



# International Covenant on Civil and Political Rights

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## Human Rights Committee

### Concluding observations on the fourth periodic report of Czechia\*

1. The Committee considered the fourth periodic report of Czechia (CCPR/C/CZE/4) at its 3655th and 3656th meetings (see CCPR/C/SR.3655 and 3656), held on 17 and 18 October 2019. At its 3676th meeting, held on 1 November 2019, it adopted the present concluding observations.

#### A. Introduction

2. The Committee is grateful to the State party for having accepted the simplified reporting procedure and for submitting its fourth periodic report in response to the list of issues prior to reporting prepared under that procedure (CCPR/C/CZE/QPR/4). It expresses appreciation for the opportunity to renew its constructive dialogue with the State party's delegation on the measures taken during the reporting period to implement the provisions of the Covenant. The Committee thanks the State party for the oral responses provided by the delegation, and for the supplementary information provided to it in writing.

#### B. Positive aspects

3. The Committee welcomes the following measures taken by the State party:

(a) The removal of the pig farm located on the site of the World War II Roma concentration camp in Lety, and the ongoing plans to build a Roma Holocaust memorial there;

(b) The approval in 2016 of the prison system concept up to 2025;

(c) The adoption in October 2016 of the crime prevention strategy for the period 2016–2020.

4. The Committee also welcomes the ratification of the following international instruments by the State party:

(a) The International Convention for the Protection of All Persons from Enforced Disappearance, on 8 February 2017;

(b) The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography and the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, on 26 August 2013 and 2 December 2015 respectively.

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\* Adopted by the Committee at its 127th session (14 October–8 November 2019).



## C. Principal matters of concern and recommendations

### Views under the Optional Protocol

5. The Committee remains concerned (see CCPR/C/CZE/CO/3, para. 6, and CCPR/C/CZE/CO/2, para. 7) about the State party's continuing failure to implement its Views under the Optional Protocol, most of which relate to the issue of nationality-based discrimination regarding the restitution of property. The Committee recalls its long-standing position, articulated in its general comment No. 33 (2008) on the obligations of States parties under the Optional Protocol to the International Covenant on Civil and Political Rights, that its Views exhibit some of the principal characteristics of a judicial decision and represent an authoritative determination by the organ established under the Covenant charged by all States parties with the task of interpreting that instrument. The Committee therefore regards the implementation of the remedies indicated in its Views as an important part of the obligations of States parties under article 2 (3) of the Covenant and article 2 of the Optional Protocol.

**6. The State party should revisit its position with a view to fulfilling its obligations under the Optional Protocol in good faith and to promptly and fully implementing all pending Views adopted by the Committee, so as to guarantee the right of victims to an effective remedy when there has been a violation of the Covenant, in accordance with article 2 (3) of the Covenant. In this respect, the State party should give due consideration to the possibility of providing ex gratia compensation to individuals in respect of whom the Committee has found a violation of the Covenant. The Committee also encourages the State party to pursue its efforts aimed at establishing an appropriate mechanism for granting financial awards to victims in cases in which a United Nations treaty body finds a violation and recommends awarding just satisfaction as well as costs and expenses.**

### National human rights institution

7. The Committee remains concerned about the slow progress and the lack of a clear timeline to finalize the process of strengthening the powers of the Office of the Public Defender of Rights (Ombudsperson), consolidating it as a fully fledged national human rights institution fully compliant with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles) and achieving its accreditation with the Global Alliance of National Human Rights Institutions (art. 2).

**8. The State party should, as soon as possible, complete the process of consolidating the mandate of the Office of the Public Defender of Rights to enable it to act as the national human rights institution with a mandate to protect the full range of human rights and in full compliance with the Paris Principles. It should also take all measures necessary to achieve its accreditation with the Global Alliance of National Human Rights Institutions.**

### Anti-discrimination legal framework

9. The Committee notes that the prohibition of discrimination is covered in many different legal regulations that each contain their own list of prohibited grounds of discrimination relevant for their respective application. The Committee is concerned that the Anti-Discrimination Act does not afford protection against discrimination on all the grounds prohibited under the Covenant, including colour, language, national or social origin, property, birth or other status, and that there are no plans to expand the limited grounds covered by the Act. While noting the State party's position that discrimination on these grounds is prohibited directly by the Charter of Fundamental Rights and Freedoms and that some of these grounds are also included in some other laws, the Committee was not provided with information proving comprehensive and effective protection against discrimination on those grounds in practice. The Committee is also concerned about the complex and inconsistent rules concerning the shifting of the burden of proof under the

Anti-Discrimination Act, and notes that this issue will be addressed in the context of the recodification of civil proceedings rules that is currently under way (arts. 2 and 26).

