



International Convention for the Protection of All Persons from Enforced Disappearance

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Summary record of the 406th meeting

Held at the Palais Wilson, Geneva, on Wednesday, 14 September 2022, at 10 a.m.

Chair: Ms. Villa Quintana

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The meeting was called to order at 10 a.m.

Consideration of reports of States parties to the Convention *(continued)*

Initial report of Czechia (CED/C/CZE/1; CED/C/CZE/Q/1 and CED/C/CZE/RQ/1)
(continued)

1. *At the invitation of the Chair, the delegation of Czechia joined the meeting.*
2. **Ms. Janina** (Country Rapporteur) said that she would like to know whether enforced disappearance was specifically mentioned in any of the national legislation on non-refoulement. If not, it would be useful to know what legislative provisions might be invoked to support a claim for non-refoulement protection on the grounds that the person concerned would be at a risk of enforced disappearance if returned. She wondered whether there were any situations in which non-refoulement protection would not be offered by the Czech authorities. She would also appreciate details of the procedure through which, as indicated in paragraph 33 of the State party's replies to the list of issues,¹ a foreign national who could not benefit from non-refoulement protection in Czechia could seek protection in another State, and also about the procedures that foreign nationals should follow at border points if they wished to request protection on the basis of a risk of enforced disappearance when entering the country. She would be particularly interested to learn: who took down the request; whether interpretation and legal assistance were offered; whether police officers were trained to identify persons in need of protection; and whether those persons were detained in closed centres while their application was processed.
3. She would like the delegation to explain the judicial procedures through which deportation decisions could be appealed. It would be useful to know whether deportations were immediately suspended when an appeal was lodged, particularly in the case of persons at risk of enforced disappearance. With regard to the list of safe countries, she would like to know how often the list was updated and the criteria that were applied; whether there was an accelerated application procedure for individuals arriving from countries on the list; and how the authorities ensured that the specific individual situation of persons originating from those countries was duly assessed. She wondered whether any procedural changes had been made since the Constitutional Court's 2020 ruling that the burden of proof for complaints of widespread breaches of human rights in such countries was too high; and whether the State party would be acting upon the Public Defender of Rights' proposal that article 350 of the Code of Criminal Procedure should be amended to bring it into line with the Asylum Act. She would also like to know whether the State party followed up on the situation of individuals who were extradited on the basis of diplomatic assurances and, if so, for how long.
4. She would like to know more about the circumstances in which, according to paragraph 76 of the State party's initial report,² a person could be detained without a family member or other person close to them being notified. She would appreciate the delegation's comments on allegations that the State party had allowed its airports to be used for rendition flights and, if that was the case, would like to know what steps had been taken to investigate and prevent the practice, as had been requested by the United Nations Human Rights Committee in 2007. In addition, the delegation's comments on allegations that detainees were allowed extremely limited time for family visits would be useful, as would confirmation that detainees had the right to meet with their lawyer as soon as they were detained, and information on the official registers of persons deprived of their liberty maintained in detention facilities, including an indication of whether they included all elements set out in article 17 (3) of the Convention and how they were maintained, updated, monitored and coordinated. She wondered whether any person with a legitimate interest, including the family members of the disappeared person, had the right to bring proceedings before a court in the case of a suspected enforced disappearance, and whether there was any coordination between the prosecutor's office, Ministry of Justice, Ministry of the Interior and the Ombudsman regarding the outcomes of their visits to places of deprivation of liberty.

¹ CED/C/CZE/RQ/1.

² CED/C/CZE/1.

5. She would appreciate clarification regarding the circumstances in which, according to paragraph 94 of the State party's initial report, the prison service might refuse to provide information from its records to administrative and judicial bodies and other parties with a legal interest in its disclosure. She would also appreciate confirmation of the existence of a database containing genetic information on disappeared persons and their families, as well as information about any legal provisions that punished the conducts specified in article 22 of the Convention. Lastly, noting that there appeared to have been no specific training on the Convention for civil and military law enforcement personnel, medical personnel and other public officials that might be stationed at border check points, she asked whether the State party intended to include the Convention in future human rights training for those officials.

6. **Ms. Kolaković-Bojović** (Country Rapporteur), noting that the definition of victim included in the State party's initial report did not seem to be in line with article 24 of the Convention, asked whether the State party had any plans to amend its legislation to incorporate a broader definition that was in conformity with the Convention. She also enquired whether victims of enforced disappearance were required to initiate criminal proceedings in order to be considered as such.

