


UNIVERSAL PERIODIC REVIEW
CZECH REPUBLIC

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Contribution prepared by:

<p>Ecumenical Network for Youth Action (ENYA)</p> <p>in collaboration with ECPAT International</p>	 <p>The logo for ENYA is a square with a blue background, containing the letters 'ENYA' in a stylized, colorful font. Below it is the ECPAT logo, which features a green silhouette of a person with arms raised, holding a small white flower, with the word 'ecpat' written in a green, lowercase, sans-serif font below the figure.</p>
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The Ecumenical Network for Youth Action (ENYA) is an inclusive ecumenical youth movement of Churches / Faith Communities / Civil Society Organisations (NGO's) and their related associations and operates on an international level. The network is membership / partnership driven and includes children, youth and women's organisations, diaconal projects, children's, youth and women's rights and protection activist networks, Roma youth and organisations, ecumenical youth movements, social movements, justice, peace, reconciliation and environmental groups, NGO's, lay training academies / centers, and individuals in over 48 countries around the world.

Executive summary

This Universal Periodic Review submission aims to provide a review of the four year period between 2008 and 2011 of the situation of the implementation of international obligations/commitments on commercial sexual exploitation of children (CSEC) in Czech Republic. Limited progress has been observed from the Government in the fight against CSEC, particularly, since it has not yet ratified the major key international legal instruments: (i) the Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography and (ii) the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime and the Council of Europe Council Convention on Cybercrime

The non-ratification of major international and regional instruments regulating CSEC leads to limitations in the domestic legislation as well as related policies. The lack of clear definition of child prostitution, child pornography and child trafficking requires a comprehensive legal reform process leading to the development of new laws compliant with the provisions of relevant international legal standards.

With regard to the policy framework, (i) the *National Plan of Action for Implementation of the National Strategy to Prevent Violence Against Children in the Czech Republic 2009 – 2010*; (ii) the *National Strategy to Combat Trafficking in Human Beings (2008 – 2011)*; and (iii) the *Resolution No 883 on the National Action Plan to Transform and Unify the System for the Care of Vulnerable Children 2009 – 2011* have been established. However, their implementation suffer from a lack of coordination among relevant state agencies, monitoring and data collection mechanism, support services for child victims of CSEC and capacity building for law enforcement representatives, especially effective communication with children, particularly with child victims.

I. Current normative and institutional framework for the promotion and protection of human rights

1.1 Legal Framework

1.1.1 International Legal Standards

The Czech Republic has not ratified the Optional Protocol to the Convention on the Rights of the Child on sale of children, child prostitution and child pornography nor the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime.

Recommendation:

- Urgently ratify the Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography;
- Urgently ratify the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime;

1.1.2 Regional Legal Standards

The country has neither signed the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS No. 201), nor the Council of Europe Convention on Cybercrime (CETS No. 185) nor the Council of Europe Convention on Trafficking in Human Beings (CETS No.:197). The reason for not ratifying these instruments is due to insufficient legal regulation of liability of the legal entities, neither criminal nor administrative nor civil.

Recommendations:

- To ratify the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse;
- To ratify the Council of Europe Convention on Cybercrime;
- To ratify the Council of Europe Convention on Trafficking in Human Beings;
- To cooperate with the Council of Europe towards the implementation of the Convention and any other human rights instruments, both in the State party and in other Council of Europe Member States.

1.1.3 Domestic Legal Framework

1.1.3.1 Laws addressing Child Prostitution

The Czech Criminal Code does not provide a clear and comprehensive definition of child prostitution. Its provisions address 'sexual intercourse or masturbation, indecent exposure or other similar behavior' in exchange for remuneration. Any other forms of gratification in exchange of sexual activity with a child should be also incorporated in the Criminal Code.

In addition, children between 15 and 18 years of age can legally engage in prostitution, the requirements of relevant international and regional legal standards to protect all children up to the age of 18 from sexual exploitation.

1.1.3.2 Laws addressing Child Pornography

The Czech Criminal Code lacks a clear definition of child pornography that would be consistent with the provisions of relevant international and regional legal standards. This is a major legal gap which encourages the production of child abuse materials are being produced in Czech Republic.

