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**Committee on the Elimination of Discrimination  
against Women****Views adopted by the Committee under article 7 (3) of the  
Optional Protocol, concerning Communication No.  
152/2019<sup>\*\*</sup>**

<i>Communication submitted by:</i>	S.I. (represented by counsel, Zuzana Pavelková, of Organization for Aid to Refugees (OPU))
<i>Alleged victim:</i>	The author
<i>State party:</i>	Czechia
<i>Date of communication:</i>	9 December 2019 (initial submission)
<i>References:</i>	Transmitted to the State party on 16 December 2019 (not issued in document form)
<i>Date of adoption of decision:</i>	24 October 2023

1.1 The communication is submitted by S.I., a national of Japan, born on 11 August 1981. The author claims that the State party violated her rights under articles 2, 6 and 12 of the Convention by continuously disregarding her health status and her vulnerability as a potential victim of human trafficking during her detention and deportation proceedings. The Optional Protocol to the Convention entered into force in the State party on 26 February 2001. The author is represented by counsel.

1.2 On 16 December 2019, when the communication was registered, the Committee, through its Working Group on Communications under the Optional Protocol and pursuant to article 5 (1) of the Optional Protocol and rule 63 of the rules of procedure of the Committee, decided not to grant the author's request that the State party

\* Adopted by the Committee at its eighty-sixth session (9 – 27 October 2023).

\*\* The following members of the Committee participated in the examination of the present communication: Brenda Akia, Nicole Ameline, Marion Bethel, Leticia Bonifaz Alfonzo, Ms. Rangita De Silva de Alwis, Corinne Dettmeijer-Vermeulen, Esther Eghobamien-Mshelia, Hilary Gbedemah, Yamila González Ferrer, Dafna Hacker Dror, Nahla Haidar, Rosario Manalo, Marianne Mikko, Maya Morsy, Ana Pelaez Narvaez, Elgun Safarov, Natasha Stott Despoja, Genoveva Tisheva and Jie Xia.

(a) transfer her to a non-custodial arrangement with regular access to health professionals; (b) have her claim of being a victim of human trafficking and her current health situation evaluated by experts; and (c) refrain from removing her to her country of origin while her communication was under consideration by the Committee.

### **Facts as submitted by the author**

2.1 On 7 July 2019, the author was arrested by a police patrol in Prague owing to allegations of theft in a local supermarket. She first gave the police a false name and date of birth but disclosed her real identity after the Japanese embassy was contacted. On the same day, the police issued a deportation order, including a one-year entry ban to the European Union. For the purpose of administrative expulsion, she was transferred to the immigration detention centre of Bělá-Jezová, where she has been detained since that day. The police justified the detention by the fact that she did not present any valid identity document or visa and that she could try to escape.

2.2 On 7 August 2019, the author appealed the decision of her deportation and explained that two years before, in Japan, she had been drugged without her knowledge (by drinking tea) during a job interview. When she woke up, she realized that she had been tricked by what she describes as “mafia networks”. While unconscious, she was raped and pictures of her body were taken. She was forced into prostitution, under the threat that the pictures would be published. The author stresses that given the traditional culture of Japan, she was afraid to resist and feared that her father would kill or banish her should the pictures be published. She was beaten at some point by the “mafia”. She went to the Japanese police and was told that forced prostitution had been abolished and that they could not help her. The “mafia” gave her false identity documents and sold her abroad.<sup>1</sup> The author travelled from Turkey to Morocco where she was forced to recruit other women. She managed to escape and fled to Europe. The author tried to regularize her situation in the Netherlands where she applied for resident status and asked to be recognized as a victim of human trafficking. The authorities of the Netherlands reviewed her case but refused to grant her the status of a victim of human trafficking and to include her in a protection programme.<sup>2</sup> She then left the Netherlands and travelled without documents within different European countries until she reached Czechia in July 2019.

2.3 Owing to aggressive behaviour, the author was hospitalized without her consent in the Kosmonosy Psychiatric Hospital between 25 and 31 July 2019. She was examined repeatedly by various health professionals upon her own request and the request of the ombudsperson. The medical examinations established that the author suffered from a long-term mental health condition which deteriorated rapidly in situations of external stress, notably involving deprivation of liberty. She suffered from combined eating disorders (anorexia and bulimia) and other forms of psychological disorders<sup>3</sup> and was rapidly losing weight.<sup>4</sup> The health-care professional noted a direct correlation between her detention and her current mental and physical health status. It was stated that “in case of progression of malnutrition, serious complications and even death may arise”. Moreover, the author had been previously diagnosed with a mild form of Asperger syndrome.

2.4 According to the author, during her hospitalization and at the detention centre, she was subjected to coercive behaviour, including the “use of security belts” and

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<sup>1</sup> The communication mentions that the author was sold “probably in Bulgaria or Turkey”.

<sup>2</sup> The author does not know the reasons for the refusal.

<sup>3</sup> Namely, dysphoria, resonance, considerable tension, negativism, affective lability, marked paranoia, delusionality, divisive thinking and inability to maintain one line of communication.

<sup>4</sup> On 16 October 2019, it was stated in a medical report that she weighed 37 kg and that her height was 164 cm.

sedatives without her approval. Since this reminded her of other traumatic events, she refused further hospitalization and agreed to ad hoc examinations. On 28 August 2019, in a second medical report, it was stated that her health had deteriorated and that she was “clearly suffering due to her stay in detention” and that “it would be appropriate to release her”. On 30 September 2019, a third medical report was issued in which it was stated that the author had been expressing suicidal thoughts and that hospitalization at the Kosmonosy Psychiatric Hospital would be appropriate.

