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**Response to the government observations on the admissibility of the collective
complaint**

International Commission of Jurists v. the Czech Republic
(no. 148/2017)

Geneva
14 July 2017

1. In its letter of 29 June 2017, the European Committee of Social Rights (hereinafter the "Committee") notified the International Commission of Jurists (ICJ) that the government of the Czech Republic has submitted their observations on the admissibility of the collective complaint.
2. The Government of the Czech Republic challenged the admissibility of the complaint only on one ground, namely that the complaint "is incompatible *ratione materiae*" with the European Social Charter "since it does not relate to any provision of the Charter binding on the Czech Republic..."
3. The ICJ does not share the Government's views in respect of the *ratione materiae* of the Charter and the competency of the Committee to consider the collective complaint at issue.
4. The ICJ underlines at the outset that the subject matter of the collective complaint concerns the failure by a State Party to the European Social Charter to ensure appropriate treatment of children below the age of criminal responsibility who are in conflict with the law and the administration of juvenile justice in the Czech Republic. The collective complaint considers certain systemic deficiencies in respect of how children below the age of criminal responsibility are treated within the juvenile justice system in the Czech Republic. It points to concrete structural deficiencies that are both procedural (e.g. absence of legal aid) and substantive (e.g. absence of diversions) in character.
5. It is the notion of "treatment" which is of primary significance in linking to article 17 of the charter. Social and economic protection, pursuant to article 17, squarely relates to protection in the way children are treated generally, but especially of institutions of State. In this regard the ICJ refers to wording of article 40 of the UN Convention on the Rights of the Child (CRC), to which the Czech Republic is a party, which provides for an obligation of the State Parties to "*recognize the right of every child ... recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth*" and, to this end, States Parties shall, in particular, ensure minimal procedural rights provided under article 40.2 of the CRC. The CRC is particularly critical here, both as a global instrument with near-universal adherence addressed to protecting the children, and as primary instruments addressing economic, social and cultural rights. The Committee has consistently stated that the Social Charter is a living instrument, which ought to be interpreted in accordance with developments in the national laws of the Council of Europe Member States as well as applicable international instruments (*World Organisation against Torture v. Greece*, European Committee of Social Rights Complaint No. 17/2003, Decision on the merits of 7 December 2004, para. 31) It should also be interpreted "*in the light of the case-law developed under other international treaties as regards the protection of children and young persons, such as the UN Convention on the Rights of the Child and the European Convention on Human Rights.*" (General Introduction to ECSR Conclusions XV-2, 2001, Vol1, p. 26).
6. The ICJ further notes that, in addition to the treatment of children more broadly, juvenile justice issues in particular clearly fall within the ambit of article 17 of the Charter, as highlighted by the Committee in Conclusions XV-2, 2001, General Introduction, General observations regarding article 7, paras. 10 and 17. In this respect it should be noted that the Committee has consistently interpreted the scope of article 17 of the 1961 Charter in line with its conclusions, including Conclusions XV-2, 2001 (*Association for the Protection of all Children (APPROACH) Ltd v. the Czech Republic*, Complaint No. 96/2013, decision on the merits of 20 January 2015, paras. 44-45). Moreover, the Committee's latest conclusions on the Czech Republic under article 17 contain an express reference to the submission by NGOs that the juvenile justice system does not provide children below the age of criminal

responsibility (15 years) with individualized treatment and restorative measures and that cases of children younger than 15 years are always brought before a juvenile court even for petty offences which are said to be unnecessary and harmful to a child. The Committee has asked the next report to provide information in this regard (Conclusions XX-4 - Czech Republic, of 4 December 2015). It appears clear from these decisions and conclusions that the Committee considers the matter to fall within the ambit of article 17 of the Charter.