The *Criminal Justice Act (as amended in 2007)* criminalizes the mere possession of child pornography. And *Act No 40/2009 Coll.*, of the Criminal Code criminalize the solicitation of sexual intercourse from minors (grooming).

The *Telecommunications Act No. 151/2000* regulates the statutory duty of Internet providers to collect data on websites with illegal content and to report to the Czech Police and foreign police authorities at their request. However, a new act is needed to define the duties and responsibilities of Internet Providers in more specific terms.

1.1.3.3 Laws addressing Child Trafficking

It is noted that there are persisting problems in relation to the implementation of the law concerning the some overlap between the offences of procuring and trafficking in human beings.¹ Thus, the Czech police, public prosecutors' offices as well as courts find it difficult to apply the law in the case.

Section 168(1) of Act 40/2009 Coll., of the Criminal Code states the elements of the crime of human trafficking. The new definition of trafficking (Section 168 (2)) includes forcing a child into producing pornography as a form of trafficking in addition to the pre-existing definition of forcing someone into sexual intercourse. Section 168(3) criminalizes trafficking for the use of forced prostitution. Section 168 applies to inter-state and intra-state trafficking cases.

Additionally § 172 in the New Criminal Code criminalizes the facilitators of trafficking (the smugglers or transporters) by punishing the act of taking people away unwillingly from the Czech Republic or transporting them unwillingly to the Czech Republic.

However, even though Section 168 and other corresponding provisions of the new Criminal Code do comply with many of the requirements of Article 3 Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (they cover all children both boys and girls and Section 168(1) mentions the recruitment, transport, and harboring as elements of the crime of human trafficking), there is no mention that consent is irrelevant for children.

1.2 General recommendations to the domestic legal Framework

- To provide a clear definition of child prostitution, child pornography and trafficking in children as well as stringent penalties for offenders;
- To provide stronger measures for prevention, protection and punishment regarding CSEC;
- To introduce a comprehensive legal provision establishing child-friendly procedures within the Justice system to ensure that child victim's best interests are duly taken into account during the legal proceedings.

II. Promotion and protection of Human Rights on the ground: implementation of international human rights standards

2.1 Key areas of concern with regard to the implementation of the children's right to protection against commercial sexual exploitation on the ground

In general, there is a National Strategy to Combat Trafficking in Human Beings for the period of 2008-2011 which has a corresponding annual status report (the status report for 2011 is due in April 30, 2011). While this report is detailed in its plan to prevent and eliminate trafficking, it only addresses

¹ The League of Human Rights, "Shadow Report to the Committee on the Rights of the Child: On the Third and Fourth Periodical Report of the Czech Republic on the Implementation of the Convention on the Rights of the Child", 2010

trafficking and some minor information related to prostitution, but does not focus on children. Previously, there was a national strategy relating to CSEC, the Combating Commercial Sexual Exploitation of Children National Plan (2006-2008) however, the Czech government has not initiated one of these reports since 2008. Instead, information relating to CSEC is placed in a more general national plan related to children's rights. The State party's sectorial approach to the Convention leads to even further fragmentation of its implementation. The National Action Plans for addressing CSEC are expert-oriented and not adequately accessible to all children, their parents and the general public².

2.1.1 Lack of an effective institutional reform ensuring implementation of the Convention on the Rights of the Child and its Optional Protocols

The Czech Committee for the Rights of the Child which forms part of the Government Council for Human Rights has the power to supervise and control compliance with the CRC. However, its power is considered as insufficient. In particular, the body is not independent but is only a working and advisory body of the Government which can suggest improvements in human rights protection and work out other documents for its use. The final documents are subject to the Government's approval.³

The present Public Defender of Rights (Ombudsman)⁴ has limited control over cases of children rights. The main reason of this fact is that the law defines the scope of the power of the Public Defender of Rights is narrower compared to what should be the scope of power of an independent body supervising fulfillment of the Convention. Its control is not specialized on rights of the child and fulfillment of the Convention. The staff is not adapted to handle children's complaints in a child-sensitive manner as the UN Committee for the Rights of the Child requires.⁵

Additionally, while the Czech Republic has a National Trafficking Rapporteur, the position is not autonomous and is under control of the Ministry of the Interior, the government agency that is in charge of the creation and implementation of trafficking policy.