10. **The State party should amend the Anti-Discrimination Act with a view to ensuring comprehensive and effective substantive and procedural protection against discrimination on all the prohibited grounds under the Covenant – including colour, language, national or social origin, property, birth or other status – in all spheres and sectors and including instances of multiple discrimination, as well as access to effective and appropriate remedies for any form of discrimination. It should also ensure that the sharing of the burden of proof applies in all cases and on all the grounds of discrimination.**

#### **Discrimination on the grounds of sexual orientation and gender identity**

11. The Committee notes that significant differences persist in the treatment of couples in same-sex registered partnerships, and is concerned that the law does still not recognize their right to joint adoption of children, despite the Constitutional Court's judgment that section 13 (2) of the Registered Partnership Act – which prohibits individuals in a registered same-sex partnership from adopting a child – is unconstitutional. The Committee notes that a same-sex marriage bill is currently being debated (arts. 2, 23, 24 and 26).

12. The Committee is concerned that the law requires transgender persons to undergo mandatory sterilization as a prerequisite for legal gender recognition. The Committee regrets that this issue remains unsettled despite the decision adopted by the European Committee of Social Rights in 2018 in the case *Transgender Europe and ILGA-Europe v. Czech Republic*, and notes that the matter is currently under consideration by the Constitutional Court. The Committee is further concerned that a psychiatric diagnosis is also a precondition for legal recognition of gender (arts. 7, 16, 17 and 26).

13. **The State party should: (a) review relevant legislation to fully ensure the equal treatment of same-sex couples, including by considering recognizing their right to joint adoption of children; and (b) eliminate abusive requirements for legal gender recognition, including mandatory sterilization and psychiatric diagnosis, and provide for and implement effectively a quick, transparent and accessible gender recognition procedure on the basis of self-identification by the applicant.**

#### **Discrimination against the Roma minority**

14. While acknowledging the steps taken to improve the situation of Roma, including the measures implemented in the framework of the Roma integration strategy (2015–2020), and the progress achieved in tackling the segregation of Roma children in education, the Committee remains concerned that members of the Roma community continue to suffer from marginalization and discrimination, especially in the areas of housing and education. The Committee is concerned that municipalities are increasingly declaring or planning to declare housing benefit-free zones, reportedly aimed at putting pressure on Roma to move into segregated areas or remain in them, and notes that a legal action against the housing benefit-free zones is pending before the Constitutional Court. The Committee is also concerned about the underrepresentation of Roma in political life, noting that there are no members of the Roma community in the Parliament and that they account for a very low number in governmental bodies at the regional and communal level (arts. 2, 24, 25, 26 and 27).

15. **The State party should intensify its efforts to achieve equal access to opportunities and services in all fields for members of the Roma community. It should, inter alia:**

(a) **Ensure the effective implementation of the Roma integration strategy (2015–2020), including by allocating sufficient funding;**

(b) **Step up efforts to integrate Roma children into mainstream education, increase school retention and completion rates and facilitate their access to secondary and higher education;**

(c) **Take appropriate measures to ensure effective access by Roma to adequate housing;**

(d) **Engage proactively and pre-emptively with regional and communal authorities with a view to raising awareness of the negative impact of housing benefit-free zones on the social integration and inclusion of Roma and on their equality of access to opportunities and services, including to education, and consider the legal options available to outlaw such measures;**

(e) **Take effective measures to increase the representation of members of the Roma community in State bodies at both the national and the local levels, including in Parliament, if necessary through appropriate temporary special measures.**

