



Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Committee against Torture

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Consideration of reports submitted by States parties under article 19 of the Convention

Concluding observations of the Committee against Torture

Czech Republic

1. The Committee against Torture considered the combined fourth and fifth periodic reports of the Czech Republic (CAT/C/CZE/4-5) at its 1068th and 1071st meetings, held on 14 and 15 May 2012 (CAT/C/SR.1068 and CAT/C/SR.1071), and adopted the following concluding observations at its 1087 meeting (CAT/C/SR.1087).

A. Introduction

2. The Committee welcomes the submission of the fourth and fifth periodic reports of the Czech Republic, submitted on time and in accordance with its reporting guidelines, and the detailed replies (CAT/C/CZE/Q/4-5/Add.1) to the list of issues (CAT/C/CZE/Q/4-5). The Committee expresses its appreciation to the State party for accepting the optional reporting procedure despite the fact that it did not report under it due to the advanced stage of the drafting of the report.

3. The Committee appreciated the open and constructive dialogue with the State party's multi-sectoral delegation and thanks the delegation for its answers to the questions raised by the Committee members.

B. Positive aspects

4. The Committee welcomes that since the consideration of the third periodic report, the State party has ratified or acceded to the following international instruments:

(a) Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (20 July 2006);

(b) Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (26 January 2005);

(c) Convention on the Rights of Persons with Disabilities (28 September 2009);

(d) Rome Statute of the International Criminal Court (21 July 2009).

5. The Committee notes the State party's ongoing extensive efforts to revise its legislation in areas of relevance to the Convention, including:

(a) Amendment of the Ombudsman Act, granting the Ombudsman the power to act as the national preventive mechanism in compliance with the Optional Protocol to the Convention, which entered into force on 1 January 2006 (Act No. 381/2005);

(b) Amendments to the Code of Criminal Procedure in 2008 and 2011 relating to extradition and claims to compensation by victims of crime, including torture (Acts No. 457/2008 and No. 181/2011);

(c) Amendments to the Asylum Act in 2006 (Act No. 165/2006) and in 2011 (Act No. 303/2011);

(d) Amendments to the Domestic Violence Act which entered into force on 1 January 2007 (Act No. 135/2006);

(e) New Act on the Police Force of the Czech Republic (Act No. 273/2008);

(f) Entry into force on 1 January 2009 of the new Security Detention Act (Act No. 129/2008);

(g) The entry into force on 1 September 2009 of Act No. 198/2009 on Equal Treatment and Legal Means of Protection against Discrimination (the Antidiscrimination Act);

(h) Entry into force on 1 January 2010 of the new Criminal Code (Act No. 40/2009) establishing racial motive as an aggravating circumstance for a number of crimes;

(i) The new Act on Special Medical Services, effective 1 April 2012 (Act No. 373/2012 Coll.).

6. The Committee also welcomes the efforts of the State party to amend its policies, programmes and administrative measures to ensure greater protection of human rights and give effect to the Convention, including:

(a) Adoption of the Strategy for the Work of the Czech Police Force in Relation to Minorities 2008-2012;

(b) Adoption of the National Plan of Action for the Implementation of the National Strategy to Prevent Violence against Children in Czech Republic 2008-2018;

(c) Approval of the National Action Plan to Transform and Unify the System for the Care of Vulnerable Children in the period 2009-2011;

(d) Adoption of the National Action Plan for the Prevention of Domestic Violence for the Years 2011-2014;

(e) Adoption of the National Strategy against Human Trafficking in the Czech Republic for the Years 2012-2015;

(f) Establishment of the General Inspection of Security Forces in January 2012 (Act No. 341/2011).

C. Principal subjects of concern and recommendations

Definition of torture

7. While noting that article 10 of the Constitution accords primacy to international treaties approved by the Parliament over domestic legislation, the Committee is concerned

that new Criminal Code only establishes the crime of torture and other inhuman and cruel treatment but does not define torture in terms of the Convention (art. 1).

