



International Convention for the Protection of All Persons from Enforced Disappearance

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Chair: Mr. López Ortega

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In the absence of Ms. Villa Quintana, Mr. López Ortega took the Chair.

The meeting was called to order at 3.05 p.m.

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

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

1. *At the invitation of the Chair, the delegation of Czechia joined the meeting.*
2. **Mr. Machačka** (Czechia), introducing his country's initial report,¹ said that enforced disappearance had not been a major issue in his country, even during the period of communist totalitarianism in the twentieth century. Since 1989, Czechia had been a democracy, and had ratified all the major regional and universal human rights instruments and upheld the relevant standards, including the right to liberty and security of person and the prohibition of torture and ill-treatment. At the national level, the Charter of Fundamental Rights and Freedoms provided comprehensive human rights protection, building on the Universal Declaration of Human Rights, and had constitutional status, meaning that all national laws and all actions of public authorities must be compatible with its provisions. Any inconsistent legislation could be repealed by the Constitutional Court. In line with the Charter, and also the European Convention on Human Rights, the right to personal liberty was protected through application of the principle of legality, strict time limits and mandatory judicial oversight in respect of detention and the requirement to bring detained persons promptly before a court for a decision on their further detention or immediate release. Those legal safeguards also served to uphold the prohibition of enforced disappearance.
3. Since there had been no instances of enforced disappearance in the country in the past, the legislature had not deemed it necessary to incorporate enforced disappearance in the Criminal Code as a separate offence. Enforced disappearance as defined in the Convention was nonetheless punishable under criminal law, primarily as an offence of deprivation and restriction of personal liberty. In other cases, it might be deemed to constitute an offence of involuntary cross-border migration, kidnapping, trafficking in persons, torture or even terrorism, and, as such, could be penalized under the legislation combating those crimes. A widespread or systematic attack against the civilian population could be prosecuted as a crime against humanity. Public officials who committed such acts, including under order, could be punished either under the same offences with aggravating circumstances or under the separate offence of abuse of power. The Government of Czechia considered that its solution for the treatment of offences of enforced disappearance, which reflected practice in a number of other States, met the requirements of the Convention.
4. National criminal law established separate penalties for the various forms of participation in the commission of an offence, including planning or attempting to commit an offence, instructing others to commit an offence and organizing an offence. National courts had jurisdiction to hear all offences committed by Czech citizens or permanent residents that had effects in national territory, as well as serious offences, such as torture, terrorism and crimes against humanity, committed against Czech citizens or permanent residents that could not be prosecuted elsewhere. The Criminal Code contained a non-exhaustive list of mitigating and aggravating circumstances and statutes of limitation varied from 3 to 30 years, depending on the offence. However, the prosecution of crimes against humanity could not be time-barred.
5. The law enforcement authorities were required to investigate and prosecute any offence of which they became aware, while respecting the procedural rights of the accused and the rules applicable to arrest and custody. Subject to international treaties and European Union law, the national authorities also cooperated in criminal investigations and proceedings at the international level, for example through information sharing, transfers of prosecution and extradition, all of which might be involved in cases of enforced disappearance. However, in line with the principle of non-refoulement, the courts would not authorize the extradition of persons deemed to be at risk of torture, ill-treatment or enforced disappearance if returned.

¹ CED/C/CZE/1.

6. Criminal law established a wide range of rules and legal safeguards for remand custody, imprisonment, security detention and protective medical treatment. The only form of detention not subject to judicial review was police detention on grounds of threat to public security, attack or escape attempt. However, the maximum duration of such detention was two days, and notification, access and visitation rules applied. Detention was not used for administrative offences.

7. Asylum-seekers were generally detained for a brief period only, prior to their security checks. Thereafter, they were placed in open facilities. Foreign nationals present in the country illegally might be placed in administrative detention but retained the right to judicial review and also to receive visits from family members. The involuntary hospitalization of persons posing a danger to themselves or others was permissible, subject to certain time limits, when no other solution could be found and following court proceedings in which the patient had legal representation and the opportunity to be heard; persons considered medically unable to decide upon their care were nonetheless entitled to express a view.