#### **Racial discrimination, hate speech and hate crimes**

16. While welcoming the measures taken to address racism, hate speech and other forms of intolerance, including the annual Concept for Combating Extremism and Prejudiced Hatred and the Campaign against Racism project and Hate Free media campaign, the Committee is concerned about the reported high level of hate speech against Roma, asylum seekers, refugees and migrants, Muslims, Jews and lesbian, gay, bisexual, transgender and intersex persons, including by politicians and high-level officials and in the media and online, and attacks motivated by hatred. The Committee is particularly concerned that senior officials in the State party reportedly encourage the public perception of migration as a threat to public security and that the media has been used to instil fear of migrants and asylum seekers and to strengthen stereotypical prejudices based on ethnicity or religion (arts. 2, 7, 18, 20 and 26).

17. **The State party should redouble its efforts, through both law enforcement and awareness-raising activities, to combat racial discrimination, hate speech and incitement to discrimination or violence on racial, ethnic or religious grounds, in accordance with articles 19 and 20 of the Covenant and the Committee's general comment No. 34 (2011) on the freedoms of opinion and expression. It should, inter alia:**

(a) **Take effective measures to prevent hate speech, particularly by politicians and high-level public officials, firmly and publicly condemn such speech and intensify efforts aimed at addressing online hate speech;**

(b) **Strengthen awareness-raising efforts, and conduct campaigns aimed at promoting respect for human rights and tolerance for diversity and revisiting and eradicating stereotypical prejudices based on ethnicity or religion;**

(c) **Investigate hate crimes thoroughly, prosecute suspected perpetrators where appropriate and, if they are convicted, punish them and provide victims with adequate remedies;**

(d) **Ensure that adequate training continues to be provided to law enforcement officials, judges and prosecutors on addressing hate crimes and to media workers on promoting racial, ethnic and religious diversity.**

#### **Representation of women in public and political life**

18. While noting the various measures taken to promote gender equality, including the strategy for gender equality (2014–2020) and the target of 40 per cent set in the action plan for the balanced representation of women and men in decision-making positions (2016–2018), the Committee is concerned about the persistently low representation of women in the Parliament (about 20 per cent), in senior government positions, including ministerial posts, and in the higher courts such as the Supreme Court and the Constitutional Court. The Committee notes that no temporary special measures are foreseen by the State party to reverse this trend (arts. 2, 3, 25 and 26).

19. **The State party should take more robust legal and policy measures to effectively achieve, within specified time frames, an equitable representation of women in public and political life, particularly in decision-making positions, including in legislative and executive bodies and the judiciary at all levels, if necessary through**

appropriate temporary special measures, in order to give effect to the provisions of the Covenant.

#### **Gender-based violence**

20. While welcoming the measures taken to address violence against women, including domestic and sexual violence, such as the action plan for the prevention of domestic and gender-based violence (2015–2018) and the new action plan approved in May 2019, the Committee regrets that little information has been provided on the effectiveness of such measures in practice. The Committee also notes with concern the delay in ratification of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention), which the State party signed in 2016 (arts. 2, 3, 7 and 26).

**21. The State party should ensure the effective implementation of the new action plan for the prevention of domestic and gender-based violence and step up its efforts to combat violence against women, including domestic and sexual violence, by, inter alia:**

(a) **Pursuing campaigns about the unacceptability and adverse impact of violence against women and systematically informing women of their rights and the avenues available for obtaining protection, assistance and redress;**

(b) **Encouraging the reporting of cases of violence against women;**

(c) **Ensuring that law enforcement officials, the judiciary, prosecutors and other relevant stakeholders receive appropriate training on gender-sensitive detection, handling, investigation and prosecution of cases of violence against women;**

(d) **Ensuring that cases of violence against women are thoroughly investigated, that perpetrators are prosecuted and, if convicted, punished with appropriate sanctions, and that victims have access to effective remedies;**

(e) **Improving accessibility of support services for victims;**

(f) **Engaging in a public debate about the importance of the Istanbul Convention for the protection of the rights of victims of gender-based violence and pursuing measures necessary for its ratification.**

#### **Involuntary/forced sterilization**

22. With reference to its previous recommendation (CCPR/C/CZE/CO/3, para. 11), the Committee is concerned that the State party's position regarding compensation for victims of past involuntary/forced sterilization, particularly Roma women, remains by and large unchanged, that no out-of-court compensation mechanisms are in place or planned, and that the three-year statute of limitations with respect to involuntary/forced sterilization claims, compounded by the difficulties encountered by the victims in proving their claims owing, inter alia, to the lack of effective access to records and to legal assistance, diminish the prospects of their receiving any reparation (arts. 2, 3, 7 and 26).