The Committee recommends that the State party amend its Criminal Code in order to adopt a definition of torture that covers all the elements contained in article 1 of the Convention.

Rendition flights and diplomatic assurances

8. The Committee is concerned that in its written materials the State party had invoked the Convention on International Civil Aviation (the Chicago Convention) as a reason for not requesting to search civilian aircraft. The Committee notes that in the oral dialogue with the State party, the State party clarified that it was not the intention that the Chicago Convention would exclude or deter the application of the Convention against Torture. The Committee is also concerned that the State party has accepted diplomatic assurances in relation to extraditions of persons from its territory to States where those persons would be in danger of being subjected to torture. It is also concerned that no information was provided concerning the type of diplomatic assurances received or requested (arts. 3, 6 and 7).

The Committee recommends that the State party refuse to accept diplomatic assurances in relation to extraditions of persons from its territory to States where those persons would be in danger of being subjected to torture since those assurances cannot be an instrument to modify a determination of a possible violation of article 3 of the Convention. It also requests the State party to provide the Committee with the number and type of diplomatic assurances received since 2004 and the countries involved.

Conditions of detention

9. The Committee is concerned about the increase in overcrowding in detention facilities which leads to increased inter-prisoner violence; about the use of pepper spray in closed prison spaces; about the number of suicides in places of detention and the absence of information about their causes; the presence of prison staff during the medical examination of prisoners; examination of inmates by psychiatrists through security grates and about the absence of information concerning alleged incommunicado detention (arts. 11 and 16).

The Committee recommends that the State party make greater use of alternative non-custodial measures in keeping with the United Nations Standard Minimum Rules for Non-custodial Measures (Tokyo Rules) and reduce the number of incarcerations resulting from the lack of implementation of alternative sentences which are then converted to incarceration. It recommends that the State party revise the regulations concerning the use of pepper spray in closed spaces. The Committee also recommends that a study be undertaken into the causes of suicides in detention, that the Prison Service enhance the monitoring and detection of detainees at risk and take preventive measures with regard to the risk of suicide and inter-prisoner violence, including installing cameras and increasing the number of prison staff. It also recommends that the rules governing the medical examination of prisoners be amended to ensure that the examination is private and independent; that inmates are not examined by psychiatrists through security grates; and that health services for detainees be transferred from the Prison Service under the Ministry of Justice to the Ministry of Health. The Committee wishes to receive information on the existence in the Czech Republic of incommunicado detention, including laws and regulations governing incommunicado detention, its duration, the number of persons held in incommunicado detention and whether it is subjected to judicial oversight that includes judicial review.

10. The Committee is concerned at the continued policy of obliging certain categories of detainees to pay up to 32 per cent of the costs of their incarceration.(art. 2 and 11).

The Committee recommends that the State party put an immediate end to the policy of obliging certain categories of detainees to pay for their incarceration.

Treatment of the Roma minority

11. The Committee is seriously concerned about reports concerning the continued marginalization of and discrimination against the members of the Roma minority. This has included some incidents in the recent past of three deaths, anti-Roma rallies as well as arson attacks against Roma homes. The Committee is also concerned about the lack of prompt, impartial and effective investigations and prosecutions regarding such incidents (arts. 2, 12, 13 and 16).

The State party should:

(a) Ensure the protection of Roma citizens and their property through enhanced monitoring and preventive measures. All acts of anti-Roma violence and discrimination should be thoroughly and effectively investigated, the perpetrators brought to justice and redress and compensation provided to the victims. Law enforcement officials should receive training on combating crimes against minorities and members of the Roma community should be recruited into the police force. The Committee recommends that statistics be compiled regarding crimes with an extremist overtone, and on the outcomes of investigations, prosecutions and remedial measures taken in relation to such crimes;

(b) Publicly condemn verbal and physical attacks against Roma, prohibit and prevent the advocacy of hate speech and organize awareness-raising and information campaigns promoting tolerance and respect for diversity. The Act on Equal Treatment and Legal Means of Protection against Discrimination (the Anti-discrimination Act) should be translated into the Roma language.