8. The law provided that family members must be duly notified of the detention of a relative and must be afforded regular communication and the opportunity to visit. Custody records that included detainees' names, dates of admission and the legal limits on their detention were updated on an ongoing basis and subject to verification by oversight authorities including the public prosecution service. Relatives could be granted access to prison records, subject to the consent of the inmate concerned, and access to central police custody records could also be granted in certain limited circumstances. In medical and social care facilities, detailed records were kept at individual establishments; however, court records for the purpose of monitoring length of stay also existed, and could be made available to family members subject to data protection rules.

9. Violations of the laws and regulations governing detention were subject to disciplinary or even criminal proceedings. Any person, including the victim, could file a criminal complaint, which the law enforcement authorities were under an obligation to evaluate. Although victims did not have the right to initiate prosecutions, they had the option of joining the proceedings and filing for compensation as an aggrieved civil party. Under the Victims of Crime Act, they were entitled to support including psychological counselling, financial and legal assistance.

10. All adoptions had to be approved by the courts, and any adoption in which established rules and procedures were found not to have been respected would be annulled. Secret or illegal adoptions were punished as trafficking in persons, child abduction or illegal child entrustment.

11. **Ms. Kolaković-Bojović** (Country Rapporteur) said that she would like to know whether the State party had an established mechanism for ensuring that civil society organizations were involved in developing and monitoring human rights policies. She would also be interested to hear about any examples of the direct application of international instruments by the national courts. Given that the direct applicability of international instruments depended on the self-executing nature of their provisions, she wished to understand which provisions a court would apply in the event of an incompatibility between the Convention and national legislation, especially if the Convention was more favourable to victims.

12. Information about the results of the recently conducted analysis of the compatibility of the mandate of the Public Defender of Rights with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles) and about the action planned to address identified shortcomings would be helpful. In addition, it would be useful to know whether the State party's court case management system allowed for the compilation of data on victims of enforced disappearance disaggregated by sex, age, ethnic origin and nationality and, if so, to receive such statistics, as previously requested.

13. She also wished to know which specific provision of national legislation, if any, provided for the absolute prohibition of enforced disappearance, including during a state of war, international instability or other public emergency. Bearing in mind that national legislation made no clear distinction between crimes committed by State actors and private individuals, she wondered whether the State party intended to establish a definition of

enforced disappearance as a separate offence that was compatible with article 2 of the Convention. She would be interested to know how, in the absence of such a definition, the State party could guarantee that the penalties for offences involving elements of enforced disappearance were commensurate with the gravity of the crime, and whether it intended to amend its legislation to ensure adequate penalties, including through recognition of all the aggravating and mitigating circumstances set out in article 7 of the Convention. It would likewise be helpful to know what types of offence might be classified as an “attack against humanity” and which specific provision of the Criminal Code penalized the crimes referred to in article 5 of the Convention.

14. An explanation as to which provisions of the Criminal Code addressed each individual element of the crime of enforced disappearance set out in article 6 (1) (a) of the Convention would be useful. Given that offences amounting to or involving enforced disappearance were punishable under a number of different offences, it would be interesting to know whether the corresponding penalties sometimes also differed depending on whether the person convicted was a direct perpetrator or fell into one of the other categories described in article 6 (1) (a). Lastly, with a view to understanding the minimum sentence that might be imposed in practice on perpetrators of enforced disappearance, she would appreciate information about the maximum and minimum penalties currently provided for in the Criminal Code.