**23. The Committee echoes the recommendations made by the Committee against Torture (CAT/C/CZE/CO/6, paras. 28–29) and the Committee on the Elimination of Racial Discrimination (CERD/C/CZE/CO/12-13, paras. 19–20), and calls on the State party to consider extending or abolishing the statute of limitation with regard to past cases of involuntary/forced sterilization. It should also establish an effective out-of-court compensation mechanism for victims who do not wish to or cannot effectively litigate their claims with a view to providing them with adequate pecuniary and non-pecuniary compensation for the irreversible harm suffered, and ensure victims' effective access to the new mechanism.**

#### **Surgical castration of sex offenders**

24. While noting the procedural safeguards in place for the application of surgical castration as one of the treatment options for sex offenders, including its performance solely upon the offender's voluntary request, the Committee considers that such a practice,

even if based on nominal consent, raises issue of compatibility with the Covenant (arts. 7, 10 and 17).

**25. The State party should abolish the practice of surgical castration of sex offenders.**

#### **Restraint in psychiatric institutions**

26. The Committee acknowledges the significant efforts to improve the psychiatric health-care system, including the methodological guidelines on the use of restraint in medical facilities published in April 2018 and the related safeguards provided for under the amended Health Services Act. Nonetheless, the Committee remains concerned that enclosed restraint beds (so-called “net beds”) are still in use, and that no independent monitoring and reporting system on the use of restraints has been established. The Committee notes, however, the efforts to phase out the use of enclosed restraint beds through a draft prepared by the Ministry of Health (arts. 7 and 10).

**27. The Committee reiterates its recommendations (CCPR/C/CZE/CO/3, para. 14) that the State party take immediate measures to abolish the use of enclosed restraint beds in psychiatric and related institutions, establish an independent monitoring and reporting system, and ensure that abuses are effectively investigated, prosecuted and sanctioned and that redress is provided to the victims and their families.**

#### **Detention under the foreign nationals act**

28. The Committee is concerned that alternatives to detention under the foreign nationals act (that is, detention under the Dublin regulations) are hardly ever applied in practice, although it notes that a new alternative designed specifically for families with children, namely the obligation to stay at a designated place, was put into effect on 1 August 2019. The Committee is also concerned about the ongoing practice of “accommodating” children with their family members detained under the Act, which constitutes de facto detention. The Committee is concerned that the principle of the benefit of the doubt in age assessment cases is not applied and that unaccompanied children may be detained as adults under the Act, pending the outcome of their age assessment (arts. 7, 9, 10 and 24).

**29. The State party should:**

(a) **Ensure that detention is applied as a measure of last resort only and is justified as reasonable, necessary and proportionate in the light of the individual’s circumstances;**

(b) **Ensure effective implementation of alternatives to detention in practice;**

(c) **Move to end the detention of all children, including detention of children with their families;**

(d) **Revise relevant regulations to ensure that the benefit of the doubt in age assessment cases is afforded to young persons, in accordance with international standards.**

#### **Elimination of slavery, servitude and trafficking in persons**

30. While appreciating the continuous efforts to combat trafficking in persons, including the adoption of the national strategy to combat human trafficking (2016–2019), projects on cybercrime prevention and the implementation of the European Union Agency for Law Enforcement Cooperation (Europol) “Say No!” campaign against child abuse online, the Committee is concerned about: (a) the insufficient identification of victims; (b) the high risk of trafficking of unaccompanied minors; (c) the reported increase in cases of online child sexual exploitation and abuse; and (d) the prosecution of trafficking crimes as pimping, and the ensuing significantly lower sentences (arts. 8 and 24).