2.5 On 3 October 2019, the Regional Police Directorate of Prague issued a second detention order prolonging the author’s detention for an additional 60 days in the Bělá-Jezová detention centre. The decision stated that, after verification, the Japanese authorities had indicated that there was an arrest warrant issued against her owing to alleged use of false identification in Japan. On 16 October 2019, upon the recommendation of the ombudsperson, the author was examined at the General University Hospital in Prague. It was stated that she suffered from severe malnutrition and atypical eating disorders which necessitated psychiatric treatment. However, on 29 October 2019, contrary to the other assessments, the general practitioner at the detention centre stated that the author’s life was not in danger. Further examination by an expert registered with the court was considered to be more appropriate than long-term hospitalization.

2.6 On 1 December 2019, the police extended her detention by 30 days and stressed that her deportation would occur between 16 and 20 December 2019, without a further medical examination being requested.

#### *Exhaustion of remedies*

2.7 The author’s appeal of 6 August 2019 of the legality of her detention before the Prague Municipal Court was denied on 20 August 2019. Her appeal of 29 August 2019 to the Supreme Administrative Court was dismissed on 13 November 2019. While the author could have challenged this decision before the domestic Constitutional Court, she maintains that the proceedings would have taken several months, which would not be appropriate in her case, and that lodging a constitutional complaint was therefore not an effective remedy.

2.8 On 14 October 2014, she filed a second appeal against her detention, presenting her medical reports and requesting an assessment of her mental health by an expert registered with the court. The Prague Municipal Court heard her on 29 October 2019, without ordering an assessment by a medical expert, and dismissed her case. On 27 November 2019, the author appealed the decision, which is pending.<sup>5</sup> The author petitioned the police authorities on three occasions. The petitions were all dismissed and on 29 November 2019, she filed another request for an administrative review with the Regional Police Directorate of Prague. The decision is pending.<sup>6</sup>

2.9 In respect of the deportation, the author filed an appeal on 16 July 2019, which was dismissed. She then appealed at the Regional Court and later at the Supreme Administrative Court on 27 November 2019. The latter appeal is pending. Since her deportation is planned and enforceable by the police, the author does not believe that any of the mentioned legal actions could provide her with effective remedy.

2.10 The author submitted a request for interim measures to the European Court of Human Rights which was denied on 6 December 2019. The author argues that as she

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<sup>5</sup> At the time of submission of the communication to the Committee.

<sup>6</sup> At the time of submission of the communication to the Committee.

had not submitted a full application to the European Court of Human Rights,<sup>7</sup> the matter has not been examined by the Court.

### **Complaint**

3.1 The author claims that the severity of her health situation, as well as her vulnerability as a victim of human trafficking, has been continuously disregarded by the authorities of the State party. She stresses that this is due to the deeply embedded stereotypes associated with eating disorders and human trafficking victims. As a woman and an undocumented foreign national with a long-term history of serious mental health disorders, who is currently malnourished and at risk of serious damage to her health and to her life and who is without access to adequate health professionals, her continued stay in detention and her deportation are putting her at real risk of severe and irreparable harm, including long-term physical and mental health consequences leading potentially to her death. She outlines that her detention is in violation of article 12 in conjunction with article 2 of the Convention. The failure to establish her status of victim of human trafficking during the deportation proceedings violates her rights under article 6 in conjunction with article 2 of the Convention.

3.2 She adds that at no point in the proceedings did the police take a sufficient initiative to verify her health status. She claims that there is a real risk of serious and irreparable harm if she is not released and transferred to a non-custodial environment where her health condition could be treated as soon as possible, as well as if she is deported without verification of her claims of being a victim of human trafficking and without establishment of her status by experts.

### **State party's observations on admissibility and the merits**

4.1 On 15 June 2020, the State party submitted its observations on admissibility and the merits. It recalled the author's contention that the State party had violated her rights under article 6 of the Convention, by not exercising due diligence in considering her status as a victim of sexual violence and human trafficking when deciding on her detention and expulsion, and under article 12, by contravening the prohibition of gender-based discrimination, especially concerning access to health care, as the specific ailment she suffers from is gender dependent. She claims that the authorities disregarded her deteriorating mental and health condition during her detention and did not provide access to specialized medical care, thereby putting her life in jeopardy, which constitutes a form of torture.

4.2 In this regard, the State party notes that the specifics of the violations are not detailed and indicates that the exact scope of the alleged violations and the necessary examination remain uncertain. The State party argues that as the author has shown a loss of interest and has lost contact with her legal representatives, the communication could be discontinued.

4.3 The State party challenges the author's allegations that during her expulsion and detention processes, the domestic authorities violated her rights under article 6 of the Convention by not acknowledging her status as a victim of trafficking in women and sexual exploitation, despite their duty to validate or refute her status. Under article 6 of the Convention, States parties are obliged to take comprehensive measures to eliminate all forms of trafficking in women and exploitation of women in prostitution.

4.4 Concerning admissibility, the State party argues that the author's claims should be deemed inadmissible owing to (a) the failure to exhaust all possible domestic

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<sup>7</sup> The author provides a copy of her exchanges with the European Court of Human Rights.

remedies; (b) incompatibility with the subject matter; and (c) the claims' being baseless and unfounded.

4.5 The State party notes that, in accordance with article 4 (1) of the Optional Protocol, it is essential for the author to exhaust all available domestic remedies unless they are prolonged or ineffective. Authors must fully utilize the available and effective domestic legal solutions that allow them to seek rectification before approaching the Committee. The State party argues that the author failed to exhaust all domestic solutions against her expulsion or detention. The State party contends that the author could have used various remedies, both preventive and compensatory, related to her claims of being a human trafficking victim.

