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COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Twenty-eighth session

SUMMARY RECORD OF THE 3rd MEETING

Held at the Palais Wilson, Geneva,

on Tuesday, 30 April 2002, at 10 a.m

Chairperson: Ms. BONOAN-DANDAN

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The meeting was called to order at 10.05 a.m

CONSIDERATION OF REPORTS (agenda item 6)

(a)REPORTS SUBMITTED BY STATES PARTIES IN ACCORDANCE WITH ARTICLES 16 AND 17 OF THE COVENANT

Initial report of the Czech Republic [(E/1990/5/Add.47); core document (HRI/CORE/1/Add.71); list of issues (E/C.12/Q/CZE/1); written replies of the Czech Republic (HR/CESCR/NONE/2001/10)]

At the invitation of the Chairperson, the members of the Czech delegation took places at the Committee table.

The CHAIRPERSON welcomed the Czech delegation on behalf of the Committee and invited it to introduce its report.

Mr. FUCHS (Czech Republic) said that the initial report before the Committee described the situation in the country right after the establishment of the independent Czech Republic, which had come into being on 1 January 1993. The years of profound economic and social change following the collapse of the totalitarian regime had resulted in the creation of a democratic society with a multi-party political system, a market-oriented economy and solid guarantees in the area of human rights and fundamental freedoms. It was undeniable that the social system in communist Czechoslovakia had functioned relatively well because everyone had had jobs and housing and health care had been free of charge. But it had been a paternalistic society, in which the State alone had decided what people needed and even wanted and had imposed solutions without respect for their free will.

It had not been easy to change the system because it had been out of the question to adopt a radical attitude of refusing any State interference on the grounds that it would be an unacceptable restriction of the free market. That would have led to a situation in which the State would no longer have been able to guarantee the rights provided for in the international instruments to which the Czech Republic was a party. The process of strengthening norms designed to ensure legally recognized rights had not been stopped; it had, rather, been stepped up, as shown by the amendment to the Labour Code establishing the principle of the equality of men and women and the adoption of a new act on the rights of ethnic minorities.

There were, of course, still problems in some areas. For example, the Government was working to broker an agreement between management and labour on the right to strike. Housing legislation was needed to reconcile contractual freedom and the effective protection of both tenants and landlords. Problems could arise even if the applicable legal provisions were fully in keeping with the Covenant. For instance, despite existing legislation, pressure exerted by some employers sometimes undermined the right to form trade unions.

Protection against discrimination was embodied in the Charter of Fundamental Rights and Freedoms, which had constitutional status. Experience had shown, however, that such provisions had little effect in practice and that discrimination was best combated at the level of ordinary legislation rather than that of the Constitution. At the same time, taking the fight against discrimination so far that it would lead to undesirable diversity must be avoided. That was why the Czech authorities were planning to elaborate a single act that would cover all areas of action to combat discrimination.

7. Respect for economic, social and cultural rights depended on a number of factors, including the economic level of the country concerned. Significantly, the Czech Republic had been a member of the Organization for Economic Cooperation and Development (OECD) since 1995; that had opened up new prospects for implementing policies to ensure that Czech citizens fully enjoyed their economic, social and cultural rights. The Czech authorities' objective was thus to refocus legislative provisions and political programmes to place emphasis on individual responsibility while assisting those who, for various reasons, were unable to exercise their economic, social and cultural rights.

8. The initial report had been prepared in consultation with non-governmental organizations (NGOs) and academic institutions. His delegation looked forward to an open, constructive dialogue with the Committee.

9. The CHAIRPERSON thanked the Czech delegation and invited the members of the Committee to consider information of a general nature, as well as articles 1 to 5 of the Covenant, which were the subject of questions 1 to 11 of the list of issues (E/C.12/Q/CZE/1).

10. Mr. PILLAY, noting that the Covenant was an integral part of domestic law and that the Charter of Fundamental Rights and Freedoms covered most of the rights and obligations stemming from the Covenant, said that, according to information received from NGOs, it nevertheless appeared that the victims of racial discrimination, who were often Roma, did not have effective remedies. For example, it was asserted that an appeal introduced by Roma parents before the Constitutional Court alleging a violation of their children's right to education had been rejected, although there had been clear discrimination and thus a violation of the Covenant. He would like to know whether a court appeal could be filed in respect of all the rights provided for in the Covenant.