15. **Ms. Janina** (Country Rapporteur) asked whether the delegation could provide clarification regarding the statute of limitations currently applicable to cases of enforced disappearance, both as an individual offence and when it constituted a crime against humanity. In view of the State party’s recognition of the continuing nature of the crime, she wished to know when the term of limitation began for offences such as trafficking in persons and kidnapping under which cases of enforced disappearance might be prosecuted. Given that, according to the State party, “most” crimes against humanity had no statute of limitations, she would appreciate confirmation that the prosecution of cases of enforced disappearance that met that description could not be time-barred. She also wished to hear the delegation’s comments on the statute of limitations applicable to civil compensation claims and requests for financial assistance under the Victims of Crime Act, since to her they appeared excessively short.

16. She would appreciate an explanation as to whether the prerequisites for application of universal jurisdiction, including the dual criminality requirement, were compatible with article 9 (2) of the Convention, in which the presence of the alleged offender in the territory was the only prerequisite mentioned. She would also like to know whether a criminal complaint of enforced disappearance that had procedural irregularities could be entirely disregarded or whether the allegation must be investigated *ex officio* nonetheless.

17. She would welcome clarification as to the jurisdiction in which an alleged offence of enforced disappearance committed by members of the national armed forces during operations inside or outside the country would be investigated and prosecuted; whether the military police was a judicial or an administrative body; and, more generally, what role it had. She would also like to know which specific legislative or administrative provision was used to ensure that persons who might potentially take a biased approach were barred from participation in criminal proceedings and whether the General Inspectorate of Security Forces played a role. Details of any extradition treaties ratified since the Convention had entered into force for the State party would be helpful, including an indication as to whether they covered enforced disappearance and whether enforced disappearance was considered a political offence under their provisions. Lastly, she wished to know whether national legislation contained any provisions that might impede fulfilment of the obligation of mutual assistance and cooperation assumed by States parties under the Convention.

The meeting was suspended at 4 p.m. and resumed at 4.15 p.m.

18. **Mr. Machačka** (Czechia) said that his country had a long-established system of government advisory bodies composed, in equal numbers, of public officials and civil society representatives and specialized in different areas of human rights protection, such as Roma issues, gender and persons with disabilities. Although the system did not include a body dedicated to enforced disappearance, in the future, the special committee on torture, ill-

treatment and the situation in detention facilities, which addressed related topics, could cooperate in the implementation of the Convention.

19. The Public Defender of Rights, which was the main human rights institution, had been established over 20 years previously as a parliamentary ombudsman focused on public administration. Over time, it had acquired additional functions, including that of the national preventive mechanism against torture and the independent monitoring mechanism under the Convention on the Rights of Persons with Disabilities. The Government intended to take the steps necessary to secure accreditation of the institution as a national human rights institution in compliance with the Paris Principles in the coming years.

20. Under the Constitution, international law always prevailed over national legislation. Before ratification of any international convention, an analysis was conducted with a view to identifying any conflicts with existing national legislation and eliminating them as quickly as possible through legislative amendments. Such an analysis had been carried out prior to ratification of the Convention. The provisions of international conventions were often cited in court findings, most often by the Constitutional Court but also by the Supreme Court and the Supreme Administrative Court. The most commonly invoked convention was the European Convention on Human Rights, but the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child had also been cited. The self-executing nature of a provision in an international convention could not be assessed generally, but only by the courts according to the facts of a specific case.

21. Data on the ethnicity of victims of criminal offences were sometimes lacking as not all victims chose to specify their ethnic affiliation. In order to overcome that problem, victims would be encouraged to provide such information and efforts would be made to enhance their trust in the confidentiality of data gathered by the State. Under laws governing the management of emergency situations, the courts could not derogate from legislation prohibiting torture and guaranteeing the right to liberty and security of person. Accordingly, no such derogation had occurred during the coronavirus disease (COVID-19) pandemic. The Criminal Code applied equally to all persons, irrespective of whether they worked in the public or private sector. For certain offences, however, it was considered an aggravating circumstance if the perpetrator was a State official. Military personnel were subject to the jurisdiction of the ordinary courts and were tried under ordinary law.