4.6 The State party argues that the author could have sought remedies for expulsion, including a petition to an administrative court, an application for international protection under the Asylum Act or an application for a residency permit owing to her status as an alleged victim. However, she failed to make timely applications or use these options effectively.

4.7 Concerning detention, the State party argues that the author could have sought preventive remedies such as a constitutional appeal or application for international protection under the Asylum Act. She lodged a constitutional appeal only after communicating with the Committee and did not apply for international protection. The State party highlights that the author did not use any compensatory domestic solution, such as the State Liability Act, which could have provided redress for unlawful detention decisions.

4.8 The State party asserts that an administrative petition challenging the deportation order issued against her was available to the author. The author did submit an administrative petition and made errors regarding the venue and timing. Despite the error related to the venue, the Prague Regional Court sent the petition to the appropriate venue, the Prague Municipal Court. However, because the petition was filed late, the Prague Municipal Court could not review it on its merits, leading to the final and enforceable status of the deportation order. If the petition had been submitted on time with valid claims, the court could have reversed the expulsion decision. Furthermore, the State party notes that, even if the petition was rejected, the author had rights to multiple avenues of appeal, including the Constitutional Court. The State party also notes that the courts do consider human trafficking risks when reviewing decisions of the police on expulsion of foreign nationals.

4.9 The State party contends that owing to not having filed the petition on time, the author failed to utilize all available domestic remedies. Furthermore, the author never raised claims of gender-based discrimination or human trafficking during domestic proceedings, making her claim to the Committee inadmissible.

4.10 The State party notes that the author never applied for international protection in Czechia despite having been advised of this option, and the risk of her secondary victimization by the mafia in her home country. The State party also notes that, if she had applied, her expulsion would have been halted until the proceedings for international protection were concluded. The State party thus contends that the application for international protection would have been an effective remedy against expulsion, which the author did not pursue.

4.11 Regarding the extension of the author's detention, the State party notes that the proceedings on an appeal are still pending, further undermining the author's case for admissibility, as not all domestic remedies have been exhausted.

4.12 The State party notes that in article 4 (2) (b) of the Optional Protocol, it is stated that communications incompatible with the provisions of the Convention will be inadmissible. The State party contends that proactive screening for every individual

to determine if that individual is a victim of trafficking or sexual violence is not necessitated under article 6 of the Convention. Only when an individual presents a plausible, substantiated claim should the State verify or deny that person's status as a victim. The author's claim of being a victim of sexual violence and trafficking was noted by domestic authorities. However, the State party believes the claim, given its context, was not adequately substantiated, deeming it expedient and speculative. The State party asserts that States have wide discretion in determining their mechanisms for identifying victims. The key is having an effective identification mechanism, which the State party claims to have.

4.13 The State party notes that under article 4 (2) (c) of the Optional Protocol, it is stated that a communication will be declared inadmissible by the Committee if it is clearly without foundation or not adequately backed up. The State party emphasizes that the internal findings brought forth during the expulsion and detention processes did not support the author's claim of being a potential victim. The State party therefore argues that there were never any valid suspicions regarding victim status in the context of her expulsion and detention. As the issue of a potential breach of article 6 of the Convention, owing to the non-consideration of the status of victim of human trafficking during the expulsion and detention processes, is intertwined with the overall merit of the communication, the State party has looked to the merits of this issue.

4.14 As to the merits, the State party stresses that it had never prejudged how domestic authorities might have assessed the author's claim for protection under the Asylum Act or the Residence Act, had she provided a plausible declaration of being a human trafficking victim. Administrative courts did not review the author's deportation owing to errors by her legal counsel. The police, when processing the expulsion, continually checked for signs that someone might be a victim of human trafficking or sexual violence. According to the State party, the author's claims, when contrasted with police findings, appeared speculative and self-serving. The author's assertions, for example, of having a travel document under a false name and travelling without a valid document, were refuted by police findings. The author also tried to present herself as a human trafficking victim in the Netherlands without success.

4.15 The State party highlighted several discrepancies in the author's narrative, including contradictions regarding her travel document; intentions to secure, unnecessarily, a new document in Berlin, when Japan had a diplomatic mission in Prague; the non-alignment of the author's profile with typical profiles of human trafficking victims; the author's cooperative behaviour and mental stability during the proceedings; the eventual discovery of her real identity and the inconsistencies in her story; her previous failed claim in the Netherlands and the possibility that the story had been rehearsed; evidence suggesting that she was avoiding a return to Japan owing to an existing arrest warrant; proper police procedures in the presence of indications of human trafficking; the possibility of identification as a victim through international protection procedures; and the potential for identification through non-governmental organizations or specialized organizations.

4.16 The State party underscores that non-governmental organizations cooperate with domestic authorities for the purpose of identification of potential victims. In this case, no suspicions arose regarding the author's being a trafficking victim and no documents were provided by any specialized organization to support her claims. Thus, she could not be granted victim rights.

4.17 The State party notes that the decision to detain the author was made by the same authority that decided her expulsion, with the State party emphasizing the author's unreliability based on her inconsistent claims and the available evidence against her. The State party points out that the first-instance police authority had considered measures alternative to detention but given the circumstances, such as the

author's false information, an arrest warrant and her stay in countries belonging to the European Union without seeking protection, those alternatives were ruled out.

4.18 The State party's observations on article 12 of the Convention concern the author's allegations that the domestic authorities violated the Convention by not properly considering her health during her detention. Specifically, the author claims that she was not transferred to an appropriate facility for treatment and lacked access to specialized health care. The State party refutes those claims.

