions brought by victims of enforced disappearance seeking the right to an effective remedy (art. 8).

11. With reference to paragraphs 31 and 32 of the State party's report, please provide additional information, including the text of relevant legislation, on how the State party ensures its competence to exercise jurisdiction over the crime of enforced disappearance in the cases contemplated under article 9 (1) (a), (b) and (c) and (2). Please also clarify: (a) whether the State party has competence to prosecute an alleged offender who has committed an enforced disappearance abroad when he or she is present in any territory under its

jurisdiction, regardless of the nationality of the offender and the victim; and (b) how the State party would exercise its jurisdiction over an offence of enforced disappearance committed abroad when the alleged offender is present in the territory under its jurisdiction and the offence is not punishable in the State where it was committed (art. 9).

12. Please indicate whether military authorities are competent under domestic law to investigate and/or prosecute persons accused of enforced disappearance, and if so, please provide information about the applicable legislation (art. 11).

13. With regard to paragraphs 38 to 40 of the State party's report, please indicate the procedures in place to ensure the presence of an alleged offender before the competent authorities. Please report on the existing legal, administrative and judicial measures for carrying out a preliminary inquiry or investigation to establish the facts, should the State party take the measures referred to in article 10 (1) of the Convention. Please indicate how the State party guarantees that a person in custody pursuant to article 10 (1) of the Convention can communicate immediately with his or her consular authorities (art. 10).

14. Please indicate whether there have been any allegations of enforced disappearance received by the authorities of the State party since the submission of the report. If that is the case, please report on the investigations conducted and their result. Please provide information on the authorities responsible for investigating cases of alleged enforced disappearance, including the budget and the human resources at their disposal, and indicate: (a) what restrictions, if any, can be put on their access to places of deprivation of liberty when there are grounds to believe that a disappeared person may be present; and (b) what restrictions, if any, exist on their access to the documentation and other information relevant to their investigations. Please indicate whether there are any mechanisms in place to exclude a member of law enforcement or security forces or any other public official, whether civilian or military, from the investigation into an enforced disappearance when he or she is suspected of having been involved in the commission of the offence (arts. 1–2, 12 and 17).

15. With regard to paragraph 43 of the State party's report, please provide further information on the individuals that can report an alleged enforced disappearance to the competent authorities, including the text of the relevant legislation. Please also provide information on the existing requirements for filing a complaint of an enforced disappearance, including the text of the relevant legislation. In view of those requirements, please report on the measures in place to ensure a prompt, thorough and impartial investigation of alleged cases of enforced disappearance, including in the absence of an official complaint. Please also inform the Committee of the remedies available to the complainant should the competent authorities refuse to investigate his or her case. With regard to paragraphs 46 and 47 of the State party's report, please provide further information on the persons protected under the legislation referred to therein and on the mechanisms available for ensuring protection from any ill-treatment, intimidation or sanction for the complainants, their representatives, witnesses and other persons participating in the investigation, prosecution and trial or any person who requests information concerning a person deprived of liberty (arts. 12 and 18).

16. Please provide information on the existing measures to ensure the provision of judicial assistance or cooperation in the terms established by articles 14 and 15 of the Convention and indicate whether there are any limitations or conditions in national legislation that could be applied with regard to requests for such assistance (arts. 14–15).

IV. Measures to prevent enforced disappearances (arts. 16–23)

17. With regard to the expulsion, return, surrender or extradition of a person, please:

(a) Clarify how, in the absence in national legislation of an autonomous crime of enforced disappearance, enforced disappearance is made an extraditable offence in all existing treaties with all States, and provide information on all the extradition treaties between Czechia and other States parties to the Convention that explicitly include enforced disappearance as an extraditable offence; in the absence of an extradition treaty, please explain how the Convention is used as basis for an extradition and indicate whether the State party has used the Convention for that purpose (art. 13);

(b) Provide information on whether the State party plans to eliminate any obstacles to extradition that may exist in national legislation, in extradition treaties or in agreements with third countries with regard to the crime of enforced disappearance (art. 13);

