



International Convention for the Protection of All Persons from Enforced Disappearance

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Committee on Enforced Disappearances

Concluding observations on the report submitted by Czechia under article 29 (1) of the Convention*

1. The Committee on Enforced Disappearances considered the report submitted by Czechia under article 29 (1) of the Convention¹ at its 405th and 406th meetings,² held on 13 and 14 September 2022. At its 419th meeting, held on 22 September 2022, it adopted the present concluding observations.

A. Introduction

2. The Committee welcomes the report submitted by Czechia under article 29 (1) of the Convention, which was submitted in conformity with the Committee's reporting guidelines. Moreover, the Committee thanks the State party for its written replies³ to the list of issues.⁴ The Committee further expresses its appreciation for the constructive dialogue held with the delegation of the State party on the measures taken to implement the Convention, in which the Committee's concerns were addressed, and welcomes the frankness with which the delegation responded to the questions posed by the Committee. The Committee also thanks the State party for the additional written information provided after the dialogue.

B. Positive aspects

3. The Committee commends the State party for having ratified or acceded to almost all the United Nations core human rights instruments and the optional protocols thereto, and to the Rome Statute of the International Criminal Court.

4. The Committee welcomes the State party's recognition of the Committee's competence to receive and consider individual and inter-State communications under articles 31 and 32 of the Convention.

5. The Committee further welcomes the standing invitation extended by the State party to all special procedures of the Human Rights Council to visit the country.

C. Principal subjects of concern and recommendations

1. General information

6. The Committee considers that the legislation in force at the time of adoption of the present concluding observations, its implementation and the performance of certain

* Adopted by the Committee at its twenty-third session (12–23 September 2022).

¹ [CED/C/CZE/1](#).

² See [CED/C/SR.405](#) and [CED/C/SR.406](#).

³ [CED/C/CZE/RQ/1](#).

⁴ [CED/C/CZE/Q/1](#).



authorities are not in full compliance with the Convention. The Committee calls upon the State party to implement its recommendations, made in a constructive spirit of cooperation, with a view to ensuring the full implementation of the Convention.

7. The Committee notes that no direct consultations have taken place with civil society organizations or other stakeholders, including the Public Defender of Rights, in the preparation of the State party's report.

8. The Committee recommends that the State party ensure the participation of civil society organizations and all relevant stakeholders in the whole cycle of reporting, from the preparation of its reports to the dissemination and implementation of the concluding observations.

Applicability of the Convention

9. The Committee welcomes the information provided by the State party that the Convention is directly applicable, and notes the explanation that the direct applicability of a provision is ultimately determined by the domestic courts on the basis of its nature. This explanation raises the question, however, as to whether certain provisions of the Convention are directly applied in practice in a unified manner, since failure to do so would hinder fulfilment of the obligations and enjoyment of the rights emanating from the Convention.

10. The Committee calls upon the State party to ensure the uniform direct applicability of all the provisions of the Convention, including those that require incorporation into domestic legislation.

National human rights institution

11. The Committee notes with interest the recent analysis carried out by the State party with a view to possible modification of the mandate of the Public Defender of Rights. Nonetheless, the Committee is concerned that the current mandate does not include promotion of all areas of human rights, including protection of all persons from enforced disappearance.

12. The Committee recommends that the State party expedite efforts to amend the Act on the Public Defender of Rights, with a view to strengthening its mandate, bringing it into full compliance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles) and achieving its accreditation by the Global Alliance of National Human Rights Institutions.

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

Non-derogability of the prohibition of enforced disappearance

13. The Committee notes that there is no specific legal provision in domestic law explicitly stating that no exceptional circumstances may be invoked as a justification for enforced disappearance (art. 1).

14. The Committee recommends that the State party adopt a legal provision explicitly affirming that no exceptional circumstances whatsoever may be invoked as a justification for enforced disappearance, in accordance with article 1 of the Convention.

Statistical information

15. The Committee notes the statistical information provided by the State party concerning the number of investigations, prosecutions and convictions, as well as the types of penalties imposed, in relation to various offences that the authorities consider to constitute enforced disappearance. It regrets, however, the lack of detailed statistical information on disappeared persons in the State party (arts. 1–3, 12 and 24).