7. Turning to measures of reparation, she wished to know whether a victim of enforced disappearance could claim compensation through civil proceedings in parallel to the criminal proceedings and whether the civil courts would be bound by the decision of the criminal courts. She would appreciate information regarding the statute of limitations for such claims; how long the average claim took and how much compensation was usually awarded; and the requirements and conditions that the injured party must satisfy in order to obtain compensation from State funds. She wondered whether urgent support was offered; whether there were any limits on the amount of compensation that might be awarded, or any other restrictions linked to the type of offence or category of victim; and whether forms of reparation other than monetary compensation were available.

8. She would be interested to learn more about the support services available to victims of enforced disappearance. In particular, the delegation should indicate: whether there was a nationwide network of such services; whether they were provided by State or civil society actors; what kind of support was available; and whether support continued to be provided, on a long-term basis, after the criminal proceedings had concluded.

9. Details of the procedure to be followed to obtain a declaration of absence would be helpful, including an indication of the parties entitled to request such declarations, the agency responsible for issuing them and the length of time the procedure took. With regard to declarations of death, she would like to know: whether the issuance process was initiated ex officio or upon request; whether the issuance of a declaration affected the authorities' obligation to search for the disappeared person; and, if so, whether family members were entitled to pause the process and request that the search should be continued.

10. She would appreciate an explanation of the procedure for annulling adoptions and other child placements that had originated in the context of an enforced disappearance, including information about the mechanisms in place to guarantee the right of the children affected to have their true identity re-established. She would also like to know about any measures taken to protect children from enforced disappearance, particularly in the context of migration and trafficking.

11. Lastly, in view of the recent massive migration movements in Europe, she would like to know: how many unaccompanied minors were currently living in institutions in the State party; in what types of institution they were placed; how many of them had become unaccompanied in the context of migration; and what kind of data was stored in the PATROS police database. It would also be useful to have an indication of whether any unaccompanied minors had left or gone missing from the institutions in which they were living; whether a search process was in place and how long the searches lasted; and whether any of the unaccompanied minors concerned had subsequently been found to have fallen victim to crimes such as trafficking in persons or abduction.

The meeting was suspended at 10.30 a.m. and resumed at 10.50 a.m.

12. **Mr. Machačka** (Czechia) said that the principle of non-refoulement was enshrined in national legislation on international judicial cooperation in criminal matters and national legislation on the residence of foreign nationals and was underpinned by the obligation assumed under article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. The non-refoulement obligation was broad in scope; it extended to enforced disappearance and there were no exceptions to the protection it afforded. Although an asylum claim might be refused if the applicant was guilty of crimes against humanity, even in that case the person concerned would not be extradited if they might be at risk of enforced disappearance. Instead, the person would have 60 days to seek protection in another State.

13. Since Czechia was surrounded by countries also forming part of the Schengen area, there was only one border point, at the international airport in Prague. It was possible to submit an asylum application at that border, where all relevant information would be provided to applicants in a language they could understand, interpreters were available and non-governmental organizations provided legal assistance. Individuals originating from States included on the list of safe countries, which was established by the European Union, were not barred from seeking asylum but would face a higher burden of proof. Asylum-seekers would only be detained for a very short period while security checks were carried out. Thereafter, they were placed in open facilities or were free to make their own accommodation arrangements. Persons residing illegally in Czechia could be detained, but alternatives to detention were available and would be used in the first resort. Any expulsion order could be appealed, with suspensive effect. The Czech authorities followed up on extraditions subject to diplomatic assurances through its missions and diplomatic representations in the requesting countries.

14. **A representative of Czechia** said that persons could be held in police custody if their behaviour was considered to threaten their life and health or the lives or health of others, if they had escaped from another form of detention such as prison, protective medical care or institutional education, and if they had resisted arrest or had attempted to escape after being caught in flagrante delicto. All persons placed in police custody had the right to speak to a lawyer, to notify family members of their detention and to speak to a medical professional. Foreign nationals also had the right to contact their consulate. Officers who failed to adhere to the internal regulations on police custody might receive a written warning, be stripped of their accolades and/or face financial penalties and, ultimately, dismissal. The police force was permitted to retain for future identification purposes the personal data of persons accused or convicted of committing a crime, under protective medical care or custody, or wanted for questioning. That data included fingerprints, physical identifiers, video and audio recordings and biological samples.

15. **Mr. Machačka** (Czechia) said that a DNA database was maintained for the purpose of identifying criminals or human remains and finding missing persons using samples from their relatives. The prison service always provided information on detainees to their relatives upon request, provided the detainee consented to its disclosure. Investigations had found the allegations of rendition flights passing through Czechia to be untrue. The allegations related to events that had occurred ten years previously and there had been no allegations of more recent incidents.

