FORUM

Human Rights

AMICUS CURIAE

Valchář v. Czech Republic, application no. 8078/23

by Forum for Human Rights

23 October 2023

Introduction

This *amicus curiae* is lodged pursuant to Rule 44§3 of the Rules of the Court upon leave by the President of the Section to make a written submission to the Court on behalf of Forum for Human Rights (FORUM) in the case of *Valchář v. Czech Republic*, application no. 8078/23.

FORUM is an international human rights organisation working in the Central European region, especially the Czech Republic and Slovakia. It leads domestic and international human rights litigation and advocacy, especially in the field of vulnerable groups, including victims of ill-treatment. In this regard, FORUM has been systematically tackling the issue of prohibition of ill-treatment, supporting a number of cases pending before domestic and international judicial authorities, including seeking redress before domestic courts.

The case of *Valchář v. Czech Republic* raises serious issues related to the compensation for non-material damage that resulted from police violence and ill-treatment. Apart from the individual level, the case reveals a **systemic problem** pertinent in the Czech Republic, in particular, that the current legal architecture of redress for ill-treatment raises serious concerns about its compatibility with requirements under Articles 3 and 13 of the Convention. The present submission specifically points out that the short **six-month statutory time limit** to file compensation claims under the State Liability Act (No. 82/1998) hinders victims of ill-treatment to obtain redress for non-pecuniary damage suffered as a result of human rights violations.

For two years now, FORUM has been implementing a project funded by the UN Voluntary Fund for Victims of Torture and provides legal aid to victims of torture and other forms of ill-treatment. FORUM has been representing a number of cases pending before different domestic levels that concern inaccessible redress for victims of torture or other forms of ill-treatment, including police

violence and it has specific experience and know-how in this regard. Considering this, FORUM will cover two aspects of the present problem. 1) The first part of the submission includes an overview of the international human rights standards on redress for victims of ill-treatment with a focus on the statutes of limitation. 2) The second part discusses domestic practice with examples of concrete cases that demonstrate the impact of the flagged systemic shortcomings in the compensatory mechanism under the State Liability Act.

1. Redress for victims of ill-treatment: UN standards

The most explicit standard on redress for victims of ill-treatment, including police violence, is to be found in Article 14 UN Convention Against Torture (*hereinafter* "CAT"). According to **Article 14** CAT, State Parties, including the Czech Republic, should ensure that the victims of ill-treatment obtain redress and have an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible.[1]

Similarly, as under Article 3 ECHR, the obligations of State Parties to provide redress under Article 14 CAT are two-fold: procedural and substantive. At the substantive level, states shall ensure that victims of torture or ill-treatment obtain **full and effective redress** and reparation, **including compensation** and the means for as full rehabilitation as possible. To satisfy their procedural obligations, states shall enact legislation and establish complaints mechanisms, investigation bodies and institutions, including independent judicial bodies, capable of determining the right to and awarding redress for a victim of torture and ill-treatment, and ensure that such mechanisms and bodies are effective and accessible to all victims.[2]
The right to prompt, fair and adequate compensation for torture or other forms of ill-treatment under Article 14 CAT is multi-layered and compensation awarded to a victim should be sufficient to compensate for any economically assessable damage resulting from torture or ill-treatment, whether pecuniary or **non-pecuniary**. This may include pecuniary and non-pecuniary damage resulting from the physical and mental harm caused.[3]

Under Article 14 CAT the State Parties should ensure that all victims of ill-treatment obtain redress and that the right to redress is effective in practice. In particular, mechanisms of obtaining redress must be available and accessible to victims. The CAT Committee has specifically mentioned inadequate legislation and statutes of limitations as barriers to the right to redress for victims of ill-treatment. In this regard, the human rights standard under CAT is positioned very high, as the Committee has exactly stated that:

> "*On account of the continuous nature of the effects of torture,* ***statutes of limitations should not be applicable*** *as these deprive victims of the redress, compensation, and rehabilitation due to them. For many victims, passage of time does not attenuate the harm and in some cases the harm may increase as a result of post-traumatic stress that requires medical, psychological and social support, which is often inaccessible to those who have not received redress.* ***States parties shall ensure that all victims of torture or ill-treatment, regardless of when the violation occurred or whether it was carried out by or with the acquiescence of a former regime, are able to access their rights to remedy and to obtain redress***."[4]

[1] UN CAT, General Comment no. 3 (2012): Implementation of article 14 by State Parties, 13 December 2012, CAT/C/GC/3, § 1.
[2] Ibid., § 5.
[3] Ibid., § 10.
[4] Ibid., § 40.