16. The State party should swiftly generate accurate and up-to-date statistical information on disappeared persons, disaggregated by sex, age, nationality, sexual orientation, gender identity, place of origin and racial or ethnic origin. Such statistical information should include the date and place of disappearance; the number of persons

who have been located, whether alive or dead; and the number of cases in which there may have been some form of State involvement within the meaning of article 2 of the Convention. In this connection, the Committee recommends that the State party establish a single nationwide register of disappeared persons, ensuring that it contains, at a minimum, all the information referred to in the present recommendation.

Offence of enforced disappearance

17. The Committee is concerned that national legislation does not criminalize enforced disappearance as a separate and autonomous offence, in accordance with article 2 of the Convention. The Committee regrets the State party's position that the existing norms are sufficient to prosecute cases of enforced disappearance. The Committee considers that the reference to a range of existing offences and similar acts is not sufficient to encompass all the constituent elements and modalities of the offence of enforced disappearance as provided in the Convention, or to reflect the gravity and specific nature of enforced disappearance. The Committee further notes with concern that section 401 (1) (g) of the Criminal Code – which lists “denial of personal freedoms, kidnapping to an unknown place, or any other restriction of personal freedom followed by the involuntary disappearance of persons” as one of the underlying crimes against humanity – fails to define enforced disappearance in full compliance with article 2 of the Convention (arts. 2 and 4–5).

18. The Committee recommends that the State party take all the legislative measures necessary to ensure that enforced disappearance is incorporated into domestic law as an autonomous offence in line with the definition contained in article 2 of the Convention, and as a crime against humanity in accordance with article 5.

Criminal responsibility of superiors and due obedience

19. The Committee is concerned that national legislation does not expressly incorporate the criminal responsibility of superiors, as set out in article 6 (1) (b) of the Convention. The Committee regrets the lack of information on legislation to guarantee that no order or instruction from any public authority may be invoked to justify an offence of enforced disappearance and that persons who refuse to obey orders or instructions that prescribe, authorize or encourage enforced disappearance will not be punished (art. 6).

20. The Committee recommends that the State party incorporate into national legislation the criminal responsibility of superiors, in accordance with article 6 (1) (b) of the Convention. It further recommends that the State party ensure that no order or instruction from any public authority – civilian, military or other – may be invoked to justify an offence of enforced disappearance, and that subordinates who refuse to obey an order to commit enforced disappearance will not be punished.

Appropriate penalties

21. The Committee notes that the penalties imposed for the crimes invoked by the State party to address enforced disappearance vary greatly, which raises the concern that such penalties lack consistency and do not take into account the extreme seriousness of the offence of enforced disappearance (art. 7 (1)).

22. The Committee recommends that the State party, when criminalizing enforced disappearance, establish appropriate penalties for the offence of enforced disappearance that take due account of its extreme seriousness.

Mitigating and aggravating circumstances

23. The Committee is concerned that the generic mitigating circumstances listed in section 41 of the Criminal Code do not specifically include that of effectively contributing to bringing the disappeared person forward alive or making it possible to clarify cases of enforced disappearance, as required under article 7 (2) (a) of the Convention. The Committee is also concerned that neither the aggravating circumstances applicable for the specific offences listed in sections 171, 172 and 174 of the Criminal Code, which are invoked by the State party to address enforced disappearance, nor the general aggravating circumstances listed in section 42 of the Criminal Code include cases of enforced disappearance against

other particularly vulnerable persons, as required under article 7 (2) (b) of the Convention (art. 7 (2)).

24. The Committee invites the State party, when criminalizing enforced disappearance, to consider establishing the specific mitigating and aggravating circumstances provided for in the Convention.

3. Criminal responsibility and judicial cooperation in relation to enforced disappearance (arts. 8–15)

Statute of limitations

25. The Committee is concerned that the term of the statute of limitations that applies to the offences invoked by the authorities in cases of enforced disappearance, which ranges from 3 to 15 years, is of short duration and cannot be considered proportionate to the extreme seriousness of the offence of enforced disappearance. The Committee is also concerned about the lack of clarity in section 34 (2) of the Criminal Code as to whether the term of limitation commences from the moment when the offence of enforced disappearance ceases. The Committee is further concerned that the statute of limitations for damages in civil proceedings ends after 15 years from the day on which the damage or harm occurred, and that financial assistance demands must be submitted no later than five years after the perpetration of the criminal act (art. 8).