4.19 As to admissibility, the State party argues that the author's complaint should be declared inadmissible owing to her not having exhausted all available domestic remedies and the complaint's being manifestly ill founded.

4.20 The author's main grievances are the lack of a proper examination of her health during detention and not having been transferred to a suitable health facility. The State party distinguishes, however, between the provision of adequate health care and the consideration of health in decisions about detention, arguing that the release from detention does not necessarily result in an improvement in health.

4.21 The State party notes that the only remedies the author sought went against the decisions of the police authority and a request to end her detention. The State party argues that remedies chosen by the author were seen as unsuitable since they did not directly address the alleged breach of the Convention regarding health-care provision. While the domestic authorities could consider whether her health was too poor for detention, they could not ensure adequate health care.

4.22 The State party argues that the author had preventive and compensatory remedies available to address the claim of inadequate health care during detention, positing that the available remedies align with requirements of adequacy and effectiveness under the Convention.<sup>8</sup> The State party argues that if the author had believed her health care was insufficient, she could have lodged a complaint with the Ministry or against the health service provider under the law on health services and could have approached the Constitutional Court thereafter.

4.23 The State party emphasizes that the author had the opportunity to challenge the decision concerning her detention through a constitutional appeal based on a violation of fundamental rights. The State party notes that the author filed a constitutional appeal against her detention after reaching out to the Committee, implying that the author recognized the appeal as an effective remedy. If the Constitutional Court recognizes a violation of the author's rights, she can pursue satisfaction for an unlawful decision and seek compensation.

4.24 Regarding the extended detention, the State party notes that an appeal process is ongoing. The State party also notes that the Supreme Administrative Court has, in the past, reversed decisions on the extension of detention, especially when the detainee's health is a significant factor. The State party therefore argues that the appeal process should be seen as an effective remedy.

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<sup>8</sup> The State party indicates that on 2 December 2019, the Ministry medical institution provided information about the author's health in connection with the author's request for the European Court of Human Rights to issue an interim measure. According to this information, the author's health improved: she visited the surgery twice a day on a regular basis and was taking the recommended medicines and substitute nutrition in the form of nutritional drinks (Nutridrink Compact Protein and Nutridrink Compact, whose flavours she selected), which helped *prima facie* to stop weight loss (she still refused to be weighed). Hospitalization was not needed. Her condition was stabilized, her life was not put at risk and she was fit for air transfer to Japan.

4.25 The State party argues that the author approached the Committee prematurely, regarding both the duration of her detention and the consideration of her health, and that the Committee should thus find the author's claims inadmissible.

4.26 On the merits, the State party notes that States are obliged to eliminate discrimination against women in the context of women's access to health-care services, ensuring that they have the right to health care. Focus should be placed on vulnerable groups such as migrant women, refugee women and those with mental disabilities. Quality health-care services should be ensured, including informed consent, confidentiality and sensitivity to women's needs. Coercion is prohibited. States have a duty to protect the well-being and health of individuals in their custody and provide the required adequate medical care.

4.27 The State party asserts that the author was given adequate general and specialized health care, with regular examinations, medication, and dietary adjustments, as required. The State party maintains that it treated the author equitably and denies any breach of article 12 and other, associated articles of the Convention with respect to health-care provision.

4.28 The State party insists that the author received suitable medical care during her detention, even when she refused to cooperate with the medical staff. The State party contends that coercion in treatment would have been inappropriate unless the author had been at immediate risk. The State party emphasizes that the author was in a facility intended for women and other vulnerable groups, with access to primary health care and specialized services, if required. From 25 to 31 July 2019, the author received specialized care in a hospital for a psychotic disorder and was released in a stabilized condition. She was assessed on several other occasions, with treatments provided as needed. The State party therefore rejects the claim that the care provided to the author was inadequate or biased and states that the author received specialized care, although she often refused further cooperation.

4.29 Regarding the author's detention, the State party notes that detention should be used only in exceptional cases, for limited periods and based on individual necessity and reasonableness. Detained individuals should have remedies for challenging their detention, and conditions should adhere to international human rights standards. The State party notes that failing to address the specific needs of women in detention might constitute a breach of the Convention.

4.30 The State party notes that while detention for administrative expulsion of foreign nationals is permissible, factors such as individual circumstances and potential evasion should be considered. If an individual claims trauma, depression or maltreatment due to detention, the individual must show an exacerbating factor beyond typical detention conditions. The State party acknowledges that detaining a mentally ill person without providing necessary care might violate their rights, especially if it results in irreversible damage.

4.31 The State party acknowledges the psychological distress that detention can cause, especially when a person is to be expelled to a country where that person faces legal repercussions. The State party insists, however, that the author was housed in a facility designed for vulnerable individuals. The facility had been renovated in 2015 to be less prison-like, with detainees being provided with amenities and privacy. The decision to detain the author was based on individual circumstances, which included providing a false identity, the existence of an arrest warrant in her country of origin and unauthorized stays in multiple countries.

4.32 The State party claims to have considered the author's health during her detention. The State party contends that, while initial evaluations indicated no health issues, her health was monitored and addressed throughout her stay. Even later



medical reports did not suggest an immediate risk to the author's life or severe health complications. It was noted, however, that continued malnutrition might lead to complications but the author declined further treatment. The possibility of using less severe measures instead of detention was considered, but the author's lack of accommodation or funds in Czechia made this infeasible. The State party concludes that the author's health was considered consistently and there was no indication of gender-based discrimination.