This standard can be read as clearly expecting that no statutes of limitations should be applicable in cases of torture, yet in other cases, assuming it is applicable, it still must be of a nature that allows victims to be able to obtain redress. In other words, the statute of limitation cannot make the right to remedy and redress futile or hypothetical in practice.

Indeed, the Czech State Liability Act (no. 82/1998) provides for a possibility to seek redress for ill-treatment, including claiming compensation for non-pecuniary damage. However, the law provides, in general, 1) **for an extremely short statute of limitation** to file such a claim as the right to seek compensation for non-pecuniary damage expires after six months**,** 2) that **sharply contrasts with 3 years limitation** for identical civil law claims,[5] thus 3) practically **shielding state officials** who committed acts that had amounted to ill-treatment.

When reviewing compliance with the Czech laws and practice with the CAT, the **CAT Committee** has repeatedly alerted the Czech Government about the incompatibility of the six-month statute of limitation in the State Liability Act with the requirements of Article 14 CAT. In 2012, the CAT Committee recommended the Czech Republic extend the time limit for filing claims under the State Liability Act,[6] same recommendation was formulated in 2018.[7] Most recently in 2021, the CAT Committee specifically asked the Czech Government whether it has extended or abolished the limit for filing claims under the State Liability Act and whether it has eliminated the court fees introduced in 2017 for victims claiming compensation under the State Liability Act.[8]

Similar standards have been set out by the **UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment**, Nils Melzer, in his recent report on accountability for torture and other cruel, inhuman or degrading treatment or punishment.[9] According to the Special Rapporteur, normative, institutional and procedural shortcomings may lead to a structural "accountability gap" that creates a culture of impunity severely undermining victims' trust in the justice system and compounding their trauma and feelings of injustice.[10] Same as the CAT Committee, the Special Rapporteur mentions statutes of limitations among the main barriers for victims to obtain redress. In concrete, he stated that:

> *"statutes of limitation can be particularly challenging for victims of torture and ill-treatment, as they may face trauma, symptoms of posttraumatic stress disorder such as avoidance and dissociation, or stigmatization and marginalization, all of which can hinder their timely engagement with the legal process."*[11]

2. Redress for victims of ill-treatment: domestic practice

Victims of torture and other forms of ill-treatment in the Czech Republic can obtain compensation for non-pecuniary damage caused by state officials when exercising public authority via the State Liability Act (no. 82/1998). This Act, however, includes several legal provisions substantially curtailing the right to compensation. Notably, Section 32(3) of the Act stipulates that *"the claim for non-pecunary damage shall be time-barred **six months** after the date on which the injured party became aware of the non-pecuniary damage (...)."*

[5] Compare Section 32(3) of the State Liability Act (no. 82/1998) and Section 629 of the Civil Code (no. 89/2012).
[6] CAT, Concluding Observations - Czech Republic, 13 July 2012, CAT/C/CZE/CO/4-5, § 13.
[7] CAT, Concluding Observations on the sixth periodic report of Czechia, 6 June 2018, CAT/C/CZE/CO/6, § 31.
[8] CAT, List of issues prior to submission of the seventh periodic report of Czechia, 10 June 2021, CAT/C/CZE/QPR/7, § 23 (CAT has not yet adopted Concluding Observations under this cycle).
[9] UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Report on accountability for torture and other cruel, inhuman or degrading treatment or punishment, A/76/168, 2021.
[10] Ibid., §§ 2-3.
[11] Ibid., § 52.

This is an extremely restrictive time frame and in many instances **illusory** for victims of ill-treatment to comply with for several reasons.