**31. The State party should further strengthen its efforts to effectively prevent and combat trafficking in persons, including the sexual exploitation of children in cyberspace, by, inter alia:**

(a) **Ensuring effective identification of victims, including the screening of groups in vulnerable situations, such as asylum seekers, unaccompanied children, refugees and migrants;**

(b) **Investigating all cases of trafficking promptly and thoroughly, prosecuting suspected perpetrators under section 168 of the Criminal Code and, if convicted, imposing adequate and deterrent sanctions;**

(c) **Ensuring that victims have access to effective means of protection and assistance services and to full reparation, including rehabilitation and adequate compensation.**

#### **Independence of judges and prosecutors**

32. The Committee is concerned about reports that the judiciary is susceptible to political interference, especially in high-profile cases, and that the independence of judges and prosecutors from the executive and legislative branches is not sufficiently secured under the law, owing in particular to: the current procedures for the selection, appointment, promotion and transfer of judges; the status of the Supreme Public Prosecutor's Office, formally part of the executive branch; and the procedure for the selection, appointment and removal of the Supreme Public Prosecutor and other public prosecutors. The Committee notes in this respect the plans for judicial reform, including the development of a new Code of Civil Procedure and the proposed amendments to the courts and judges act and to the Public Prosecutor Act (art. 14).

33. **The State party should eradicate all forms of undue interference with the judiciary by the legislative and executive branches and safeguard, in law and in practice, the full independence and impartiality of judges and the independence and effective autonomy of the Supreme Public Prosecutor's Office, by, inter alia, ensuring that the procedures for the selection, appointment, promotion, transfer and removal of judges and prosecutors are in compliance with the Covenant and relevant international standards, including the Basic Principles on the Independence of the Judiciary and the Guidelines on the Role of Prosecutors. The State party should give due consideration to establishing a supreme judicial council, or other similar bodies, that would be mandated to govern the judicial selection process, be fully independent, comprise mostly judges and prosecutors elected by professional self-governing bodies and operate with full transparency.**

#### **Defamation**

34. The Committee remains concerned (CCPR/C/CZE/CO/3, para. 21) that defamation is still criminalized under section 182 of the Criminal Code. It is concerned that the vague definition of defamation, compounded by its criminalization and by the criminal liability of legal persons introduced by Act No. 183/2016 Coll., could result in a chilling effect on the exercise of freedom of expression by the general public, and particularly by the media (art. 19).

35. **The State party should clarify the vague definition of defamation with a view to ensuring that it does not restrict freedom of expression beyond the narrow restrictions permitted under article 19 of the Covenant. It should consider decriminalizing defamation and, in any case, resorting to criminal law only in the most serious of cases, bearing in mind that imprisonment is never an appropriate penalty for defamation, as set out in general comment No. 34.**

#### **Journalists and media workers**

36. The Committee is concerned about increasing allegations of threats against journalists, especially by high-ranking politicians, including violence. It is also concerned about instances of hostile rhetoric against media outlets and accusations of media manipulation of public opinion emanating from public officials (arts. 7 and 19).

37. **The State party should ensure that officials refrain from any interference with the legitimate exercise of the right to freedom of expression of journalists and media**

workers, that their effective protection against any kind of threat, pressure, intimidation or attack is guaranteed, and that illegal acts against journalists are thoroughly investigated and those responsible brought to justice.

#### **Concentration of media ownership**

38. The Committee is concerned about the reported growing concentration of ownership of private media in the hands of a few actors and about allegations of increasing political influence over the media that, inter alia, affects the manner of coverage of all political actors during elections (art. 19).

39. **The State party should avoid any form of political influence over media outlets, ensure the transparency of private media ownership and prevent undue media dominance or concentration that may adversely impact media freedom and pluralistic views, taking into account the Committee's general comment No. 34.**

#### **Access to information**

40. The Committee is concerned about reported difficulties in gaining access pursuant to the Free Access to Information Act to information held by public bodies, including unclear conditions under which information can be withheld, the tendency to provide general information that lacks detail, inconsistent practice in releasing information among public authorities, and insufficient efforts to publish information proactively. The Committee notes that an amendment to the Free Access to Information Act foresees, inter alia, simplified processing of information requests and that a draft amendment approved on 14 October 2019 will explicitly stipulate that abuse of the right to information constitutes grounds for refusal of an information request (art. 19).