16. Family visits to prisons tended to be limited because prisons lacked the capacity to accommodate all requests. However, prison directors were doing their best to accommodate visits and to develop visiting spaces that were more child- and contact-friendly. The prison authorities endeavoured to place detainees in facilitates close to their families. Persons close to detainees could appeal against their prison sentence or support a request for their conditional release. Such requests would be ruled upon by a judge. If the detention was ruled to be unlawful, the judge would grant immediate release. The public prosecutor could also order the release of an unlawfully detained person.

17. Prisons had an internal monitoring system but also received monitoring visits from the public prosecution service and the Ombudsman's Office. The Ombudsman's Office was an independent authority established in line with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles) that worked closely with the public prosecutor and published a report after all visits. Those

reports were shared with the relevant authorities and were publicized through press conferences. The Ombudsman could make general recommendations and recommendations on individual cases but did not have the power to order the release of a detainee.

18. **A representative of Czechia** said that all new police officers received training in how to manage detainees held in police cells. They were required to re-read the internal regulations on police custody on a regular basis and to confirm that they had done so. Seminars were held to raise awareness of best practices and pre-empt mistakes.

19. **Mr. Machačka** (Czechia) said that, under Czech law, the relatives of victims of enforced disappearance could be considered victims of the offence as well as their disappeared family member, and that the definition of a victim of enforced disappearance was in line with the Convention and European Union law. Victims of enforced disappearance could not initiate criminal proceedings themselves but were able to participate and to present evidence. Regardless of whether or not they participated in the proceedings, they had the right to receive psychological and legal support, information and protection.

20. A guilty verdict in the criminal courts was binding in the civil courts, but, if the perpetrator was not found guilty in the criminal courts, the victim could still claim compensation through the civil courts. Civil proceedings could not begin until the criminal proceedings had finished. Judicial proceedings were not subject to a time limit but were required to be swift, and victims could be compensated if the justice process moved too slowly. The amount of monetary compensation awarded was also not limited, and was at the discretion of the courts. Monetary assistance provided to victims by the State, on the other hand, was limited to €10,000, with the average amount awarded being around €1,000. Monetary compensation claims were subject to a statute of limitations but not the criminal proceedings. Victims had access to mediation and psychological counselling services provided by non-governmental organizations supported through State funding schemes.

21. A declaration of absence or death was issued through a civil process that had to be initiated by a person's relatives or other interested parties. The State did not initiate those processes. After an application had been made to the courts and a person had been declared missing, a curator would be appointed to administer their affairs. That process did not affect their civil status. Once a person had been declared missing for a minimum of five years, an application could be made to the courts for a declaration of death. If the person was subsequently found to be alive, they could resume their place in society but any marriage would not be reinstated. Those procedures were separate from the police processes and the police search could continue.

22. Placement in foster care had no legal effect on a child's identity. If an adoption was annulled, the child had the right to have his or her true identity re-established.

23. In previous years, very few unaccompanied children had entered Czechia. That situation had now changed with the arrival of a large influx of Ukrainian nationals, including many children travelling without their parents. The authorities were assessing the extent to which the existing mechanisms could cope with the increase in numbers.

24. **Ms. Janina** said that it would be helpful for the State party to review its asylum legislation to ensure the inclusion of enforced disappearance as one of the elements that should be considered in application of the principle of non-refoulement. While the State party's list of safe countries was based on the criteria established by the European Union, it was important for the authorities to ensure that asylum claims were assessed on an individual basis. She would welcome data on the number of non-refoulement applications, particularly any that had invoked a potential risk of enforced disappearance in the country of origin. According to information received by the Committee, there were inconsistencies in the legislation governing asylum and expulsion that left asylum applicants unsure where to direct any appeals against deportation decisions. She would be grateful for any information that might clarify the matter.

25. It was unclear whether there were any circumstances that might prevent detainees from having access to a lawyer from the outset of their detention. She would welcome the delegation's response to reports that lawyers assigned to persons detained in psychiatric hospitals did not perform their duties effectively. It would also be useful to learn about the

conditions of detention in the Zastávka facility and whether the principle of non-refoulement was adequately applied there. With regard to access to police registers, she would welcome clarification as to whether the delegation's understanding of "legal interest" was aligned with the term "legitimate interest" that appeared in article 18 of the Convention. The Committee welcomed the State party's commitment to upholding the Convention and would greatly appreciate any steps the Government could take to help increase the number of ratifications of the Convention, particularly in the context of the State party's presidency of the Council of the European Union during 2022.