1) First, one must take into account a typical context of ill-treatment. Torture and ill-treatment often occur in closed institutional settings such as prisons, psychiatric hospitals, police stations, and detention centres where victims have limited access to timely legal aid and have restricted possibilities to obtain evidence about their cases. Moreover, as one can imagine, they often do not wish to file complaints about ill-treatment while confined in the institution because they fear retribution. Often in practice, the passage of time takes victims much more than six months to resolve on complaint, find legal aid and gather at least simple evidence to support their case.

2) Second, the lived experience of violence and the possible traumatic experience must be taken into account. Ill-treatment is associated with trauma and it can be very difficult for victims to return to this experience, even after prolonged time and therapy. The six-month time limit places an extreme demand on victims to not only process the trauma within that time limit and be able to talk about the incident and describe the trauma they experienced but to do so in front of a lawyer and in a legal submission. It is one thing to go through therapy with a therapist and another to tell a lawyer about your trauma to seek compensation. And that's assuming the victim has legal support at all.

The time frame, as stipulated under the State Liability Act is discriminatory and effectively shields state officials who violated the prohibition of ill-treatment.

1) The six-month time limit strikingly contrasts strikingly with the **three years** statute of limitation period **in civil matters** (Section 629(1) of the Civil Code). There is no clear reason why state officials should be protected by a much shorter time limit from being accountable for ill-treatment. If an act that would have otherwise been considered ill-treatment is taken by a civil person or an institution (e.g. hospital), the victim has three years to claim non-pecuniary damage. If an act of torture or ill-treatment is committed by public officials (for example prison guards, police officers, social workers in social care facilities, employees of psychiatric hospitals etc.), the victim must claim non-pecuniary damage from the relevant Ministry within six months, regardless of her actual state of health and her situation.

The law seems not only illogical but bizarre because it turns the rationale of the right to remedy and redress for ill-treatment upside down. As an example, we can refer to domestic jurisprudence on civil liability that concerns the context of medical care. According to well-established legal practice, the basic proposition for determining the start of the limitation period in medical-legal disputes is the determination of the time when the patient's **medical condition became stable**. In this regard, the Constitutional Court has taken the position that limitation periods are **to be assessed in doubt in favour of the injured patient**. According to the Constitutional Court:

> *"There is, after all, an abyssal difference between a party to a personal injury claim who lives in fear for his health and sometimes even his life, and a party to ordinary, contentious proceedings brought, for example, in connection with the non-payment of a debt under a contract of sale (...) The patient clings to the fact that his health is not good and to the hope that it will improve. The injured patient cannot fairly be asked to continually assess whether his health is stable while his treatment is still pending. The patient can only have knowledge of his state of health if the treatment process has been definitively completed or if the doctors have clearly agreed that the state of health has stabilised and have given clear and understandable information to the patient in this respect."*[12]

[12] The decision of the Constitutional Court no IV. ÚS 774/2018 of 27 February 2019.

2) Not only there is an extremely short time limit for claiming redress for ill-treatment but even this time limit is interpreted restrictively. A victim of ill-treatment can file the claim for non-pecuniary damage under the State Liability Act only within six months "*after the date on which the injured party became aware of the non-pecuniary damage."* This date usually correlates with the date when torture or ill-treatment happened and not the date the investigation authorities or courts confirm that there was ill-treatment or the date when the victim's situation became stable. In many cases, this is problematic.

In order not to lose the right to claim non-pecuniary damage, victims are expected in practice to file claims under the State Liability Act **in parallel with other remedies**, typically criminal complaints aimed at identifying the perpetrators and holding them accountable. Thus, forced to battle on two grounds, not to mention that running two parallel proceedings on the same event – one by the relevant Ministry and eventually civil courts, and second by the criminal authorities - is highly unproductive and may lead to mixed or even opposite results.

Moreover, it is costly and especially, it puts victims of ill-treatment in a specifically vulnerable situation because **they are facing repeated victimisations** with each submission, and each court hearing. Under the State Liability Act, victims have to make a claim and support it with evidence, the rule that the burden of proof shifts – known under ECHR – does not apply in domestic law and victims are expected to prove harm and causal nexus. In practice, it is only possible if they give evidence directly, by statements during hearings.