22. **A representative of Czechia** said that the Criminal Code provided for separate consideration of the different stages of offences, which included preparing to commit an offence, attempting to commit an offence and committing an offence. Under the Criminal Code, a person could be considered liable for the indirect commission of an offence or for acting as an accomplice to, or a participant in, its commission. Section 401 of the Criminal Code set out the offences that, when committed as part of an extensive, systematic attack against civilians, were classified as attacks against humanity. Such offences included enslavement, deportation, rape, torture and murder. The penalty applicable to any person carrying out such an attack ranged from 12 to 20 years' imprisonment, although exceptional terms of imprisonment could be handed down in certain cases.

23. Although enforced disappearance was not established as a separate offence in national legislation, any person who committed such an act could be charged with a number of other offences under the Criminal Code. For instance, unlawfully confining another person without authorization was punishable by a prison sentence of between 2 and 8 years, or longer if aggravating circumstances applied. Likewise, restricting another person's personal liberty was punishable by a prison sentence of up to 2 years, or longer if aggravating circumstances applied. Any person who used force or the threat of violence to take another person into Czechia or another State would be liable to a prison sentence of between 2 and 8 years, or longer if aggravating circumstances applied.

24. **Mr. Machačka** (Czechia) said that the periods of limitation applicable to different offences depended on the gravity of the offence and the sanctions available for it. For serious offences, such periods ranged from 15 to 30 years, with the longest periods being applied to offences resulting in the victim's death. Crimes against humanity were not subject to any period of limitation. Victims of criminal offences were not entitled to initiate legal

proceedings; only the public prosecutor could do so. However, victims were entitled to participate in the proceedings and submit claims for compensation. Complaints submitted by victims were not always admitted but the authorities were required to initiate legal proceedings if, in considering a complaint, they found evidence that an offence had been committed.

25. Victims could also pursue claims through the civil courts although such claims were subject to periods of limitation and the process of obtaining compensation was more complicated. Subjective periods of limitation lasted two years and were applicable to certain claims, including claims for compensation for harm caused to a victim's health or harm caused by the death of a family member. Although subjective periods of limitation were relatively short, they started only when the victim became aware that the offence had been committed, which could be many years after its perpetration.

26. The General Inspectorate of Security Forces was responsible for investigating offences committed by members of the security forces, including police officers, prison officers and customs officers, and ensuring that any investigations carried out were not unduly influenced by the colleagues or superiors of accused officers. Extradition treaties were no longer widely used as judicial cooperation between member States of the European Union took place in accordance with European Union law. Parties to the European Convention on Mutual Assistance in Criminal Matters were required to cooperate with each other to tackle crime, including enforced disappearance. Such parties did not consider enforced disappearance to be a political offence and did not refuse extradition requests on such grounds. The judicial authorities were entitled to invoke universal jurisdiction only for the most serious offences, such as acts of torture, terrorist acts or war crimes.

27. **Ms. Kolaković-Bojović** asked whether the Government was required to involve the advisory bodies that included members of civil society in the preparation of reports for treaty bodies and, if so, why they had not participated in the development of the present report. She wondered how members of civil society were nominated and appointed to positions on advisory bodies and whether the Government engaged with civil society organizations who were not represented on them. She welcomed the fact that the Constitutional Court and the Supreme Court frequently invoked international treaties but wished to know whether courts of first instance and courts of appeal could also apply them directly.

28. The Committee would be interested to know whether the Government had established an electronic case management system that could store data uploaded by prosecutors, police officers and judges and could generate reports that allowed court practices to be reviewed. It would also be grateful to receive official or unofficial English translations of the State party's Criminal Code and Code of Criminal Procedure so that the Committee could check the many legal provisions cited by the delegation, including the definition of crimes against humanity.

29. The delegation might confirm whether persons who planned to commit, or attempted to commit, crimes against humanity could be prosecuted and punished under the legislation applicable to persons who had actually committed such crimes. She wondered what role the public prosecutor played in investigations conducted by the General Inspectorate of Security Forces. In particular, she was curious to know whether such investigations were initiated and led by the public prosecutor or the head of the General Inspectorate. The delegation might also explain whether such investigations were subject to any procedural guarantees and whether mechanisms were in place to ensure that persons involved in the commission of enforced disappearance did not participate in any investigation into that offence.