11. Mr. RIEDEL asked why the constitutional complaint procedure referred to in paragraph 51 of the report related only to acts by local authorities, but not to the central administration. Although the institution of the public protector of rights (ombudsman) had been set up in 1999, an application to that body did not have the same value as a constitutional appeal. Moreover, it seemed that the public protector was not accountable to the Parliament for his actions and was not entirely independent of the Government. It would be interesting to know the results of his work since the initial report had been prepared. The Committee commended the Czech authorities on actively involving NGOs in producing the report.

12. Mr. AHMED said that he was concerned about the violence to which women in the Czech Republic were subjected both within and outside the family. It seemed that there was no legislation protecting women against that phenomenon and that there were no centres where battered women could go to escape their predicament. He also referred to the proliferation of organized groups involved in the prostitution of both women and young boys and girls.

13. The situation of Roma in the Czech Republic was also a matter of concern. The Czech Government appeared to be aware of the seriousness of the situation and had taken measures to deal with it, but it was difficult to explain the persistence of discrimination against Roma, who had lived in the country for generations. They were often the victims of police violence, 70 to 90 per cent, depending on the region, were unemployed and a discriminatory situation continued to exist in education because Roma children were required to attend special schools, which could only perpetuate the discrimination against them. He asked the delegation to comment.

14. Mr. MALINVERNI said that he would like details on the situation of the Roma, since, according to several NGOs, they had been victims of violence by the security forces and the few cases they had brought before the courts had been ruled non-receivable. In addition, Roma children were allegedly taught in special schools normally intended for the mentally handicapped. Travellers were also subject to segregation in housing. Referring to refugees and stateless persons, he asked why the Czech Republic had not ratified the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness and whether it planned to do so. In general, the refugee situation seemed satisfactory, apart from the problem of family reunion. Why were refugees not allowed to have their families join them in the country?

15. Mr. CEAUSU, referring to the Czech Government's written reply to question 11, stating that the Supreme Court had not to date registered any case of workers claiming to be victims of wage-related discrimination on the grounds of gender said that, in his view, all complaints of wage-related discrimination should go to the Supreme Court. The situation showed, moreover, that Czech citizens were not informed about the remedies available and of their rights in cases of discrimination. He also wished to know whether women had access to a military career and could work in the police.

16. Mr. SADI asked whether decision-makers and legislators were fully aware of the Covenant's provisions and whether the provisions were invoked before the courts and applied in practice. He would also welcome details from the State party on how it interpreted minority rights. He asked whether the Czech Republic granted particular economic, social and cultural rights to minority groups.

17. Mr. HUNT asked whether the Czech Republic had instituted a national plan of action for the promotion and protection of human rights and fundamental freedoms in accordance with the 1993 Vienna Declaration and Programme of Action and, if not, whether it

planned to do so. He would also welcome clarifications as to whether the Council for Human Rights mentioned in paragraph 60 of the report (E/1990/5/Add.47) was independent of the Government, covered economic, social and cultural rights and conformed to the Paris Principles relating to the status of national institutions for the promotion and protection of human rights. It appeared from the report, moreover, that the Czech Government had established a speedy, far-reaching privatization programme. In implementing the programme, had the Government borne in mind its obligations under the Covenant towards the poor?

18.Mr. WIMER ZAMBRANO asked whether the Czech Government had adopted a policy of offering additional protection to minorities and ethnic groups such as the Roma. He also asked what its policy was for remedying discrimination against such groups.

19.Mr. TEXIER said that the number of unaccompanied minors seeking asylum had risen considerably, having increased from 4,000 in 1998 to 8,700 in 2000. He asked whether there were statistics on their countries of origin. According to some information sources, some young persons were in precarious situations while waiting for their cases to be dealt with; he asked whether the Government had made provisions for the best possible reception of such children. As far as the Covenant's justiciability was concerned, he also asked whether judges were sufficiently aware of the Covenant's provisions to cite and apply them and, if not, whether training courses and lectures were being organized on the Covenant and its domestic application.

20.Mr. SCHORM (Czech Republic) said that, in accordance with the 1992 Constitution, international human rights treaties took precedence over national laws; they were justiciable and could be invoked before the Constitutional Court. The Constitution also included a general clause stating that all fundamental rights were protected by the judiciary. Any legal person was able, after having exhausted all internal remedies, to file a constitutional appeal against any administrative or judicial decision regarded as contrary to the country's Charter of Fundamental Rights and Freedoms or to international treaties or against any presumed violation of the fundamental rights safeguarded by the Constitution. It should be stressed that such an appeal in no way depended on the will of the judge or the Constitutional Court. The ombudsman, also known as the public protector of rights, was elected by the Chamber of Deputies, on the proposal of the President of the Republic and the Senate, and was thus responsible to that Chamber. His chief function was to protect citizens against mismanagement by the administration. Since the mediator had taken office only as recently as 1999, his record had not yet been assessed. He had intervened, however, on many occasions in matters relating to discrimination in housing and had filed a constitutional appeal in that regard.