26. **Ms. Kolaković-Bojović** said that it was unclear whether it was possible to appeal against police detention. She would welcome clarification as to whether there were differences between the procedural rights afforded to persons detained by the police and those afforded to persons detained pursuant to a court order.

27. It would be useful to know more about the bodies that provided support services to victims and informed them of their rights. In particular, she would welcome information on the geographical distribution of victim support services, on whether the provision of such services was standardized, and on any quality assessments that were performed in respect of such services.

28. It would be helpful to gain an understanding of whether State funds were available to victims in cases where the perpetrator did not possess sufficient means to pay compensation or could not be held criminally responsible for an act on grounds of mental illness. It remained unclear whether criminal courts were required to render decisions on compensation claims or whether such claims were dealt with through the civil courts. She wished to learn whether the guidelines issued to courts with a view to harmonizing compensation awards were based on the practice of the European Court of Human Rights. She would also like to know whether the police continued to search for missing persons even after they had been declared dead.

29. Lastly, she asked whether adults who had been adopted illegally as children were able to request the annulment of the adoption, and whether the police continued to search for unaccompanied children who had left or gone missing from an institution indefinitely.

30. **Mr. Albán-Alencastro** asked whether training was provided to military personnel, border guards and other State officials who might come into contact with persons at risk of enforced disappearance.

31. **Ms. Lochbihler** asked whether the State party had any plans to include the issue of enforced disappearance in its work with civil society organizations.

32. **The Chair** asked whether persons placed in police detention had the right to a habeas corpus hearing. If so, which authorities were competent to hold such hearings? She would also like to know whether any victim support programmes were provided by the Supreme Prosecutor's Office or by bodies that were independent from the administration of justice.

33. **Mr. Machačka** (Czechia) said that police detention was not a punishment and could be imposed for a maximum of 48 hours. If an extension beyond that time frame was deemed necessary, a court order was required.

34. **A representative of Czechia** said that, immediately upon being taken into police custody, suspects were informed of their rights in a language they understood, which, for non-nationals, would be English or another language. If a previous translation of the list of rights was not available in the relevant language in paper form, a translator would be called. The list included the rights to contact a lawyer from the outset of detention, to remain silent until the lawyer arrived and to speak with them without a police presence.

35. **Mr. Machačka** (Czechia) said that the non-refoulement provisions contained in Czech legislation would be re-examined to check that they were sufficient and worked in practice in all cases. Although he had no supporting data, colleagues had informed him that they were unaware of any asylum applications having been filed on the grounds that the applicant would be at risk of enforced disappearance if returned. The risks usually cited were persecution, torture or inhuman treatment on grounds of religion, ethnic origin, sexual orientation or other characteristic. Nonetheless, consideration would be given to the

possibility of expressly mentioning enforced disappearance in the relevant legislation. Asylum applications from persons originating from States included on the list of safe countries were not barred, but in such cases the burden of proof shifted to the applicant, who would need to provide evidence that they would be at risk if returned. Ukraine had previously been considered a safe country but that was no longer the case. Ukrainians in Czechia benefitted from temporary protection under European Union policy but were also entitled to submit asylum applications, which would be assessed individually on the basis of specific factors such as the applicant's place of residence and proximity to the fighting.

36. He was unable to provide any further information regarding the possible amendment of article 350 (b) of the Code of Criminal Procedure. As explained in paragraph 32 of the replies to the list of issues, the Government did not consider the article particularly problematic but discussions between the Public Defender of Rights and the Ministry of Justice regarding the necessity of amendment would undoubtedly continue.

37. All persons involuntarily admitted to psychiatric hospitals were entitled to legal assistance. The Government acknowledged that some lawyers may not have received sufficient training in how to deal with associated issues such as the use of public curatorship for persons with intellectual disabilities, but it was endeavouring to address any shortcomings.

38. The asylum facility in Zastávka was an open refugee processing centre not generally used to house foreign nationals facing expulsion. Usually, the latter were placed in the Bělá-Jezová detention centre. Even in that facility, families and unaccompanied minors were housed in a special wing, children had access to education and play and the living environment was designed to be as comfortable and welcoming as possible. Nonetheless, since Ukrainian refugees were legally resident in the country, the authorities tried to avoid placing them in the Bělá-Jezová centre and instead to find other forms of temporary accommodation.

