

**EUROPEAN COMMITTEE OF SOCIAL RIGHTS  
COMITÉ EUROPÉEN DES DROITS SOCIAUX**

30 June 2017

**Case Document No. 2**

**International Commission of Jurists (ICJ) v. Czech Republic**  
Complaint No. 148/2017

**OBSERVATIONS BY THE GOVERNMENT  
ON ADMISSIBILITY**

**Registered at the Secretariat on 23 June 2017**



## THE CZECH REPUBLIC

1. In its letter of 7 April 2017, the European Committee of Social Rights (hereinafter the “Committee”) notified the Government of the Czech Republic (hereinafter the “Government”) that the International Commission of Jurists (hereinafter the “complainant organization”) had submitted a collective complaint against the Czech Republic to the Committee, filed under no. 148/2017. In its letter of 12 May 2017, the Committee invited the Government to submit their observations on the admissibility of the complaint.

## THE LAW

2. The complainant organization claims in particular that the Czech Republic does not comply with Article 17 of the European Social Charter, adopted in 1961 (hereinafter the “Charter”), read alone or in conjunction with the prohibition of discrimination embodied in the Charter, on the ground that children below the age of criminal responsibility are deprived of “social protection” in the pre-trial stage of juvenile justice procedure because the Czech Republic has failed to take “all appropriate and necessary measures to that end”, and that they are discriminated against because they do not enjoy the same standard criminal procedural safeguards as other juveniles or even adults.

3. The Government do not share the complainant organization’s views.

## ALLEGED VIOLATION OF ARTICLE 17 OF THE CHARTER

4. Article 17 reads as follows:

“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.”

### ***Incompatibility ratione materiae***

5. The Government are convinced that the complaint is incompatible *ratione materiae* with the Charter, since it does not relate to any provision of the Charter binding on the Czech Republic under rules stipulated by Article 4 of the Additional Protocol to the European Social Charter Providing for a System of Collective Complaints (hereinafter the “Protocol”).

6. Taking note of the wording of Article 17 of the Charter, its relevant decision-making, as well as the object and purpose of the Charter, the Government are of the opinion that this provision is not applicable to the collective complaint at hand.

7. First of all, the complaint does not relate to any provision of the Charter. The Government are convinced that the content of Article 17 of the Charter strives clearly to ensure social and economic protection of mothers and children. However, as the wording of the provision suggests, it does not in any way guarantee the right to a fair trial of children below the age of criminal responsibility, which is the subject matter of the complaint at hand. The Government maintain that there seems to be no link of any kind between social and economic protection of mothers and children and the right to a fair trial of children. Therefore, Article 17 of the Charter cannot be invoked in the case at hand.

8. Relatedly, in the absence of any interpretation rule in the Charter, the Committee has stated that the Charter must be interpreted on the basis of the Vienna Convention on the Law of Treaties (*International Federation of Human Rights Leagues (FIDH) v. France*, collective complaint no. 14/2003, decision on the merits of 8 September 2004, § 26). Therefore, Article 17 of the Charter must be interpreted in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose (Article 31 of the Vienna Convention on the Law of Treaties). As follows from the Preamble of the Charter, the member states of the Council of Europe have agreed “to make every effort in common to improve the standard of living and to promote the social well-being”. In accordance with the Preamble, the Charter guarantees a broad range of social rights related to, e.g., employment, housing, health, education, social protection or welfare. It is often highlighted by various Council of Europe actors, including the Committee, that the Charter is a Council of Europe treaty that guarantees fundamental social and economic rights as a counterpart to the European Convention on Human Rights (hereinafter the “Convention”), which refers to civil and political rights. Thus, in principle, the Charter does not and *should not* protect civil and political rights. Its system of protection is not adapted for that purpose.

The right to a fair trial is guaranteed under Article 6 of the European Convention on Human Rights. It is one of the fundamental civil rights, a prerequisite of the principle of rule of law, and it cannot be regarded as a social or economic right to be protected by the Charter. The Government are of the view that systems of protection under the Charter and the Convention should not be interchanged.

9. The complainant organization relies merely on the wording of the “Committee’s Conclusions XV-2” according to which, among others, “[t]he Committee holds that the procedure with respect to children and young persons must be suitable for them and that they must be afforded the same procedural guarantees as adults, although proceedings involving minors should be conducted rapidly.”

The Government note that the Committee’s Conclusions XV-2 address a wide range of topics but do not relate particularly to the subject matter of this collective complaint. Firstly, they clarify which issues are to be dealt with by the Committee under Articles 7 and 17 respectively because the scopes of these two provisions overlap to a large extent. Secondly, in respect of Article 17 of the Charter, the document in its introduction merely states, in general terms, that “Children and law” is one of the issues to be dealt with under this provision. However, the issue “Children and law” is not specified in the text of the document in more detail. Instead, the rest of the document deals with topics related mainly to the child welfare systems, such as the prohibition of corporal punishment, foster families, maintaining links with natural family of the child or the rights of children living in

institutions.

In the light of the above, the Government are of the view that it is self-serving to base a complaint relating to the right to a fair trial on the Committee's Conclusions XV-2, which were adopted by the Committee for a different purpose.

10. Furthermore, the complainant organization relies on the document "Children's rights under the European Social Charter" which is a factsheet prepared by the Secretariat of the European Social Charter. The Government stress that the Secretariat has no power to interpret the Charter and the document therefore cannot be held as a relevant basis for the complaint at hand. In its decision-making, the Committee has dealt with complaints concerning Article 17 of the Charter only on three occasions and in relation to the subject matters of, *first*, sexual and reproductive health education (*International Centre for the Legal Protection of Human Rights v. Croatia*, no. 45/2007, decision on merits of 30 March 2009) and, *second*, the prohibition of corporal punishment (*Association for the Protection of all Children Ltd v. Czech Republic*, no. 96/2013, decision on merits of 20 January 2015; *World Organisation against Torture v. Greece*, no. 17/2003, decision on merits of 7 December 2014). The Government point out in relation to the first case, that the Committee found that it did not raise issues falling within the scope of the Article 17 of the Charter and two other cases dealt exclusively with the social protection of children. In sum, nothing in the Committee's decision-making suggests that Article 17 is applicable in the case at hand.

11. Thus, in light of all the above arguments, the Government are convinced that the complaint relating to the right to a fair trial of children below the age of criminal responsibility does not fall within the scope of Article 17 of the Charter. The subject matter of the complaint should have been dealt with under the mechanism of the Convention, namely under Article 6 of the Convention. It should have been dealt with by the European Court of Human Rights, not the Committee.

12. It is of crucial importance that the complainants do not circumvent the Court by filing complaints to the Committee. This practice could seriously harm the Council of Europe system of the protection of fundamental rights.

## CONCLUSION

13. In the light of the above facts the Government of the Czech Republic, in their observations on the collective complaint of *International Commission of Jurists (ICJ) v. the Czech Republic*, propose that the Committee declares the complaint inadmissible for incompatibility *ratione materiae* with the European Social Charter.

Vít A. Schorm Agent of  
the Government  
*signed electronically*

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