21.The Czech Republic was aware that there were considerable gaps in the dissemination of information to the public and the judiciary on the rights provided for in the Covenant. Fresh training programmes for the judiciary were being developed and a new school for judges would be opening shortly. There was no doubt that, in future, judges would have a better grounding in international human rights instruments. As for the justiciability of the Covenant before the Constitutional Court, it should be pointed out that the Court's decisions were based not on the Covenant, but on the national Charter of Fundamental Rights and Freedoms and on the Constitution. There was no major difference, however, between the national Charter and international instruments for the protection of human rights.

22.Mr. RIEDEL asked why the Czech Republic had not ratified the revised European Social Charter and whether it planned to do so with a view to promoting economic, social and cultural rights.

23.Mr. FUCHS (Czech Republic) said that his Government was seriously considering the ratification of the revised European Social Charter, but had first wanted to make all the requisite amendments to its employment legislation, including the Labour Code. In addition, the first report on the implementation of the 1961 European Social Charter had just been published and the Government thought it as well to appraise the contents before ratifying the revised Charter.

24.As for reference by decision-makers to the European Social Charter and the Covenants, the relevant ministries carefully studied the Covenants during the drafting of a bill and drew up an explanatory note for Parliament in order to show that the proposed text was in conformity with the international treaties ratified by the Czech Republic. Parliament was thus also aware of the Covenants' contents, which it invoked before the Constitutional Court to challenge the conformity of a particular domestic act with international law.

25.Mrs. SCHELLONGOVÁ (Czech Republic) said that any person could seek legal redress in cases of the violation of the rights provided for in the Covenant, either before the ordinary courts, since the Covenant was part of domestic law and in the Charter of Rights and Fundamental Freedoms, or before the Constitutional Court. The fact that appeals could be filed in those courts proved that those rights were justiciable. The Government also regularly advocated the possibility of invoking economic, social and cultural rights before international courts.

26.Mr. FUCHS (Czech Republic) said that the Government had established the post of Commissioner for Human Rights in 1998. The Commissioner's task was to draw up annual reports on the human rights situation in the Czech Republic, with the help of civil servants and non-governmental organizations. The reports were then submitted for scrutiny by the Government which, after approving them, submitted them to Parliament, which in turn discussed them in various committees. The Government and a number of ministries had also drawn up a wide range of action plans in various areas, including equality between the sexes, equal opportunities for disabled persons, employment, older persons, the integration of Roma into society and child prostitution, pursuant to the International Labour Organization Worst Forms of Child Labour Convention 1999 (No. 182). Those action plans were currently in operation and were regularly evaluated by the Government. Since the action plans as a whole enabled all aspects of the Covenant to be covered, the Czech Government had not drawn up any overall plan of action on human rights and was not planning to do so.

27.Mrs. BARŠOVÁ (Czech Republic) said that, although there was no global plan of action, the Government had adopted a programme of activities after the latest elections. The programme, which had provided for an important sector devoted to promoting democracy and human rights, had been successfully implemented, all the prior aims having been achieved, thereby showing that the Government was aware of the problems to be given priority.

28.The Council for Human Rights was a body established by the Government in 1998, and it was therefore not independent, unlike

the ombudsman. It was a specialized body set up to monitor the human rights situation and formulate proposals for improvement. It was composed of senior civil servants and representatives of civil society, mainly members of non-governmental human rights organizations. It consisted of 22 members divided into several mixed committees which considered specific topics such as the situation of women, foreigners and asylum-seekers, and economic, social and cultural rights. It was empowered to submit proposals to the Government and to comment on bills or submit amendments to legislation in matters relating to conformity with human rights standards.

29. On the question of refugees and opportunities for family reunification, the information cited by the members of the Committee was not correct. In fact, pursuant to the 2000 Asylum Act and the law on refugees previously in force, a recognized refugee could be reunited with family members, whether they were in the country of asylum or the country of origin. Thus, in 2001, over two thirds of the persons who had obtained refugee status in the Czech Republic had received it on family and humanitarian grounds. As for unaccompanied refugee minors, the number was not excessively high, having been put at 280 in 2001 compared to 329 in 1999. Refugee minors were, in fact, often accompanied by an adult belonging to the extended family or by a friend. Most were aged 16 or 17 years, since minors below 15 years of age were relatively exceptional cases. Generally, they came from Romania, India, Georgia and Afghanistan. On 17 April 2002, the Government, in response to such persons' specific needs, had adopted, on the initiative of the Council for Human Rights, a set of measures to enable the Ministry of Education to set up a suitable reception facility to deal, *inter alia*, with language requirements. Further written information on the subject of unaccompanied minors could be provided to the Committee if required.