Moreover, Czech Republic does not have separate justice system to adjudicate cases involving persons under the age of 18. In addition, the law in the area of juvenile justice is rather ambiguous, as it does not clearly distinguish between punitive measures imposed on children in conflict with the law and protection measures applicable to child victim.⁶

Recommendation:

² The League of Human Rights, "Shadow Report to the Committee on the Rights of the Child: On the Third and Fourth Periodical Report of the Czech Republic on the Implementation of the Convention on the Rights of the Child", 2010

³ Ibid.

⁴ Pursuant the Act No. 349/1999 Coll., on the Public Defender of Rights;

⁵ The League of Human Rights, "Shadow Report to the Committee on the Rights of the Child: On the Third and Fourth Periodical Report of the Czech Republic on the Implementation of the Convention on the Rights of the Child", 2010

⁶ The League of Human Rights, "Shadow Report to the Committee on the Rights of the Child: On the Third and Fourth Periodical Report of the Czech Republic on the Implementation of the Convention on the Rights of the Child", 2010

- To establish an independent body for the monitoring of the implementation of the Convention, and the Optional Protocol on the sale of children, child prostitution and child pornography ;
- To Establish an Ombudsperson for children
- To ensure that the state provides with necessary human, technical and financial resources to implement child rights policy that is comprehensive, coherent and consistent at national, regional and municipal levels.
- The National Rapporteur on Trafficking should be made an independent position that is not under the control of the Ministry of the Interior.

2.1.2 Lack of coordination in implementation among child protection stakeholders

A coordination system among child protection agencies, educational institutions, health care facilities, police and NGOs does not exist, leading to unsystematic responses to individual cases of sexual abuse and CSEC, which might cause secondary victimization.⁷

There is no consistent, timely and transparent system of allocating grants and subsidies to relevant civil society organizations.⁸ The current system does not allow for adequate dialogue with civil society on issues relating to resources, policies and priorities for children.⁹

Recommendation:

To establish a coordinated system of cooperation and information exchange among relevant stakeholders (state agencies, institutions, nongovernmental organizations and the private sector) in order to better address commercial sexual

2.1.3 Lack of support services provided to CSEC victims

An elaborated, unified and coordinated system of crisis intervention, long-term care for victims, and rehabilitation is not in place. Child victims are referred to a diagnostic centre, then to state care, being placed in special homes/foster care or shelters and lack resources, specialized and trained staff, psychotherapists, etc. There is no special support or rehabilitation program for CSEC victims available in such institutions, and many children manage to run away and become re-victimized.

The victims are granted neither legal nor psychosocial assistance nor adequate social rehabilitation support system. Due to constraints in financial and human resources, child protection agencies have to narrow down their preventive function and limit terrain social work with children and families at risk.¹⁰

⁷ The League of Human Rights, "Shadow Report to the Committee on the Rights of the Child: On the Third and Fourth Periodical Report of the Czech Republic on the Implementation of the Convention on the Rights of the Child", 2010

⁸ Committee on the Rights of the Child, "Consideration of reports submitted by States parties under Article 44 of the Convention – Concluding observations: Czech Republic", Fifty-seventh session, 30 May – 17 June, 2011

⁹ Ibid.

Trafficked children do not benefit from a reintegration program. There is an absence of a proper referral system.¹¹

Recommendations:

- to urgently develop rehabilitation and reintegration support program for child victims of trafficking and establish more care centers providing tailored support to child victims of prostitution and pornography;
- to ensure that care centers are staffed with professionals trained on how to properly assist victims
- to strengthen the provision of holistic and long-term psychosocial support to child victims of sexual abuse.