4.33 In the light of the above, the State party requests that the Committee declare the communication inadmissible in relation to the alleged violation of article 6 of the Convention for the non-exhaustion of domestic remedies, for being incompatible *ratione materiae* and for being manifestly ill founded or not sufficiently substantiated. In the absence of such a finding, the State party requests that the Committee hold that article 6 was not violated. Similarly, the State party requests that the Committee declare the alleged violation of article 12 inadmissible owing to the non-exhaustion of domestic remedies, for being incompatible *ratione materiae* or for being manifestly ill founded or not sufficiently substantiated. In the absence of such a finding, the State party requests that the Committee hold that article 12 in conjunction with article 2 of the Convention was not violated.

#### **Author's comments on the State party's observations on admissibility and the merits**

5.1 The author's legal representative provides evidence of their communication with the author through emails and letters. The representative explains that the author has given full and informed consent to the continuation of the proceedings in her absence and that her mental health status and the circumstances of the case may make it difficult for her to maintain regular contact.<sup>9</sup>

5.2 The representative provides information about further developments in the author's case since the initial submission. The new developments encompass additional information relating to the circumstances of the author's deportation; additional documents obtained from the Kosmonosy Psychiatric Hospital relating to the author's first hospitalization, which may explain the reasons for later non-cooperation with other health experts; the ombudsperson's assessment of her complaint; a judgment of the Supreme Administrative Court relating to the first prolongation of her detention; a judgment of the Constitutional Court relating to the initial decision to detain her; and the application for compensation for non-pecuniary damage under the State Liability Act.

5.3 The ombudsperson's report<sup>10</sup> on the inquiry into the detention of vulnerable persons for the purpose of deportation points, in the case of the author, to several failures of the authorities: in deportation and detention proceedings, there is generally no effective mechanism in place to identify victims of trafficking and to address their claims of being victims of trafficking; the police did not take the necessary steps to verify whether the author was a victim of trafficking in human beings as soon as they became aware that this might be the case; the police did not identify in a timely manner the author's vulnerability with respect to her health problems and disabilities, including autism and an eating disorder; the police did not determine on time that the detention had become illegal and contrary to the obligations under article 3 of the European Convention on Human Rights; the detention had reached a level of ill treatment; an effective mechanism for detecting various forms of vulnerability cannot be limited to the initial stage of the proceedings (that is, to the first detention

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<sup>9</sup> In August 2023, the Secretariat requested information from the author's representative regarding the last contact with the author (it dates from 2021).

<sup>10</sup> Dated 18 February 2020.

decision); and even when prolonging the detention, the police are obliged to examine whether new facts have emerged which could affect the lawfulness of the continuation of detention. While the author's detention between 3 October and 16 December 2019 was later found to be unlawful by the Supreme Administrative Court, the ombudsperson's report suggests that the detention had ceased to be lawful at an earlier date.

5.4 On 16 December 2019, the author applied for preliminary measures with the Supreme Administrative Court, which was at that time reviewing her cassation complaint in respect of the second detention order. This petition was dismissed by the Court on 19 December 2019.

5.5 On 20 July 2020, the Constitutional Court dismissed the author's constitutional complaint (relating to her detention) as manifestly ill founded. In the view of the Constitutional Court, the author has not been exposed to inhumane or degrading treatment as a result of her detention.

5.6 On 21 May 2020, the Supreme Administrative Court quashed the decision of the Prague Municipal Court of 3 October 2019 on prolonging the author's detention. The Supreme Administrative Court argued, inter alia, that in the proceedings relating to the prolongation of a person's detention, the police are obliged to consider the detainee's vulnerability when new information suggesting vulnerability concerns arise. The Court pointed out that victims of human trafficking are not obligated to inform the police of their status during the first encounter or to present any proofs in support of their claims. In the case of persons who claim to be victims of trafficking, the authorities should use trained staff to identify those victims in accordance with article 10 of the Council of Europe Convention on Action against Trafficking in Human Beings. The Supreme Administrative Court stated that, owing to her deteriorating health status, the author should have been transferred to an alternative facility, specifically the Zastávka reception centre, which can serve as an alternative to detention.

5.7 Following the decision of the Supreme Administrative Court relating to the first prolongation of the author's detention, on 9 November 2020, her representative filed on behalf of the author a request for compensation for non-pecuniary damage under the State Liability Act.<sup>11</sup> The results of these proceedings are pending.

5.8 The representative argues that the author's experience during her hospitalization in the Kosmonosy Psychiatric Hospital had led to her later refusal to cooperate with the medical authorities, as the treatment received can be categorized as degrading under international standards and in violation of domestic law. The author was accompanied to the hospital by about five security guards, both men and women. She was under the impression that the visit was an ad hoc outpatient visit, not one that would lead to hospitalization. She claimed that she had not been informed about the purpose of the visit. She did not remember signing any documents or consent form prior to the visit or the hospitalization. She had a short conversation with the doctor in the waiting room. Afterwards, she was placed in the room made ready for her, without any further examination prior to her placement, and no information was provided to her regarding the purpose of the placement or its length. She believes that she was provided with sedatives, after which she slept for about 2.5 days. She was confined to the bed with security belts to limit her freedom for at least three days at the time of her entry into the hospital and later for at least one additional day during her stay. During the initial period when the security belts were used, she was not allowed to go to the bathroom and she had no option but to wet herself on at least one occasion. She found these circumstances very stressful, as she was paying a great deal

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<sup>11</sup> Law No. 82/1998 Coll., Act on Liability for Damages Caused in the Exercise of Public Powers by a Decision, or Improper Official Conduct.

of attention to her hygiene. Such treatment would be deeply degrading and humiliating for any human being, let alone a person with several pre-existing vulnerabilities who, owing to language and cultural barriers as well as her mental health condition, has limited opportunities to communicate with the personnel to make her needs known. The author's account corresponds to the information in the medical file and explains the low level of her trust in the health personnel in general.