30. With regard to minorities, the Czech Government was bound both by national legislation, namely, the Charter of Rights and Fundamental Freedoms, and international treaties, in particular, article 27 of the International Covenant on Civil and Political Rights and the Council of Europe's Framework Convention for the Protection of National Minorities. On 10 July 2001, the Government had adopted a new law on national minorities, in order to consolidate existing provisions hitherto dispersed in various texts. Under that law, minorities enjoyed all political rights, including those of creating a party and participating in discussions on matters of direct concern to them. There were minority boards at the national, regional and municipal levels, but there were not very many, since members of minorities were scattered throughout the country, with the exception of Poles, the majority of whom lived in the region bordering Poland.

31. Mr. KOLOSOV said that the best way to guarantee the implementation of the rights provided for in the Covenant without any discrimination was to ensure that the persons concerned were informed of the existence of those rights. He would like to know what measures were being taken to provide human rights education to the following groups of people: children, judicial officials, medical personnel, social workers, police officers, civil servants, asylum-seekers and refugees. What support was provided to non-governmental organizations, so that they were able to raise awareness of the human rights instruments? Had the Covenant been translated into the Czech language? If so, was it available in bookshops?

32. Mr. FUCHS (Czech Republic), replying to the question on privatization and respect for human rights, said that any company wishing to buy out a State-run company had to submit a blueprint setting out some very strict guarantees designed to prevent the emergence of unemployment in the regions and sectors concerned. Those Government-imposed guarantees were so restrictive that some companies withdrew their takeover bids.

33. Despite the existence of national and international legislation on discrimination, it continued to be difficult for many people to take their cases to court, which was why the Government had gradually incorporated anti-discrimination provisions into legislation on such widely varying areas as employment, labour, salaries, education and consumer protection. In February 2002, the Government had decided to set up an ad hoc working group composed of experts and representatives of non-governmental organizations and to make it responsible for drafting a general law on the elimination of discrimination, formulated in clear terms. That law should provide, *inter alia*, for the possibility of seeking redress and for the creation of an independent body responsible for monitoring the situation with regard to discrimination, providing advice to victims and formulating proposals for legislative amendments, if necessary. The Government had taken that decision in order to implement the recent European Union directives on the equal treatment of persons without distinction on grounds of race, ethnic origin or gender in the field of employment and labour.

34. Following the introduction in 2001 of a national plan of action on equal opportunity for men and women, a growing number of women had joined the police force and the army; it was estimated that they accounted for almost 25 per cent of the personnel of those two corps. Within the framework of that plan of action, emphasis had been placed on raising public awareness of issues relating to women's rights and gender-based discrimination. Increasing women's awareness of their rights was the task not only of the ad hoc governmental committee on equality between women and men, which came under the Ministry of Labour and Social Affairs, but also of social partners, NGOs and trade unions. Employers were strongly encouraged to curb any discriminatory tendencies against women. For their part, women were invited to refer to the courts if they considered that their rights had been violated in the workplace or in any other field. He regretted that no case of gender-based discrimination had been subjected to criminal proceedings because that would give the Government an opportunity to raise greater public awareness of that issue.

35. Mr. SCHORM (Czech Republic), referring to domestic violence, said that the main problem lay in the detection of cases, as abused children were afraid to accuse their parents and women victims of domestic violence did not dare to prosecute their husbands or partners. Nevertheless, legislation was evolving; for example, a recent amendment to the Code of Criminal Procedure allowed a third party to take criminal action without having to obtain the victim's consent.

36. The Penal Code differentiated between the crime of procuring and the crime of trafficking in women. The recent revision of the Penal Code had extended the provisions on trafficking in women to men and children, and that represented a step forward. The fact that trafficking had been criminalized, regardless of whether it took place on national territory or abroad, was another step forward. However, the most important thing was not so much legislation, but the repression, on the ground, of criminal behaviour. A significant legal loophole was that it was impossible to prosecute a legal person engaged in that type of activity. The fact that victims did not receive enough protection during criminal proceedings was from a legal point of view another shortcoming.