7. Second, the Government argued, in general, that the Charter does not and should not protect civil and political rights and that its system of protection is not adapted for that purpose. The ICJ strongly disagrees with this conception and its artificial differentiation of human rights into several categories. Rather, the ICJ concurs with the United Nations Office of the High Commissioner for Human Rights, which has stressed that, "in reality, the enjoyment of all human rights is interlinked. ... [W]hen closely scrutinized, categories of rights such as "civil and political rights" and "economic, social and cultural rights" makes little sense" (OHCHR, Fact sheet 33, Frequently asked questions on economic, social and cultural rights, p. 10). This conclusion flows from the universal consensus agreement reached in Vienna in 1993 that all human rights are universal, indivisible and interdependent, and interrelated (Vienna Declaration and Programme of Action, Adopted by the World Conference on Human Rights in Vienna on 25 June 1993, para.5). This principle is also recalled in the Committee's jurisprudence (Human Rights Leagues (FIDH) v. France, Complaint No. 14/2003, decision on the merits of 8 September 2004, para. 28).

8. The fact that the division of the human rights protections into categories of civil and political rights and economic, social and cultural rights is artificial, does not mean that all rights are protected under the European Social Charter. The Committee is still only competent to consider subject matter that the Charter identifies as falling under its jurisdiction *ratione materiae*. But it does mean that the fact that aspects of that subject matter may cross over into areas classically identified as civil and political rights is of no consequence. The ICJ does not, in any event, contend that the Committee should be considering the full range of fair trial concerns, *tout court*, but only those that engage the protective scope of article 17 and the measures that States must take to discharge their corresponding obligations of protection. It should be underscored that the Government's assumption to the contrary would lead to the disapplication of the existing jurisprudence of this Committee. Applying the Government's logic, the notion of protection from ill-treatment and abuse would fall outside the scope of the article 17 of the Charter, since torture and other ill-treatment are classically perceived as civil and political rights. This conclusion would be in clear contravention of the Committee's interpretation of article 17 of the Charter (World Organisation against Torture (OMCT) v. Portugal (Complaint No. 34/2006, decision on the merits of 5 December 2006; paras. 19-21)).

9. The Charter, as understood by the Committee, is envisaged as a human rights instrument to complement the European Convention on Human Rights (Human Rights Leagues (FIDH) v. France, Complaint No. 14/2003, decision on the merits of 8 September 2004, para. 27). Moreover, as the Charter contains comprehensive provisions protecting human rights and human dignity of children (Defence for Children International v. the Netherlands, Complaint No. 47/2008, decision on the merits of 20 October 2008, paras. 25-26), it also enhances the obligations and guarantees of the European Convention on Human Rights in this regard (Association for the Protection of all Children (APPROACH) Ltd v. Czech Republic, Complaint No. 96/2013, decision on the merits of 20 January 2015, para. 46). Therefore, children's rights under article 17 of the Charter, and indeed all provisions of the Charter, should be interpreted to meet the aim and purpose with which the Charter was established. The task of the Committee under the terms of the Protocol providing for a system of collective complaints is not to pursue an abstract process of promoting values, but one of protecting practical and

effective rights (Greek General Confederation of Labour (GSEE) v. Greece, Complaint No. 111/2014, decision on the merits of 23 March 2017, para. 248).

10. In view of its substantive nature, the ICJ also considers that the Government's objection pertains to the merits of the complaint and not its admissibility. In support of this argument, the ICJ refers to the Committee's decisions in the following cases: Quaker Council for European Affairs (QCEA) v. Greece, Complaint No. 8/2000, decision on admissibility of 28 June 2000, para. 10; International Federation of Human Rights Leagues (IFHR) v. Ireland, Complaint No. 42/2007, decision on admissibility of 16 October 2007, para. 13; European Federation of National Organisations working with the Homeless (FEANTSA) v. the Netherlands, Complaint No. 86/2012, decision on admissibility of 1 July 2013, para. 18; European Roma and Travellers Forum (ERTF) v. Czech Republic, Complaint No. 104/2014, decision on admissibility of 30 June 2014, para. 11; Transgender Europe and ILGA-Europe v. Czech Republic, Complaint No. 117/2015, decision on admissibility of 9 September 2015, para. 9.

11. In light of the above, the ICJ submits that the Committee should affirm that the complaint satisfies the admissibility requirements. The ICJ further submits that the Committee should consider that the objection raised by the Government, namely that the subject-matter of the complaint, falls outside the scope of Article 17 of the 1961 Charter cannot be sustained, is an issue which is linked to the substance of the complaint and therefore should be dealt with at the merits stage.



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