5.9 Moreover, the author has been provided with various types of medical tranquilizers. Without questioning whether the use of such medication was appropriate for her health condition, it is important to view this event in the context of the author's story of how she became a human trafficking victim. She claimed to have been provided with sedatives in her tea, after which she fell asleep, was raped and had pictures taken of her nude body. In consequence, an event in which she was provided yet again with sedatives without her consent must have been traumatizing for her, as it reawakened memories of the past trauma. The author later refused to cooperate with health authorities and refused further hospitalization.

5.10 The author has been deprived of legal representation in proceedings relating to the legality of her forced hospitalization. It was possible for the District Court in Mladá Boleslav to assess only the legality of forced hospitalization but not the legality of the use of security belts. The author was informed that if she did not chose a legal representative within three days, the court would appoint an attorney-at-law as her guardian. However, as the author had been released on 31 July 2019 (that is to say, five days after her hospitalization), on 1 August 2019, the District Court in Mladá Boleslav decided to discontinue the proceedings. It accordingly did not appoint a guardian or legal representative for the author. This mistake irreversibly affected the author's ability to challenge the legality of her forced hospitalization. The failure of the medical professionals to inform the court about the use of security belts and the failure of the District Court to appoint a guardian for the forced hospitalization proceedings have irreversibly affected the author's right to obtain a judicial review of the legality of her forced hospitalization and the use of security belts.

5.11 At the beginning of August 2019, employees of a specialized organization were invited, upon the author's consent, to conduct an identification interview with her. Based on the interview, they could not decisively ascertain whether the author was a victim of human trafficking. Their inability to confirm or refute the author's assertion of her status was influenced by her mental health and the fact that she came from a region where the specialized organization did not have much experience. As of 7 August 2019, the police had knowledge of the fact that the author might be a victim of trafficking. Until her deportation, however, the police did not take any steps of their own to verify or refute her claims. In consequence, it has never been proved beyond a reasonable doubt that the author was not a victim of human trafficking.

5.12 The representative refutes the State party's arguments regarding the exhaustion of domestic remedies and elaborates on the exhaustion of domestic remedies in relation to violations of the author's rights under articles 6 and 12 of the Convention. The author challenged her detentions through court reviews and administrative remedies. With regard to the first detention order, the author pursued legal action but her lawsuit was dismissed by the Prague Municipal Court and subsequent appeals were rejected by the Supreme Administrative Court and the Constitutional Court. The representative highlights the delays in the process and the author's efforts to seek redress. Similarly, with regard to the second detention order, the author engaged in legal processes but the remedy came too late to have a practical effect, as she had already been deported to Japan. The author also sought administrative remedies, including submitting complaints to the ombudsperson and requesting administrative reviews of her detention. However, these avenues were limited by legal provisions,

as the ombudsperson lacked the authority to order her release and the administrative review process was constrained by timelines.

5.13 The author's efforts to obtain effective remedies were hindered by the delays in court proceedings and the questionable conduct of the police. The representative underscores the author's comprehensive efforts to exhaust all available domestic remedies. The delays and limitations within the domestic system prevented her from obtaining timely and effective relief for the harm that she had experienced. The representative emphasizes that by the time of filing the communication to the Committee, the author had utilized all remedies available to her up to that point.

5.14 On 7 July 2019, the first-instance police authority issued a deportation order with a one-year entry ban for the author, who was detained on the same day. The author appealed this decision on 16 July 2019. On 7 August 2019, she provided additional reasoning, disclosing her victimization due to human trafficking in her country of origin and outlining her exploitation by "mafia networks" in Japan, including being drugged, sexually assaulted, coerced into prostitution and photographed nude. The police were aware of the possibility that the author might be a trafficking victim but failed to verify her claims before her deportation. Under the Residence Act, the police were required to seek a binding opinion from the Ministry of the Interior regarding her potential departure from the State party. This opinion was based on initial police interactions and the subsequent appeal process, without direct interviews conducted by the Ministry. The Ministry's opinion confirmed the feasibility of the author's deportation based on the information provided. The author contested this decision through the legal system, yet her lawsuit was dismissed owing to a procedural oversight. Her cassation complaint was rejected by the Supreme Administrative Court without a delving into the merits and she was not provided with a legal representative owing to the Court's belief that her complaint would not succeed. The author's legal representative emphasizes the challenges faced owing to limited time and resources.

5.15 The representative argues that despite procedural complications, the domestic courts were obligated to consider the case on its merits. Authorities failed to adequately investigate the trafficking claims or conduct a comprehensive review. Given the exhausting of all avenues for administrative and judicial review, the author's submission is deemed admissible for the deportation proceedings. The representative highlights the systemic deficiencies in police and court procedures which hinder protection for trafficking victims who do not immediately disclose their situation.

5.16 In conclusion, the author's submission should be considered admissible for the deportation proceedings, given that she pursued various avenues of review. The author's case underscores the authorities' failure to verify her trafficking claims and emphasizes the obligation of domestic courts to address cases based on their merits. The case also exposes gaps in the system's ability to protect victims of trafficking who delay disclosing their experiences.

5.17 The representative further challenges the accessibility and effectiveness of the alternative remedies suggested by the State party in relation to the author's detention and deportation. These proposed measures include applying for asylum, seeking a protection residence permit and claiming damages under the State Liability Act. The representative argues that these alternatives were either inaccessible to the author or unlikely to be effective, given the circumstances of the case.