37.Mr. FUCHS (Czech Republic) said that the Ministry of the Interior and the Ministry of Labour and Social Affairs had launched a major campaign to prevent violence against women, using press conferences, radio programmes and information pamphlets. Training had been provided to teachers responsible for giving sex education classes in schools. A telephone helpline had been created in September 2001 to listen to and advise victims of violence. A special team composed of experts from the Ministries of Health, the Interior and Labour and Social Affairs had been created and made responsible for studying the social and legal aspects of violence against women, ultimately aiming to prepare a new national plan to combat that phenomenon. Several ministries were providing financial support to NGOs involved in building shelters for battered women and training for the staff responsible for caring for those women. In six of the country's towns, the victims of violence could seek free legal and psychological assistance and receive advice from professionals. The Czech Government was aware that domestic violence was a real problem and accorded it special emphasis.

38.The CHAIRPERSON, speaking as a member of the Committee, said that the written replies by the Czech Republic stated that there were no specific provisions in the Czech Penal Code to protect women against domestic violence. If the Government was, as it claimed, giving special emphasis to that issue, why did it not enact a law to criminalize the violent treatment of women within the family? Could the delegation provide further information on that issue?

39.Mr. SCHORM (Czech Republic) explained that, although there was no specific legislation in that regard, that did not mean that nothing was being done to prevent violent acts within or outside the family. In fact, such acts came under various general provisions of the Penal Code, which applied to both men and women without distinction.

40.Mr. FUCHS (Czech Republic) said that the competent authorities were currently conducting a revision of the Penal Code which they were responsible for submitting to the Government for consideration by the end of 2002. The new Penal Code would take account of the various proposals on action to prevent domestic violence made by the Human Rights Department.

Articles 6 to 9 of the Covenant

41.Mr. GRISSA said that, as there was no law on domestic violence, it was highly likely that women did not know their rights, particularly their right not to be subjected to violent treatment by their husbands or partners. Those rights should be set out in the Family Code. Did such a code exist in the Czech Republic?

42.Mr. TEXIER said that he would like further information on labour law. If jobs in the civil service were reserved for nationals, did foreigners find that they were excluded in the same way from other jobs, solely on grounds of their nationality? What impact was privatization having on the unemployment rate? More specifically, was privatization causing the “flexibilization” of employment, which led to an increase in the number of insecure jobs or to heightened demands by employers that their employees should be geographically mobile?

43.According to the report, the real level of the minimum wage had fallen in 1998 to 61 per cent of its initial value; could it be expected, in the short term, that the minimum wage would enable all workers to meet their own and their families' needs and to have an adequate standard of living? With regard to labour inspection, were there enough inspectors to exercise an effective control over working conditions and to prevent accidents in the workplace? Did they have the right, for example, to halt work on a building site if they considered safety conditions to be insufficient? If there was a breach of the labour regulations, could the case be brought before the courts? Was there any significant jurisprudence in that regard? Foreign workers had the right to form a trade union, but could they participate in trade union activities, become trade union representatives or leaders of a sector of activity, for example, or even assume responsibilities at the national or regional levels?

44.Mr. HUNT said that, when asking whether the State party took the Covenant into account in the privatization process, he had wanted to know whether the Government was aware of its obligations under the Covenant towards the most disadvantaged groups, such as the establishment of a poverty threshold.

45.Mr. MARTYNOW said he would like to know the results of the national plan of action for employment, implemented in May 1999. He would also like to know why the Czech Republic had not ratified the ILO Unemployment Convention (No. 2), the ILO Labour Inspection Convention (No. 81), the ILO Social Policy (Basic Aims and Standards) Convention (No. 117), the ILO Equality of Treatment (Social Security) Convention (No. 118) and the ILO Minimum Age Convention (No. 138). Were the so-called “screening acts”, which had been strongly criticized by both the ILO and the Council of Europe, still in force? It would be interesting to know whether an individual who considered that one or other of those acts had violated his or her rights could seek redress before the courts.

46.Noting that there was an inconsistency between the report, according to which there were 1,240 jobs available for disabled persons, and the written replies, which indicated that the 18,000 companies with over 20 employees had a commitment to ensure that at least 5 per cent of their staff were disabled, corresponding to a much higher number of jobs, he requested the delegation to provide the real statistics relating to job opportunities for disabled persons. If it was possible to attribute the high Roma unemployment rate to their low level of education and professional training, how could the Government explain the fact that it systematically directed children from that community to special schools that did not provide them with the necessary levels to become integrated into the labour market?

The meeting rose at 1 p.m.