30. **Ms. Janina** said that it was still not clear what period of limitation applied to offences amounting to enforced disappearance. Given that enforced disappearance was an extremely serious crime that should not be prosecuted under other offences, the State party might consider establishing it as a separate offence in national legislation and ensuring that any period of limitation applicable to it was of long duration. With regard to the question of jurisdiction, she wondered whether the State party's judicial authorities would be able to prosecute a perpetrator of enforced disappearance who was a foreign national of a State where enforced disappearance was not an offence or whether they would be prevented from taking legal action by the principle of double criminality. The Committee would appreciate further information on the legal framework governing the operations of the General Inspectorate of

Security Forces. The State party might also describe the legal provisions in place to prevent State officials, or any other persons, from influencing or hindering investigations into reports of enforced disappearance conducted by the General Inspectorate.

31. **Mr. Albán-Alencastro**, noting that victims of criminal offences were not authorized to initiate legal proceedings, said that he wished to know what rights they had if they chose to participate in proceedings and what rights they had if they chose not to. The delegation might explain whether, in a case of enforced disappearance, the two-year period of limitation applicable to civil claims would begin when the person bringing the claim discovered that the offence had been committed or rather when he or she learned of the identity of the perpetrator or the whereabouts of the disappeared person.

32. **Mr. Machačka** (Czechia) said that the Government was not legally required to involve civil society in policymaking, decision-making or other State business but that such involvement took place frequently and was not limited to the advisory bodies mentioned earlier in the discussion. For instance, ministries often set up working groups to enable civil society to participate in the development of their strategies. Owing to time limits and other constraints, it was not always possible to involve civil society in the preparation of reports for treaty bodies, which mainly reflected the views of the State. However, efforts were made to discuss pertinent issues with them, including the best way to implement the recommendations set out in concluding observations.

33. Although the ordinary courts were entitled to apply the international treaties to which Czechia was a party, they did not often do so in practice as, unlike the Constitutional Court and the Supreme Court, they usually dealt with day-to-day matters to which international law did not apply. However, they applied international law indirectly to the extent that national law had been brought into compliance with the treaties ratified by Czechia. The police service, the prosecution service and the courts used a number of electronic systems but those systems were not very well integrated. Efforts were being made to overcome that problem so that judicial authorities and law enforcement bodies could record and share evidence and other information related to offences, perpetrators and victims.

34. Although enforced disappearance had not been established as a separate offence in legislation, involuntary disappearance was listed in the Criminal Code as an offence that, in certain circumstances, could constitute an attack against humanity. If the Czech authorities discovered that a foreign national living in Czechia had committed an offence corresponding to enforced disappearance and enforced disappearance had not been defined as an offence in that person's country, they would examine the laws of the country concerned to determine whether he or she could be prosecuted under another offence that had also been established in Czechia.

35. The General Inspectorate of Security Forces strove to ensure that its investigations were not unduly influenced by members of the security forces but was unable to prevent such influence from being exerted by judicial officials or members of the public prosecution service. Victims or accused persons involved in criminal proceedings were entitled to submit complaints if they felt that the prosecutor or judge was biased against them. If such a complaint was found to be substantiated, the prosecutor or judge concerned would be replaced.

36. Victims who chose to participate in criminal proceedings could submit appeals against decisions relating to any compensation awarded to them. Victims who decided not to participate were not entitled to claim compensation in the proceedings but did have the right to be informed of developments in their case. In both civil and criminal cases, periods of limitation began when the offence concerned was considered to have ended. In cases of enforced disappearance, that occurred when the disappeared person was discovered. Subjective periods of limitation started when the person bringing the claim became aware that an offence had been committed or learned the identity of the perpetrator.

The meeting rose at 5.25 p.m.