5.18 The State party suggests that as a preventive remedy, the author could have applied for international protection under the Asylum Act to alleviate her situation. However, as highlighted by the representative, there were barriers that made this remedy inaccessible and ineffective. The Asylum Act requires that an individual detained must apply for asylum within seven days of having been informed by the

police. However, this short time frame, combined with the shock and stress of detention, prevents individuals from making informed decisions. Limited access to information due to technical difficulties and language barriers further complicates matters. Although there is a provision for belated applications, it is rarely accepted unless there are extraordinary circumstances. The author's vulnerability due to her trafficking victimization makes the seven-day deadline unrealistic. Despite the access to legal counselling, the time constraints hinder informed decision-making, particularly for those facing acute mental distress. Even when the author consulted a lawyer, her disoriented state and lack of trust in authorities affected her decision-making. Therefore, the remedy of applying for international protection was practically inaccessible owing to the short deadline and the author's emotional state.

5.19 Even if the author would have managed to apply for international protection, the representative questions its effectiveness. Vulnerable groups, such as victims of trafficking, are subject to special attention under the Asylum Act. However, identification by the Ministry of the Interior of vulnerable individuals is limited to minors and families with children, leaving victims of trafficking overlooked. Even if those victims are identified, doubts about their credibility arise if their statements differ from the content of initial police interviews. The reliance of the Ministry on police files and doubts cast on the credibility of asylum-seekers limit the effectiveness of the asylum procedure. Moreover, the overly restrictive asylum and migration policy of the State party makes obtaining international protection highly unlikely, given the low approval rates.

5.20 In conclusion, the author's ability to apply for asylum was hindered by the short deadline and her vulnerable state. Even if she had managed to apply, the effectiveness of the asylum procedure in addressing her detention or deportation concerns would be questionable owing to the flawed identification process and the broader restrictive policies.

5.21 The representative dismisses another potential avenue for improving the author's situation pointed out by the State party, notably, inclusion in the Support Programme, which offers assistance to victims of human trafficking. The State party omitted crucial details, rendering this option impractical for the author. Inclusion in the Support Programme requires fulfilment of specific criteria and cooperation with law enforcement, requirements which the author could not have satisfied owing to the unique circumstances of her trafficking experience.

5.22 Another option suggested by the State party is applying for a long-term protection residence permit. This permit is intended for trafficking victims who are cooperating with authorities in criminal proceedings. However, yet again, the author's situation did not align with the criteria, as her trafficking occurred outside the State party. Her inability, being in detention, to initiate proceedings further complicated this option.

5.23 Ultimately, there's no other established procedure in the State party for identifying trafficking victims outside of criminal investigations. This leaves the author trapped in a systemic protection gap, unable to access effective remedies. In summary, both the Support Programme and protection residence permit options were unavailable and inaccessible to the author given their specific circumstances and her detention status.

5.24 The author sought damages as a compensatory remedy for her unlawful detention from 3 October to 16 December 2019. She applied for compensation under the State Liability Act after the Supreme Administrative Court ruled her detention unlawful. The Act requires a competent authority to deem a decision unlawful before a claim for compensation can be made. The author's application for damages was delayed while the legal representative re-established contact to inform her of

developments. However, the author could seek damages only for the specific period stated, as preceding periods were deemed lawful by domestic courts. The author couldn't claim damages for forced hospitalization or deportation since no domestic court had declared them unlawful. Seeking a decision from the Committee is vital for the author in claiming compensation for the detention period. The finding of a violation by the Committee could impact the compensation amount. The author considers alternative remedies proposed by the State party to be unavailable, inaccessible or ineffective for her case.

5.25 As to the State party's assertion that the author's submission is inconsistent with the Convention (*ratione materiae*), the author's representative refers to the State party's obligations under the Convention on the Elimination of All Forms of Discrimination against Women, as defined by several general recommendations of the Committee, including general recommendation No. 38 (2020) on trafficking in women and girls in the context of global migration.<sup>12</sup> In general recommendation No. 38, the Committee notably emphasizes that all women, regardless of status, are subject to the obligations of States under the Convention. In general recommendation No. 38, the Committee highlights the obligation to identify marginalized women and girls, including migrants and refugees, as rights bearers and states that States should ensure the dignity, protection and fulfilment of rights throughout displacement and facilitated access to asylum procedures for trafficking victims; underscores that migration, particularly if irregular, can put at risk women's rights and that States must balance border control with human rights obligations; and calls for nuanced anti-trafficking responses and gender-sensitive migration frameworks. Victim identification and protection, with a focus on gender sensitivity by professionals, are crucial. The author's situation aligns with these concerns, showing non-compliance in her treatment and protection, as her claims were not adequately addressed, and that she was not treated as a trafficking victim despite her claims and evidence.

5.26 The representative highlights key points of the case in the context of general recommendation No. 38 on trafficking in women and girls: trafficking victims hold a special status, with rights to assistance and protection from the State; identification is crucial for implementing those rights under national law; trafficking victims require immediate support services but often face restricted access and a lack of comprehensive victim-centred assistance; while the author's claims align with the need for such services, specialized care was not provided owing to her claim's being disregarded by the authorities; eliminating discrimination in health-care access is crucial, particularly for trafficked women at risk of physical and psychological harm, and language and cultural barriers and fear of retaliation hinder access; the applicant did not receive adequate health care despite her mental health challenges and potential trafficking victim status; authorities must enhance early detection capacity of trafficking by professionals and provide protection and support for victims during identification processes; government training for identifying trafficking victims was lacking, leading to the applicant's not being identified and receiving inadequate care; protection and assistance should not be conditional upon cooperation with law enforcement and victims must be protected against further rights violations; the applicant's treatment was not in line with these principles; she faced retraumatization and inadequate care; States should provide linguistic and culturally appropriate emergency and longer-term medical and social services accessible to all trafficking victims, regardless of immigration status; adequate resources should be allocated for shelters and crisis centres, with trained staff to assist women victims of trafficking; victim assistance should be unconditional and respectful of cultural identity and should provide support for building independent lives; human rights of women who are victims of trafficking must be safeguarded, including protection from