26. The Committee invites the State party to provide that, once criminalized, the offence of enforced disappearance is not subject to any statute of limitations; if it is, the Committee recommends that the State party ensure that:

(a) **The term of limitation for criminal proceedings in respect of enforced disappearance is of long duration and is proportionate to the extreme seriousness of the offence;**

(b) **The statute of limitations commences from the moment when the offence ceases;**

(c) **The right of victims of enforced disappearance to an effective remedy is guaranteed during the term of limitation.**

Jurisdiction

27. It is not clear for the Committee whether, in line with article 9 (2) of the Convention, the State party would be competent under domestic law to exercise jurisdiction over the offence of enforced disappearance when an alleged perpetrator who is a foreign national or has no nationality and does not have permanent residence status in the State party is present in its territory, he or she is not extradited or surrendered, and the country in which the enforced disappearance was allegedly perpetrated does not specifically criminalize enforced disappearance (art. 9).

28. The Committee recommends that the State party ensure that no conditions that are not provided for in the Convention, such as double criminality, affect the exercise of jurisdiction by its courts in compliance with article 9 (2) of the Convention.

Allegations of enforced disappearance

29. The Committee regrets not having received clear information from the State party as to whether there is any mechanism to exclude members of the law enforcement or security forces or any other public officials from the investigation into a case of enforced disappearance when they are suspected of having been involved in the commission of the crime. The Committee further regrets the lack of detailed information on whether the internal security or investigation units of the law enforcement or security forces whose officials are accused of having committed an offence that includes enforced disappearance could still be involved in the initial stages of an investigation (art. 12).

30. The Committee recommends that the State party ensure that officials belonging to the same law enforcement or security forces as the person accused of having

committed enforced disappearance are not involved in the investigation, and that any State agents, civilian or military, who are suspected of having been involved are suspended from duties, from the outset and for the duration of the investigation, without prejudice to the presumption of innocence, and do not participate in the investigation.

4. Measures to prevent enforced disappearance (arts. 16–23)

Non-refoulement

31. The Committee notes that domestic legislation does not include specific reference to the prohibition of refoulement where the person concerned would be at risk of being subjected to enforced disappearance. The Committee regrets that it does not have clear information on the criteria applied to evaluate and verify any claim regarding the danger of being subjected to enforced disappearance if the person is expelled, returned, surrendered, or extradited to another State, including the individual assessment for persons coming from States on the list of safe countries of origin. The Committee is concerned that the principle of non-refoulement is not applicable if there is reasonable suspicion that the person concerned is considered dangerous to the security of or a threat to the State party or has committed particularly serious crimes. The Committee is also concerned about the lack of effective safeguards against refoulement in the context of the execution of an expulsion sentence, since the lodging of an application for international protection does not have an automatic suspensive effect on the execution of the deportation order. It also regrets that diplomatic assurances may not be properly assessed in practice in cases where there are substantial grounds for believing that the person concerned would be in danger of being subjected to enforced disappearance (art. 16).⁵

32. The Committee recommends that the State party ensure systematic and strict respect for the principle of non-refoulement. In that regard, the Committee recommends that the State party:

(a) Consider explicitly prohibiting, in its domestic legislation, any expulsion, refoulement, surrender or extradition when there are substantial grounds for believing that the person concerned may be in danger of being subjected to enforced disappearance;

(b) Prescribe clear and specific criteria for expulsion, refoulement, rendition or extradition and ensure that a consistent and thorough individual assessment is conducted to determine and verify the person's risk of being subjected to enforced disappearance in the country of destination, including in countries considered safe;

(c) Ensure that diplomatic assurances are effectively evaluated with utmost care and that they are not accepted in any case where there are substantial grounds for believing that the person would be in danger of being subjected to enforced disappearance;

(d) Provide training to staff involved in the asylum, return, surrender or extradition procedures, in particular to border control officials, on enforced disappearance and on the assessment of the related risks;

(e) Ensure that any decision taken in the context of refoulement involving the execution of an expulsion sentence may be appealed and that such an appeal has a suspensive effect.

⁵ See Constitutional Court, Decision No. II. ÚS 2299/19, 2 April 2020.

Fundamental legal safeguards

33. Recalling the findings of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment⁶ and the Committee against Torture,⁷ which attest in practice to the non- or late observance of the right of detained persons to notify a relative of their detention, the Committee is concerned that in certain circumstances, as provided for under section 24 (3) of the Police Act, persons deprived of their liberty may not have access to all the fundamental legal safeguards from the very outset of their deprivation of liberty, such as access to a lawyer and the right to notify their family or any other person of their choice (art. 17).