12. The Committee is concerned about reports of sterilization of Roma women without free and informed consent, the destruction of medical records on involuntary sterilizations and the difficulties of victims to obtain redress. (arts. 2, 14 and 16)

The Committee recommends that the State party investigate promptly, impartially and effectively all allegations of involuntary sterilization of Roma women, extend the time limit for filing complaints, prosecute and punish the perpetrators and provide victims with fair and adequate redress. Medical personnel conducting sterilizations without free, full and informed consent could be held criminally liable and medical records concerning possible involuntary sterilization should not be destroyed within the time frame prescribed by law. Medical personnel should be trained on appropriate means of how to obtain free and informed consent from women undergoing sterilization and all written materials relating to sterilization should be translated into the Roma language.

Redress and compensation, including rehabilitation

13. The Committee is concerned about the absence of statistical data concerning compensation to victims of torture and ill-treatment, including victims of involuntary sterilization and surgical castration as well as ill-treatment in medical and psychiatric settings, violent attacks against ethnic minorities, trafficking and domestic and sexual violence. It is also concerned about the time limits set for filing complaints (arts. 14 and 16).

The Committee recommends that the State party ensure that victims of torture and ill-treatment are entitled to and provided with redress and adequate compensation, including rehabilitation, in conformity with article 14 of the Convention. It

recommends that the State party provide it with statistical data on the number of victims, including victims of involuntary sterilization and surgical castration as well as ill-treatment in medical and psychiatric settings, violent attacks against ethnic minorities, trafficking and domestic and sexual violence, who have received compensation and other forms of assistance. It also recommends the extension of the time limit for filing claims.

Roma children

14. The Committee is concerned about the placement of Roma children in educational facilities for children with slight mental disabilities or with a reduced syllabus formerly used for special schools, which compromises their subsequent educational development (arts. 2, 10, 12, 13 and 16).

In light of its general comment No. 2 (2007) on implementation of article 2 by States parties, the Committee recalls that the special protection of certain minorities or marginalized individuals or groups especially at risk is part of the State party's obligations under the Convention. In this respect, the State party should ensure that Roma children are admitted to mainstream education, unless a proper assessment concludes that the child has a mental disability and that the child's legal guardian has requested placement in a special school. Standardized testing should be adapted to the social, cultural and linguistic specificities of minorities and educators and school personnel should receive training in principles of non-discrimination.

Complaints, investigations and prosecution of acts of torture and ill-treatment

15. The Committee is concerned about the problematic registration of complaints and the independence of the system to assess them. In particular, the Committee is concerned about the discrepancy between the number of complaints of torture and ill-treatment in places of deprivation of liberty, especially those described as justified and partially justified, and the absence of prosecution in this connection for torture or ill-treatment committed by police officers and prison staff (arts. 12 and 13).

The Committee recommends that the General Inspection of Security Forces promptly, impartially and effectively investigate all allegations of torture and ill-treatment by law enforcement officials and prison staff, prosecute the perpetrators of such acts and provide redress, including compensation to the victims. The State party should provide the Committee with data disaggregated by, and with reference to, sex, age, ethnicity and origin of the victims and with a breakdown according to the categories established in the law as grounds for filing a complaint.

Trafficking in persons

16. The Committee is concerned that not all victims of trafficking receive sufficient protection, access to health care and counselling, shelters and redress, including compensation and rehabilitation since only the victims of trafficking who cooperate with the authorities benefit from a special regime (arts. 10, 12, 13, 14 and 16).