In general, the experiences of our clients confirm that the State Liability Act is hardly an effective remedy for victims of ill-treatment in practice. The civil courts are not suited to investigate the acts of ill-treatment, are often reluctant to hear these types of cases, require the victims to prove the level of suffering during ill-treatment and the proceedings are extremely lengthy. The system simply does not operate properly.

3) Indeed, the present submissions concern the statute of limitations. In the following part, we present two case studies that demonstrate the discussed problem.

The **first case** concerns a situation when the client had not obtained redress, even if the Constitutional Court found a violation of Article 3 ECHR.

FORUM has represented a client who was a victim of police violence during a deportation attempt (including the use of tear gas in the closed room, beatings and unnecessary handcuffing). He filed a criminal complaint which led to no results and his case was set aside. He then turned to the Constitutional Court which found that the Czech authorities had violated his right not to be subjected to degrading treatment and his right to an effective investigation (case no. I. ÚS 860/15).[13]

After the Constitutional Court's ruling, the client sought compensation for non-pecuniary damage under the State Liability Act. The relevant Ministry and subsequently the courts at three levels refused to compensate the client for the suffering that occurred during the deportation attempt on the ground that his claim was statute-barred.[14] The calculation of the six-month time limit set out in Section 32(3) of the State Liability Act had started running from the time, the client learned about the non-pecuniary damage, i.e. from the date of the deportation attempt, and not from the date of the Constitutional Court's ruling or the moment the victim was in a stable situation.

[13] The decision of the Constitutional Court, case no. I. ÚS 860/15 of 27 October 2015.
[14] The decision of the Supreme Court, no. 30 Cdo 3509/2019-191of 24 February 2021.

Despite the acknowledgement of a violation of his right not to be subjected to degrading treatment by the Constitutional Court, the client never received any compensation (needless to say the perpetrators were never punished in any way). To be complete, after eight years of litigation, the client obtained compensation for non-pecuniary damage for the ineffective investigation (in the amount of a mere 10,000 CZK). This procedural claim was not statute-barred because the investigation had re-opened after the Constitutional Court's judgment.[15]

The **second case** concerns the ongoing criminal proceedings on charges of torture of a woman in the prison in Světlá nad Sázavou.[16] The situation at the moment is such that the first instance court after the original conviction was overturned, convicted the perpetrators from the prison service for offences relating to breach of public duties. The victim was not legally represented in the criminal proceedings and was not awarded compensation by the trial court and very likely will not be compensated in the appellate proceedings. FORUM legal counsel took up representation only recently.

In the six months following the incident, which consisted of particularly agonising and humiliating restraint in prison, the so-called Jesus position, where the victim wet herself and was then subjected to further humiliation, she experienced severe trauma, had to visit a psychiatrist, was medicated and began psychotherapy. At the time, not only was she unaware of the obligation to make a claim within the six-month time limit (parallel to the ongoing criminal proceedings), but because of her medical condition it was completely unavailable to her. She has therefore lost her ability to obtain compensation under the State Liability Act. If the time limit was the same as it is in civil litigation, e.g. if the injury occurred in a hospital, this problem would not arise and her right to redress would not be statute-barred.

Overall, it can be concluded that existing human rights standards, namely under CAT, require no statute of limitations in cases of torture and allow the appropriate statute of limitations in cases of inhuman and degrading treatment. The appropriateness should be assessed against, at minimum, two premises. 1) First, the state officials cannot be shielded by the statute of limitations, 2) All victims must be in a position to seek redress when they are in a position of safety. Considering this and bearing in mind CAT standards, as well as an illogical and bizarre discrepancy between the statute limitations under the State Liability Act and the Civil Code, there is a concern whether the six-month period, existing in law and applied in practice, is in compliance with the requirements under Articles 3 and 13 ECHR.

Alexandra Dubová
Forum for Human Rights, Chair

FORUM (Fórum pro lidská práva)
Mánesova 48
Prague 2, Czech Republic

[15] The decision of the Prague Municipal Court, no. 25 Cdo 384/2021-270 of 3 February 2022.
[16] See: https://ct24.ceskatelevize.cz/regiony/3589938-odvolaci-soud-vratil-k-novemu-projednani-pripad-dozorcu-a-dozorkyn-veznice-ve-svetle