39. He could confirm that the term "legal interest", as used in the report, was equivalent to the term "legitimate interest". Family members in all cases had a legal and legitimate interest in the disclosure of information pertaining to their relatives contained in police and prison registers.

40. With regard to training on the Convention for civil and military law enforcement personnel, it should be noted that the civilian police force was the sole law enforcement authority. The special military police performed defence rather than law enforcement duties. Its officers might be called upon to perform civilian functions by special Government decision, as had occurred during the coronavirus disease pandemic, but would never be involved in policing operations that brought them into contact with detainees. The training provided to civilian police officers was mainly focused on the treatment of detainees, and thus had a bearing on enforced disappearance. It should not therefore be difficult to incorporate the provisions of the Convention into training curricula.

41. As the first point of contact for criminal complaints, police officers also received training on victim support and assistance and victims' rights. After that initial contact and assessment, victims would be referred to relevant support services available through the social, probation and mediation services, which had branches in each regional capital, and also through civil society organizations. Service providers were accredited and supervised by the regional authorities, the Ministry of Labour and Social Affairs and/or the Ministry of Justice, which maintained a register on its web page.

42. Victims whose claims for compensation from the perpetrator failed because the latter lacked the means to make settlement and/or the enforcement procedure proved ineffective could seek monetary support from the State if they had suffered injury to their health or human dignity as a result of a criminal offence such as sexual abuse, human trafficking or kidnapping. The right to seek compensation was also extended to the relatives of deceased persons. In addition to helping victims to overcome the social consequences of the crime, settlements were intended to offset loss of income and to cover medical bills and the cost of psychiatric assistance. Awarding compensation had not historically been seen as a key function of the criminal courts – their main role was to investigate crime and to prosecute and punish offenders – and victims were in some cases referred to the civil courts to pursue

their claim, particularly when there was insufficient evidence to secure a conviction. However, the Government recognized the need to develop and refine procedures for claiming compensation and to shift the focus to the victim, particularly in criminal court proceedings. The Supreme Court, through its decisions, provided guidance for the settlement of claims in respect of, for example, the death of a child or relative or physical injury or disability and the lower courts endeavoured to follow that guidance.

43. **A representative of Czechia** said that there was no limit on the period of a time that a person could be classified as missing and that police searches likewise remained open for an indefinite period. However, a declaration of death could be requested if there had been no sign of a person's remaining alive for a considerable period.

44. **Mr. Machačka** (Czechia) said that, although, in principle, the two processes were not interlinked and police searches could continue even after a declaration of death had been issued, in practice, the court's decision, which was taken only after a thorough assessment of all the evidence, implied that any searches that might be ongoing were very unlikely to be successful.

45. An adoption subsequently found to be illegal would be annulled irrespective of the time that had elapsed and even if the adoptee was no longer a minor. Provided that there were no practical obstacles – for example, that the legal parents had not died and there were no inheritance issues – the children concerned could re-establish their original identity.

46. Unaccompanied minors were provided with a safe place to live and access to education while the authorities attempted to locate their parents or other relatives. If the search proved successful, the children could be returned to family care, but some remained in care facilities until they reached the age of majority. Adoption was a possibility for some. Many of the unaccompanied Ukrainian children that had entered Czechia since the start of the war did not know the whereabouts or fate of their families. The Government was working hard to ensure that all such children were duly registered, closely monitored and received appropriate protection and care.

47. Before closing, he wished to highlight the importance of civil society, with which the Government cooperated in many matters, including in preventing torture, through the special committee on torture, ill-treatment and the situation in detention facilities mentioned previously, and in upholding the rights of detainees. The Committee's concluding observations would be shared with non-governmental organizations and they would be invited to participate in discussions on how best to implement its recommendations. Particular focuses would be the definition of enforced disappearance and whether amendments to national legislation were necessary, and the rights of victims.

48. Thanking the members of the Committee for their constructive questions and comments, he reiterated that, although enforced disappearance had not historically been an issue in Czechia, the Government was aware of the pertinence of the many related issues that the Convention addressed. The situation in Ukraine and the influx of refugees that the country was receiving as a result were raising new challenges, and, in addressing them, the Government would continue to implement the Convention and the Committee's recommendations.

49. **The Chair**, thanking the delegation for the frankness and openness of the dialogue, said that, as a State with no history of enforced disappearance, Czechia provided a valuable example that she hoped would encourage others States in which enforced disappeared had not historically been an issue, and hopefully never would be, to ratify the Convention. It was important to highlight the benefits of ratification, and of the harmonization of international law to which ratification contributed.

The meeting rose at 12.30 p.m.