(c) Provide additional information about the authority that determines the expulsion, return, surrender or extradition of a person and about the mechanisms and criteria applied before carrying out any of those procedures to evaluate and verify the risk of a person being subjected to enforced disappearance or other forms of serious harm to life and personal integrity, including to a country considered as safe; in that regard, please clarify the differences in the application of the principle of non-refoulement established in section 179 (1) of the Act on the Residence of Foreign Nationals and in section 91 of the Act on International Judicial Cooperation in Criminal Matters to cases of expulsion, return, surrender or extradition of a person, including the criteria applied to such decisions; please also indicate whether the possibility of being subjected to enforced disappearance would be a reason to prevent the expulsion, return, surrender or extradition of a person under both of those pieces of legislation (art. 16);

(d) Indicate whether the State party accepts diplomatic assurances as sufficient grounds for a decision of expulsion, return, surrender or extradition of a person when there is a reason to believe that there is a risk that the person may be subjected to enforced disappearance (arts. 13 and 16);

(e) Specify whether any decision on expulsion, refoulement, surrender or extradition can be appealed; if that is the case, indicate before which authorities such appeal can be brought, whether it has a suspensive effect, the steps of the procedure and whether the decision regarding such an appeal is final; please also indicate whether there are any plans to amend article 350 (b) of the Code of Criminal Procedure in order to harmonize the Code with the Asylum Act (art. 16);

(f) Describe any other measures in place to ensure strict compliance with the principle of non-refoulement under article 16 (1) of the Convention, including in the cases mentioned in paragraph 62 of the State party's report; in that regard, please indicate the measures in place to ensure that any person subject to expulsion, return, surrender or extradition is effectively and timely informed of his or her rights and of the avenues to seek international protection (art. 16).

18. With regard to detention and access to places of deprivation of liberty, please:

(a) Provide information on the prohibition in national legislation of secret detention and respond to allegations of its use in the context of countering terrorism (art. 17);

(b) With regard to paragraphs 38 to 42 and 68 to 72 of the State party's report, provide information on the measures that guarantee, in law and in practice, that all persons deprived of liberty are afforded fundamental legal safeguards from the very outset of the deprivation of liberty, including the right to communicate and be visited by their counsel, family or any other person of their choice, and that in the case of foreigners, they can communicate with their consular authorities, regardless of the type of deprivation of liberty and of the place of deprivation of liberty, including in border control areas, immigration detention centres, psychiatric hospitals and social care homes; please also specify the measures taken in that regard in the context of the COVID-19 pandemic; indicate whether there have been complaints or allegations regarding failures to observe those rights and, if so, please provide information about the proceedings carried out and their outcome and about the sanctions imposed; with regard to paragraphs 76, 78, 82 and 83 of the State party's report, provide further information on any conditions or restrictions that may apply to those rights and their compatibility with article 17 (2) (d); in that regard, indicate whether there are any time limits for a person deprived of liberty to meet with his or her counsel after his or her deprivation of liberty (art. 17);

(c) With regard to paragraph 74 of the State party's report, provide information on the applicable legislation to guarantee that any person with a legitimate interest other than the person deprived of liberty can bring proceedings before a court in order to decide on the lawfulness of the deprivation of liberty, including asylum seekers deprived of their liberty pursuant to article 46 of the Asylum Act; indicate the measures in place to prevent and impose

sanctions for obstructing and delaying that remedy, including in the context of the COVID-19 pandemic (arts. 17 and 22);

(d) In connection with paragraphs 92, 93, 95 and 99 of the State party's report, please clarify whether the records mentioned in paragraph 92 and the Central Records of Imprisoned Persons mentioned in paragraph 95 are the same, and provide information on the existence of any other official registers of persons deprived of liberty, irrespective of the place of deprivation of liberty; please also indicate the measures taken to ensure that all existing registers contain all the information listed in article 17 (3) of the Convention and that they are systematically and immediately updated and monitored; in that regard, provide further information on the measures in place, including applicable legislation, to prevent and sanction the conduct described in article 22 (b) and (c) of the Convention (arts. 17 and 22);