34. The Committee recommends that the State party ensure that, from the outset of the deprivation of liberty and irrespective of place and duration, all detained persons have immediate access to a lawyer and can communicate with and be visited by their family or any other person of their choice.

Remedies concerning the lawfulness of detention

35. The Committee notes with concern that the proceedings for examining the lawfulness of deprivation of liberty may be brought before a court only by the person deprived of liberty. The Committee is also concerned about the information provided during the dialogue that no appeal may be lodged against police detention. The Committee is further concerned that asylum-seekers deprived of liberty pursuant to section 46 of the Asylum Act may not appeal against their initial deprivation of liberty, which may last two or three weeks (arts. 17 and 22).

36. The Committee recommends that the State party guarantee that any person with a legitimate interest is entitled to initiate the procedure of reviewing the lawfulness of a deprivation of liberty, and that decisions of deprivation of liberty may be challenged before a court in all cases, irrespective of place and duration.

Access to information by persons with a legitimate interest

37. The Committee notes that access to relevant information in prison facilities is granted only persons with a legal interest as proved through official documents, which may be restrictive for persons with a legitimate interest. With regard to the right of access to relevant information in police custody and in foreigner detention centres, the Committee notes the information provided by the State party that, under section 24 (3) of the Act on the Police, “[n]otification is not provided only if this would constitute a threat to the purpose pursued by a serious action or if such notification would be associated with disproportionate difficulties” (arts. 18–20).⁸

38. The Committee recommends the State party ensure that any person with a legitimate interest, such as relatives of the person deprived of liberty, their representatives or their counsel, have prompt and easy access to all the information listed in article 18 (1) of the Convention. The Committee further encourages the State party to ensure that section 24 (3) of the Act on the Police is applied in such a way as to guarantee that the right to information may be restricted in exceptional circumstances only, in conformity with article 20 of the Convention.

Training

39. The Committee notes the information provided by the State party that specific and regular training on the Convention and the offence of enforced disappearance for public officials and other persons, as required under article 23 (1) of the Convention, has not been ensured (art. 23).

⁶ Council of Europe, *Report to the Czech Government on the Visit to the Czech Republic Carried Out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 2 to 11 October 2018* (Strasbourg, 2019), paras. 13–14.

⁷ CAT/C/CZE/CO/6, para. 10.

⁸ CED/C/CZE/1, para. 76. See also CED/C/CZE/RQ/1, para. 39.

40. **The Committee requests that the State party ensure that all law enforcement and security personnel, whether civil or military, medical personnel, public officials, and other persons who may be involved in the custody or treatment of persons deprived of liberty, including judges, prosecutors and other officials responsible for the administration of justice, receive specific and regular training on the provisions of the Convention, in accordance with article 23 (1) thereof.**

5. Measures to protect and guarantee the rights of victims of enforced disappearance (art. 24)

Definition of victim and right to receive reparation and prompt, fair and adequate compensation

41. The Committee is concerned that the definition of victim in the Victims of Crime Act is not in full compliance with the Convention, as it may not cover all natural persons who have suffered harm as the direct result of enforced disappearance (art. 24).

42. **The Committee recommends that the State party revise the definition of the victim so as to bring it into full compliance with the definition set out in article 24 (1) of the Convention, recognizing a victim as any individual who has suffered harm as the direct result of enforced disappearance.**

Right to receive reparation and prompt, fair and adequate compensation

43. The Committee is concerned that domestic law does not fully guarantee the right of victims of enforced disappearance to obtain adequate compensation and all forms of reparation under the responsibility of the State. It is also concerned about the restrictions on the right to compensation, in particular: (a) the 3- and 15-year limitation periods for access to compensation through civil proceedings; (b) the fact that compensation through the “adhesion procedure” in criminal proceedings may be awarded only where the proceedings result in a conviction and where the victim applied for compensation during the proceedings before the taking of the evidence during the trial; and (c) the fact that the granting of financial assistance is conditional on the criminal conviction of the perpetrator for the act causing the damage and becomes statute-barred five years after the perpetration of the criminal act. The Committee notes with concern the information presented during the dialogue that the criminal courts are reluctant to adjudicate compensation claims in criminal proceedings, and instead refer victims to civil remedies. The Committee regrets that it has not received clear information on non-monetary reparative measures or on the functioning, quality and duration of victim support services (art. 24).

