

**DECISION ON ADMISSIBILITY**

**13 September 2017**

**International Commission of Jurists (ICJ) v. the Czech Republic**

Complaint No. 148/2017

The European Committee of Social Rights, committee of independent experts (“the Committee”) established under Article 25 of the European Social Charter, during its 294<sup>th</sup> session attended by:

Giuseppe PALMISANO President  
Monika SCHLACHTER, Vice-President  
Karin LUKAS, Vice-President  
Eliane CHEMLA, General Rapporteur  
Birgitta NYSTRÖM  
Petros STANGOS  
Jozsef HAJDU  
Marcin WUJCZYK  
Krassimira SREDKOVA  
Raul CANOSA USERA  
Marit FROGNER  
François VANDAMME  
Barbara KRESAL  
Kristine DUPATE  
Aoife NOLAN

Assisted by Henrik KRISTENSEN, Deputy Executive Secretary

Having regard to the complaint dated 13 March 2017, and registered on 20 March 2016 as 148/2016, lodged by the International Commission of Jurists (ICJ) against the Czech Republic and signed by its European Programme Director, Roisin Pillay, requesting the Committee to find that the situation in the Czech Republic amounts to a violation of Article 17 of the 1961 European Social Charter (“the 1961 Charter”).

Having regard to the documents appended to the complaint;

Having regard to the observations on admissibility of the Government of the Czech Republic (“the Government”) registered on 23 June 2017; and the response of the ICJ registered on 14 July 2017.

Having regard to the 1961 Charter and in particular to its Article 17 as well as the non- discrimination clause in the Preamble which read as follows:

**Article 17 – The right of mothers and children to social and economic protection**

Part I: “Mothers and children, irrespective of marital status and family relations, have the right to appropriate social and economic protection.”

Part II: “ With a view to ensuring the effective exercise of the right of mothers and children to social and economic protection, the Contracting Parties will take all appropriate and necessary measures to that end, including the establishment or maintenance of appropriate institutions or services.”

**Preamble** (Extract)

“[...]

Considering that the enjoyment of social rights should be secured without discrimination on grounds of race, colour, sex, religion, political opinion, national extraction or social origin;”

Having regard to the 1995 Additional Protocol to the European Social Charter providing for a system of collective complaints (“the Protocol”);

Having regard to the Rules of the Committee adopted on 29 March 2004 at its 201<sup>st</sup> session and last revised on 6 July 2016 at its 286<sup>rd</sup> session (“the Rules”);

Having deliberated on 13 September 2017;

Delivers the following decision adopted on this date:

1. The ICJ alleges that the situation in the Czech Republic amounts to a violation of Article 17 of the 1961 Charter on the grounds that the Czech Republic has failed to ensure equal legal protection and participation of children below the age of criminal responsibility in the pre-trial stage of juvenile justice procedures, and to ensure alternatives to inappropriate and unnecessary formal trials.

2. The Government objects to the admissibility of the complaint on the grounds that it is incompatible *ratione materiae* with the 1961 Charter. In particular it maintains that the issues raised in the complaint fall outside Article 17 of the 1961 Charter which guarantees the right to social and economic protection of mothers and children. The Government argues that the issues raised fall within the scope of the right to a fair trial—a right that is guaranteed by Article 6 of the European Convention on Human Rights and that falls outside the scope of the 1961 Charter.

3. In response the ICJ argues that the social and economic protection guaranteed to children by Article 17 of the 1961 Charter does encompass the protection of children by institutions of the State including those pertaining to children in conflict with the law. It states that the Committee has, under Article 17 of the 1961 Charter, within the reporting system, considered issues relating to children in conflict with the law, and refers in this respect to the Committee's most recent conclusions under Article 17 in respect of the Czech Republic (Conclusions XX-4 (2015), Czech Republic).

4. Further the ICJ submits that the Government's objections pertain to the merits of the complaint and not to its admissibility.

## **THE LAW**

### *As to the admissibility conditions set out in the Protocol and the Committee's Rules*

5. The Committee observes that, in accordance with Article 4 of the Protocol, which was ratified by the Czech Republic on 4 April 2012 and entered into force for this State on 1 June 2012, the complaint has been submitted in writing and concerns Article 17, provision accepted by the Czech Republic when it ratified this treaty on 3 November 1999 and to which it is bound since the entry into force of this treaty in its respect on 3 December 1999.

6. Moreover, the grounds for the complaint are indicated.

7. The Committee notes that, in accordance with Articles 1 (b) and 3 of the Protocol, the ICJ is a non-governmental organisation having participatory status with the Council of Europe. It is included on the list of international non-governmental organisations entitled to lodge complaints before the Committee, drawn up by the Governmental Committee.

8. The Committee has already considered that the ICJ has particular competence for the purposes of the collective complaints procedure within the meaning of Article 3 of the Protocol (ICJ v. Portugal, Complaint No. 1/1998, decision on admissibility of 10 March 1999). It recalls that the ICJ promotes and protects human rights through the rule of law, and aims *inter alia*, to ensure the progressive development and effective implementation of international human rights and international humanitarian law and secure the realization of civil, cultural, economic, political and social rights. In view of the broad scope of activities of the ICJ, the

Committee considers that the condition is also fulfilled for the purpose of the instant complaint.

9. The complaint lodged on behalf of the ICJ is signed by Roisin Pillay, its European Director of Programmes, whose authorisation to sign documents on behalf of the ICJ and specifically to sign complaints to international human rights mechanisms was confirmed by the Secretary General of the ICJ, Sam Zafiri, by letter dated 30 August 2017.

10. The Committee therefore considers that the complaint complies with Rule 23.

*As to the Government's objections on admissibility*

11. As regards the Government's objections that the complaint is inadmissible *ratione materiae*, in respect of Article 17 of the 1961 Charter, the Committee recalls that Article 17 of the 1961 Charter encompasses the situation of children in conflict with the law (Statement of Interpretation regarding Article 17, Conclusions XV-2 (2001), see most recently Conclusions XX-4 (2015), Article 17 (Denmark, Poland and the United Kingdom).

12. The Committee considers that the issues concerning the application of Article 17 of the 1961 Charter in the circumstances of the current complaint fall to be dealt with at the merits stage.

13. For these reasons, the Committee, on the basis of the report presented by Aoife NOLAN and without prejudice to its decision on the merits of the complaint,

**DECLARES THE COMPLAINT ADMISSIBLE**

In application of Article 7§1 of the Protocol, requests the Executive Secretary to notify the complainant organisation and the Respondent State of the present decision, to transmit it to the parties to the Protocol and the states having submitted a declaration pursuant to Article D§2 of the Charter, and to publish the decision on the Internet site of the Council of Europe.

Invites the Government to make written submissions on the merits of the complaint by 15 November 2017.

Invites the complainant organisation to submit a response to the Government's submissions by a deadline which it shall determine.

Invites parties to the Protocol and the States having submitted a declaration pursuant to Article D paragraph 2 of the Charter to make comments by 15 November 2017, should they so wish.

In application of Article 7§2 of the Protocol, invites the international organisations of employers or workers mentioned in Article 27§2 of the Charter to make observations by 15 November 2017.



Aoife NOLAN  
Rapporteur



Giuseppe PALMISANO  
President



Henrik KRISTENSEN  
Deputy Executive Secretary