The Committee recommends that the State party enhance the investigation of all types of trafficking, prosecute the perpetrators and provide all victims of trafficking, including those trafficked for sexual and labour exploitation, with equal protection, access to health care and counselling, shelters and redress, including compensation and rehabilitation. Efforts should be made to raise awareness of and train law enforcement personnel, judges and prosecutors in measures to combat trafficking in persons and to improve the identification of victims of trafficking.

Detention of asylum seekers and other non-citizens

17. The Committee is concerned about the continuous practice of detention of asylum seekers, including families with children and minors accompanied by a legal guardian; the

restrictions on the freedom of movement of asylum seekers in closed reception centres; and the regime and material conditions of detention in centres for foreign nationals awaiting deportation (arts. 3 and 11).

The Committee recommends that the State party implement alternatives to detention of asylum seekers, including unconditional release, in particular of families with children and asylum seeking adults who are responsible for children; that asylum seekers enjoy freedom of movement in closed reception centres, with adequate reception conditions; that the State party review the duration of restrictions on freedom of movement of asylum seekers in closed reception centres and that it review the regime and material conditions in centres for foreign nationals awaiting deportation in order to ensure that they are in conformity with the principle of non-refoulement set out in article 3 of the Convention and in the 1951 Convention on the Status of Refugees

Training

18. The Committee is concerned about the State party's assertion that signs of physical and psychological injuries caused by torture are so specific that an experienced medical worker does not require training (art. 10).

The Committee recommends strongly that training in detecting signs and treating physical and psychological injuries resulting from torture and ill-treatment outlined in the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) be made part of the training for nursing, medical personnel, paramedical personnel and other professionals involved in the documentation and investigation of allegations of torture and ill-treatment to ensure that every case of torture is detected and the perpetrators duly punished.

Stateless persons

19. While noting that the State party has ratified the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness, The Committee is concerned about the particularly vulnerable situation of stateless persons, in particular persons without valid documents and permanent residence in the State party; about the absence of a definition of statelessness, of a central database of stateless persons and of a legal framework, and of a procedure or mechanisms to determine their status; and about the possible discrimination between different categories of stateless persons under the new Citizenship Act (arts. 3 and 16).

The Committee recommends that the State party introduce the definition of statelessness in its legislation, establish procedures and mechanisms for the determination of the status of statelessness and create a central database on stateless persons in its territory. In order to avoid discrimination among different categories of stateless persons, the State party should review the provisions in the draft Citizenship Act relating to acquisition of nationality by children who would otherwise be stateless or who are born out of wedlock to foreign stateless mothers. In addition, the Committee recommends that stateless persons be provided with identification documents.

Surgical castration of sex offenders

20. The Committee is concerned about the continued use of surgical castration for detained sex offenders. The Committee is concerned that surgical castration usually takes place in the context of a measure of protective treatment (mandatory treatment in a psychiatric hospital) and that article 99 of the Penal Code implies that patients can be placed and treated without their consent. It is also concerned that the detention of sex offenders under the new Act on "forensic detention" may be of an indefinite nature. The

Committee is concerned about the past practice that persons were led to believe that refusal of surgical castration would mean lifelong detention (arts. 2 and 16).

The Committee recommends that the State party desist from the practice of surgical castration and amend its legislation in order to bring it in line with international norms such as the “Standards of Care for the Treatment of Adult Sex Offenders”. Legislation regarding sex offenders should include procedural safeguards and precise regulations and professional instructions on their treatment and detention, including its duration.

Psychiatric facilities

21. Notwithstanding the changes in legislation announced by the delegation of the State party, the Committee is concerned about the reports of frequent placement of persons with intellectual or psychosocial disabilities in social, medical and psychiatric institutions without their informed and free consent; the continued use of cage-beds, despite the prohibition in law, and of net-beds as well as the use of other restraint measures such as bed strapping, manacles, and solitary confinement, often in unhygienic conditions and with physical neglect. The Committee is also concerned about the absence of investigations into the ill-treatment and deaths of institutionalized persons confined to cage and net-beds, including suicides (arts. 11 and 16).