2.1.4 Lack of comprehensive research and data collection on CSEC

A few partial studies have been carried out on commercial sexual exploitation of children, but there is a lack of comprehensive research studies on the prevalence and the root causes of the commercial sexual exploitation of children in Czech Republic.

Moreover, there is no such systematic information about CSEC. Collection of data about sexually abused children is not centralized.¹² The statistics on sexual abused children are compiled by Police, Ministry of Labor, the Ministry of Interior and Social Affairs and Ministry of Justice (including the statistics of courts and public prosecution). However, since the methodology of data collection is neither systematic nor coherent, the statistics are incompatible¹³. Especially, there is no adequate methodology to identify the Roma minority with a view to collecting data in order to facilitate the fulfillment of their rights.

In addition, data on children are not used in a manner that is effective in assessing progress as a basis for policy-making in the field of ensuring children's rights.

Recommendations:

- To develop and implement a standardized system of data collection on children who have been sexually exploited
- To use the indicators and data effectively in designing policies and programmes for the protection of children against commercial sexual exploitation

¹⁰ The League of Human Rights, "Shadow Report to the Committee on the Rights of the Child: On the Third and Fourth Periodical Report of the Czech Republic on the Implementation of the Convention on the Rights of the Child", 2010

¹¹ ECPAT International, Czech Republic Country Process Card, 2010

¹² The League of Human Rights, "Shadow Report to the Committee on the Rights of the Child: On the Third and Fourth Periodical Report of the Czech Republic on the Implementation of the Convention on the Rights of the Child", 2010

¹³ Ibid.

2.1.5 Weak prevention programmes addressing the commercial sexual exploitation of children

Whilst Czech Republic has adopted a National Strategy to Combat Trafficking in Human Beings (2008 – 2011) in January 2008, there is neither special policy nor a specific institution in charge of preventing the risks for children to fall victim of trafficking.¹⁴ In general, insufficient attention has been paid to the issue of child trafficking as a specific area of concern in the larger context of human trafficking.

The National Strategy to Combat Trafficking in Human Beings has some provisions to reinforce multi-stakeholder collaboration but this is not focused on preventing child trafficking and therefore child protection agencies are not adequately involved to protect child victims of trafficking.¹⁵

Although some campaigns and activities aimed at the prevention of trafficking in human beings have been carried out by both the State and NGOs, these are in relation to adults and no extensive campaign related to the prevention of child trafficking or any aspect thereof has been noted since 2000.¹⁶

Even though some aspects of CSEC is discussed within the general program of education and specific provisions for the general education of teachers on trafficking in human beings included in the National Strategy to Combat Trafficking in Human Beings, this has not yet been implemented and lacks specific focus on child trafficking.¹⁷

Recommendation:

To integrate more the issue of child trafficking in the National Action Plan and any national policy targeted human trafficking.

2.1.6 Lack of training on children rights/child protection/CSEC for judges and the representatives of the social and legal protection authority

In general, there is no systematic training program on human rights, including children's rights, for all professionals working for and with children.

In particular, there is no training for the custodial judges and for the representatives of the social and legal protection authority so that they would learn to communicate with children in order to obtain their views in an effective yet sensitive way.¹⁸ That has led to the fact that, judges tend to avoid hearing children before court due to the fact that they do not know how to communicate with children or because they fear that the hearing would be psychologically exhausting for the child.

¹⁴ ECPAT International, Czech Republic Country Process Card, 2010

¹⁵ ECPAT International, Czech Republic Country Process Card, 2010

¹⁶ Ibid.

¹⁷ Ibid.

¹⁸ The League of Human Rights, "Shadow Report to the Committee on the Rights of the Child: On the Third and Fourth Periodical Report of the Czech Republic on the Implementation of the Convention on the Rights of the Child", 2010

In addition, there is no system of lifelong learning for the representatives of the social and legal protection authorities or for the custodial judges, which would help those professionals define and acknowledge the best interest of the child.¹⁹

Recommendation:

To provide capacity building to law enforcement officials as well as social workers on the identification of child victims of commercial sexual exploitation and on measures to protect children from commercial sexual exploitation (e.g child-friendly procedures within the justice system)

¹⁹ Ibid.