(e) With regard to paragraphs 94, 95 and 97 of the State party's report, inform the Committee of the measures and procedures in place to guarantee that any person with a legitimate interest, including other than those who have a legal interest, can access all information listed in article 18 (1) of the Convention, including in psychiatric facilities, and indicate whether there are any restrictions on access to such information; explain the means of appeal against the refusal to disclose such information, and indicate the measures in place to prevent and impose sanctions in case of delay or obstruction of such an appeal; please also specify the measures taken in that regard in the context of the COVID-19 pandemic (arts. 18, 20 and 22);

(f) With reference to paragraphs 88, 90 and 91 of the State party's report, provide information on any other independent bodies or administrative mechanisms that exist to inspect all places of deprivation of liberty, including border control areas, and the measures in place to guarantee their independence and their unrestricted access to all places of deprivation of liberty (art. 17);

(g) With regard to paragraph 98 of the State party's report, clarify whether the Criminal Proceedings Register contains information on the release of persons from all places of deprivation liberty; if that is not the case, provide additional information on the legislation and practice to ensure the verification of the release of persons deprived of liberty from all places of deprivation of liberty, as well as information on the authorities in charge of monitoring their release (arts. 17 and 21).

19. Please indicate whether a database exists consisting of genetic data on disappeared persons and their relatives for the purpose of searching for disappeared persons and of identifying remains in the case of death. Please provide information on mechanisms in place to locate victims and, in the case of death, to respect and return their remains to relatives (arts. 19 and 24).

20. Please describe plans to provide training on the Convention to civil and military law enforcement personnel, medical personnel, public officials and other persons who may be involved in the custody or treatment of any person deprived of liberty, including judges and other officials responsible for the administration of justice and police officers in border control areas (art. 23).

V. Measures to provide reparation and to protect children against enforced disappearance (arts. 24–25)

21. Please provide further information on the definition of "victim" in national legislation, including the text of section 2 (2) of the Victims of Crime Act and other relevant legislation, and explain how they conform with the definition of victim contained in article 24 (1) of the Convention (art. 24).

22. In connection with paragraphs 26, 112 and 113 of the State party's report, please: (a) provide further information on the "adhesion procedure" for victims to claim compensation in criminal proceedings; (b) clarify whether a victim of enforced disappearance is obliged to initiate criminal proceedings to be considered a victim; (c) clarify the procedures available to victims of enforced disappearance to obtain compensation and reparation and indicate whether there are any time limits for victims to gain access to compensation and reparation;

(d) clarify the kind of reparation provided to victims and provide further information on the purpose of the financial assistance provided by the State party to victims of crime; and (e) provide information on the measures taken by the State party to guarantee the right of victims to know the truth (art. 24).

23. Please indicate whether there is a system in place for undertaking immediate and urgent searches when a disappearance is brought to the attention of the authorities, and provide further information on the procedures undertaken by the police when a disappearance is reported, including any relevant time frames. Please explain how the right to privacy of a person interacts with the obligation of the State to provide information on the location of a disappeared person, when it is requested to do so (arts. 24 and 30).

24. With regard to paragraph 114 of the State party's report, please indicate the actions that may be required from a disappeared person in civil status matters, and provide information on the legal situation of a disappeared person in national legislation when his or her fate has not been clarified and that of his or her relatives in fields such as social welfare, financial matters, family law and property rights. In that regard, please indicate whether there are other procedures in place, apart from declaring a person missing, such as issuing a declaration of absence or a declaration of death of the disappeared person, and inform the Committee of the impact that such procedures may have on the State party's obligation to continue the search and investigation into an enforced disappearance until the fate of the disappeared person has been clarified. Please also provide further information on the procedure for declaring a person missing, including information on how long after the disappearance an application can be filed to declare the person missing (art. 24).

25. Please indicate the relevant provisions of the Criminal Code applicable to acts under article 25 (a) and (b) of the Convention and specify the maximum and minimum penalties provided for such acts. With regard to paragraph 123 of the State party's report, please explain how the described procedure of annulment would apply to cases of children in which the adoption or placement originated in the context of an enforced disappearance. Please provide information on how national legislation guarantees the right of such children to have their true identity re-established. Please also indicate the measures taken by the State party to protect children from enforced disappearance, in particular in the context of migration and trafficking, and specify the measures taken in that regard in the context of the COVID-19 pandemic (art. 25).