The Committee recommends that the State party:

- (a) Allocate appropriate funding for the implementation of the national plan on the transformation of psychiatric, health, social and other services for adults and children with intellectual or psychosocial disabilities to ensure a speedy process of deinstitutionalization to more community-based services and/or affordable housing;
- (b) Establish close supervision and monitoring by judicial organs of any placement in institutions of persons with intellectual or psychosocial disabilities, with appropriate legal safeguards and visits by independent monitoring bodies. Institutionalization and treatment should be based on free and informed consent and the persons concerned should be informed in advance about the intended treatment;
- (c) Take all necessary measures to ensure, in practice, the prohibition of the use of cage-beds, in conformity with the prohibition enshrined in the Act on Medical Services (Act No. 372/2011). In addition, the Committee recommends that the Act be amended to include the prohibition of the use of net-beds since their effects are similar to those of cage-beds;
- (d) Ensure the effective monitoring and independent assessment of the conditions in institutions, including hygiene and instances of neglect. It should establish a complaints mechanism, ensure counsel and provide training to medical and non-medical staff on how to administer non-violent and non-coercive care. All cases of ill-treatment and deaths, including those of 30 year-old Vera Musilova in 2006 and the suicide of a 51 year-old woman on 20 January 2012, should be effectively investigated and prosecuted and redress provided to the victims and their families, including compensation and rehabilitation.

Corporal punishment

22. The Committee is concerned about the widespread tolerance of corporal punishment in the State party and the absence of legislation explicitly prohibiting it. It is also concerned about the provision in Act No. 94/1963 Coll. Family Act which states that parents have the right to use “adequate educational measures” and that the issue will be addressed in a similar manner in the new Civil Code (arts. 2 and 16).

The Committee recommends that the State party amend its legislation, including the Family Act and the new Civil Code, with a view to introducing an explicit prohibition against corporal punishment in all settings. The State party should carry out awareness-raising campaigns among the general public regarding the unacceptability of and the harm done by corporal punishment.

Data collection

23. The Committee regrets the absence of comprehensive and disaggregated data on complaints, investigations, prosecutions and convictions of cases of torture and ill treatment by law enforcement, security, and prison personnel, including in relation to involuntary sterilization, surgical castration, involuntary treatment and placement in social institutions, including the use of restraints, and violent attacks against ethnic minorities, in particular Roma, trafficking and domestic and sexual violence.

The State party should compile statistical data relevant to the monitoring of the implementation of the Convention at the national level, in such areas as data on complaints, investigations, prosecutions and convictions of cases of torture and ill-treatment, in relation to involuntary sterilization, surgical castration, involuntary treatment and placement in social institutions, the use of restraints, and violent attacks against ethnic minorities, in particular Roma, trafficking and domestic and sexual violence, as well as on means of redress, including compensation and rehabilitation, provided to the victims.

24. The Committee invites the State party to ratify the core United Nations human rights treaties to which it is not yet a party, namely the International Convention on the Protection of the Rights of All Migrant Workers and members of Their Families, the Convention for the Protection of all Persons from Enforced Disappearance, the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights and the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.

25. The State party is requested to disseminate widely the report submitted to the Committee and the Committee's concluding observations, in appropriate languages, through official websites, the media and non-governmental organizations.

26. The Committee requests the State party to provide, by 1 June 2013, follow-up information in response to the Committee's recommendations relating to (a) ensuring or strengthening legal safeguards for persons detained, (b) conducting prompt, impartial and effective investigations, and (c) prosecuting suspects and sanctioning perpetrators of torture and ill-treatment, as contained in paragraphs 11, 14 and 21 of the present document.

27. The State party is invited to submit its next report, which will be the sixth periodic report, by 1 June 2016. For that purpose, the Committee will, in due course, submit to the State party a list of issues prior to reporting, considering that the State party has accepted to report to the Committee under the optional reporting procedure.