41. **The State party should ensure that the right of access to information held by public bodies can be effectively exercised in practice, including by addressing any practical or administrative obstacles to processing information requests and by ensuring timely and comprehensive responses to such requests. The State party should also proactively put in the public domain government information of public interest to give effect to the right of access to information.**

#### **Corporal punishment**

42. While noting the general policies stressing the prohibition of corporal punishment and the explanations provided by the State party regarding adequate and proportional disciplinary measures, the Committee remains concerned (CCPR/C/CZE/CO/3, para. 19) that corporal punishment does not appear to be explicitly prohibited in all settings (arts. 7 and 24).

43. **The State party should take practical steps, including through legislative measures where appropriate, to explicitly prohibit corporal punishment in all settings, including the home. It should also strengthen activities aimed at encouraging non-violent forms of discipline as alternatives to corporal punishment, and continue to raise awareness about its harmful effects.**

#### **Statelessness and refugee status**

44. The Committee notes that statelessness is not defined in domestic legislation and that, in view of the absence of a dedicated statelessness determination procedure, statelessness applications are currently processed according to a procedure under the Asylum Act and the general administrative code. The Committee is concerned that, as a result, the legal status of stateless persons and the rights attached thereto remain unclear pending the outcome of their application. While amendments to the Asylum Act are currently in the legislative process and statelessness-related issues will be the subject of discussion with the Public Defender of Rights in November 2019, the Committee notes that the inclusion of these matters in the Asylum Act is not certain. The Committee is also concerned that, in order for a stateless child born in the State party to stateless parents to acquire citizenship, it is a non-waivable prerequisite that at least one of the stateless parents hold a residence permit of 90 days or more, and that this prerequisite may represent an

obstacle to reducing statelessness. The Committee notes with concern the low success rate of asylum applications in the State party and the possible connection between these statistics and statements made by senior State officials against accepting refugees (arts. 2, 24 (3) and 26).

45. **The State party should consider revising the relevant regulations with a view to introducing an internationally accepted definition of statelessness so as to increase transparency and facilitate more effective handling of statelessness applications. It should establish a dedicated and effective statelessness determination procedure with specific procedural considerations and safeguards, and ensure that every child has a nationality, in accordance with article 24 (3) of the Covenant, including by granting citizenship to children born to stateless parents irrespective of their legal status. The State party should review the conformity with international standards of the criteria that it applies in affording refugee status and its refugee status determination procedures.**

#### **Right to vote**

46. The Committee remains concerned that persons with intellectual or psychosocial disabilities continue to be deprived of their right to vote. It notes that amendments aimed at the removal of this restriction were to be submitted to the Government in the autumn of 2019 (arts. 2, 25 and 26).

47. **The State party should, in accordance with the Covenant, ensure that its legislation does not discriminate against persons with intellectual or psychosocial disabilities by denying them the right to vote.**

### **D. Dissemination and follow-up**

48. **The State party should widely disseminate the Covenant, its two Optional Protocols, its fourth periodic report and the present concluding observations with a view to raising awareness of the rights enshrined in the Covenant among the judicial, legislative and administrative authorities, civil society and non-governmental organizations operating in the country, and the general public. The State party should ensure that the report and the present concluding observations are translated into the official language of the State party.**

49. **In accordance with rule 75, paragraph 1, of the Committee's rules of procedure, the State party is requested to provide, by 8 November 2021, information on the implementation of the recommendations made by the Committee in paragraphs 17 (racial discrimination, hate speech and hate crimes), 27 (restraint in psychiatric institutions) and 29 (detention under the foreign nationals act) above.**

50. **In line with the Committee's predictable review cycle, the State party will receive in 2025 the Committee's list of issues prior to the submission of the report and will be expected to submit within one year its replies to the list of issues, which will constitute its fifth periodic report. The Committee also requests the State party, in preparing the report, to broadly consult civil society and non-governmental organizations operating in the country. In accordance with General Assembly resolution 68/268, the word limit for the report is 21,200 words. The next constructive dialogue with the State party will take place in 2027 in Geneva.**