44. **The Committee recommends the State party to:**

(a) **Ensure that its domestic legislation provides for a comprehensive system of compensation and reparation (including medical and psychological rehabilitation, restitution, and satisfaction, including restoration of dignity and reputation) and for prompt, fair and adequate compensation for all persons who have suffered harm as the direct result of enforced disappearance, regardless of when it was perpetrated and even if no criminal proceedings have been opened against the potential perpetrators or the latter have not been identified;**

(b) **Ensure, by means of its legislation, that any term of limitation is of long duration and commences from the moment when the enforced disappearance ceases.**

6. Measures to protect children from enforced disappearance (art. 25)

Wrongful removal of children and adoption

45. The Committee is concerned that domestic legislation does not specifically criminalize the conduct described in article 25 (1) (a) and (b) of the Convention. The Committee regrets that the State party did not provide information about the measures taken to prevent the acts referred to in article 25 (1) (a). It also regrets that it has not been informed of the measures taken by the State party to protect children, particularly unaccompanied minors, from enforced disappearance, in particular in the context of migration and trafficking.

Noting reports that many unaccompanied minors left the facility for children of foreign nationals in Prague without available records on their subsequent whereabouts, the Committee is concerned about the fact that unaccompanied minors may be at risk of enforced disappearance. The Committee is also concerned about reports that the police search for an unaccompanied minors lasts for only 60 days, even if the unaccompanied minor is not located (art. 25).

46. **The Committee recommends that the State party:**

(a) **Incorporate as specific offences the conduct described in article 25 (1) (a) and (b) of the Convention, providing for appropriate penalties that take into account the extreme seriousness of the offences;**

(b) **Take the measures necessary to prevent falsification, concealment or destruction of documents attesting the true identity of the children referred to in article 25 (1) (a);**

(c) **Take effective measures to prevent the disappearance of children from reception centres, in particular from the facility for children of foreign nationals in Prague, and to search for and identify children who may have been the victims of wrongful removal as described in article 25 (1) (a), and ensure that information on unaccompanied minors is duly recorded;**

(d) **Ensure that the police search for a disappeared unaccompanied minor continues until the fate of the minor is reasonably established, on a case-by-case basis, and that the search reaches a concrete outcome rather than ending on the basis of the passage of time after an extremely short period.**

D. Fulfilment of the rights and obligations under the Convention, dissemination and follow-up

47. **The Committee wishes to recall the obligations undertaken by States when becoming parties to the Convention and, in this connection, urges the State party to ensure that all the measures that it adopts, irrespective of their nature or the authority from which they emanate, are in full accordance with the Convention and other relevant international instruments.**

48. **The Committee also wishes to emphasize the particularly cruel effect of enforced disappearance on women and children. Women who are subjected to enforced disappearance are particularly vulnerable to sexual and other forms of gender-based violence. Women who are relatives of a disappeared person are particularly likely to suffer serious social and economic disadvantages and to be subjected to violence, persecution and reprisal as a result of their efforts to locate their loved ones. Children who are victims of enforced disappearance, either because they themselves were subjected to disappearance or because they suffer the consequences of the disappearance of their relatives, are especially vulnerable to numerous human rights violations. In this context, the Committee places special emphasis on the need for the State party to ensure that gender issues and the specific needs of women and children are systematically taken into account in implementing the recommendations contained in the present concluding observations and all the rights and obligations offset out in the Convention.**

49. **The State party is encouraged to widely disseminate the Convention, its report submitted under article 29 (1) of the Convention, the written replies to the list of issues drawn up by the Committee and the present concluding observations, in order to raise awareness among the judicial, legislative and administrative authorities, civil society and non-governmental organizations operating in the State party and the general public. The Committee also encourages the State party to promote the participation of civil society in the process of implementing the recommendations contained in the present concluding observations.**

50. Under article 29 (4) of the Convention, and with a view to strengthening its cooperation with the State party, the Committee requests the State party to submit, by 23 September 2029, specific and updated information on the implementation of all its recommendations and any other new information on the fulfilment of the obligations contained in the Convention since the adoption of the present concluding observations, in a document prepared in accordance with the guidelines on the form and content of reports under article 29 to be submitted by States parties to the Convention.⁹ The Committee encourages the State party to involve civil society in the process of preparing this information, which the Committee intends to consider in 2030.

⁹ [CED/C/2](#), para. 39.