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<sup>12</sup> In draft form at the time of submission.

retraumatization during legal and administrative procedures; the applicant's experience demonstrated a lack of required care and respect for her dignity by authorities; women who are victims of trafficking should not be detained or charged for irregular entry or stay resulting from their situation as victims of trafficking; the author's detention and the subsequent proceedings violated this principle; justice systems can violate women's rights and require effective legal services frameworks for addressing gender-based violence, with consideration for diversity among victims; and the approach of the authorities to the author's claims did not consider that diversity and violated her rights under the Convention.

5.27 The representative refers to other pertinent general recommendations of the Committee. In general recommendation No. 32 (2014) of the Committee on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women, it is underscored that under the Convention, women are safeguarded against gender-based discrimination which extends to all women requiring international protection, encompassing situations such as armed conflicts and trafficking. Gender sensitive interpretation is crucial in refugee scenarios; and violence against women, including trafficking, constitutes persecution. States should ensure equitable, impartial asylum procedures for women and adopt a gender sensitive approach. Gender can be a basis of recognition of social groups for granting refugee status. Adequate training in gender sensitivity for border police and immigration officials is essential for identifying and assisting women in need of international protection. Gender-related persecution is inherent to trafficking; and victims should be able to access asylum procedures without prejudice. The establishment of screening mechanisms for identifying women with specific protection needs is recommended. In its general recommendation No. 35 (2017) on gender-based violence against women, updating general recommendation No. 19, the Committee underscores the interconnection between discrimination against women and factors such as migration status, deprivation of liberty and trafficking. Violence against women assumes diverse forms; and detention leading to deteriorating health can be construed as arbitrary deprivation of liberty and violence. States hold responsibilities in combating gender-based violence, including offering legal protection and reparations to victims. Establishment of effective measures to shield women complainants and witnesses of violence is advised. In its general recommendation No. 24 (1999) on women and health, the Committee focuses on women's health; in this regard, States ought to eliminate discrimination and guarantee health services tailored to women with disabilities. Detention exacerbating the author's health condition underscores inadequacy of care during detention. In conclusion, the compatibility of the author's communication with the provisions of the Convention implies that it should not be deemed inadmissible *ratione materiae* under the Optional Protocol to the Convention.

5.28 Further, the representative contests the State party's argument that the submission lacks a strong foundation and thus is insufficiently substantiated. The representative reiterates that the author's rights have been violated under articles 2, 6 and 12 of the Convention owing to the actions and omissions of State authorities and summarizes the key points made previously: The authorities ignored the author's serious health condition and her vulnerability as a potential victim of trafficking during detention and deportation proceedings; detention worsened her health and posed a risk to her physical and mental well-being; the worsening of her health was directly linked to detention and the authorities failed to adequately address her vulnerability; the police showed bias and a reliance on stereotypes in handling her case, dismissing her claims as manipulative; the author's status as a trafficking victim remained unverified, as the authorities did not adequately establish it; police lacked proper mechanisms for identifying trafficking victims during deportation and detention proceedings; the author's vulnerability as a woman with mental health issues was not appropriately considered; pre-existing biases led the police to dismiss

her claims without proper evaluation; the author was extremely vulnerable owing to her being a woman, an undocumented migrant and a possible victim of trafficking, and to her having mental health issues; detention exacerbated her condition owing to communication barriers and limited prospects and the authorities' inaction posed severe health risks; the representative emphasizes the aspect of gender, highlighting the impact on women due to biases; and the issue at stake has a gendered nature, as eating disorders as well as trafficking exert a disproportionate impact on women owing to their gender, and owing to the deeply embedded stereotypes associated with both phenomena, the author's health condition and status as a potential victim of trafficking were not taken seriously enough by the authorities, that is to say, she was being exposed to forms of intersectional, or multiple, discrimination by virtue of the fact that she was a woman, an undocumented migrant and a person with long-term mental health difficulties who was suffering from a "women's disease".

5.29 The representative concludes that there are valid grounds to believe that the author's rights under the Convention were violated owing to the actions and inactions of the State party and stands ready to provide further observations on the merits if the communication is deemed admissible.

### **Issues and proceedings before the Committee**

#### *Consideration of admissibility*

6.1 In accordance with rule 64 of its rules of procedure, the Committee is to decide whether the communication is admissible under the Optional Protocol. In accordance with rule 72 (4), it must do so before considering the merits of the communication.

6.2 In accordance with article 4 (2) (a) of the Optional Protocol, the Committee is satisfied that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

6.3 In accordance with article 4 (1) of the Optional Protocol, the Committee shall not consider a communication unless it has ascertained that all available domestic remedies have been exhausted, unless the application of such remedies is unreasonably prolonged or unlikely to bring effective relief. The Committee notes that the author claims to have exhausted all available and effective domestic remedies, while maintaining that other remedies brought up by the State party are prolonged and ineffective. The Committee notes, however, that the State party has challenged the admissibility of the communication on this ground and has specified the type of judicial remedies available to the author.

6.4 The Committee takes note of the State party's argument that the author approached the Committee prematurely, regarding both the duration of her detention and the consideration of her health. In this regard, the Committee observes that several proceedings were indeed pending at the time of the submission of the communication (namely, an appeal against the Prague Municipal Court detention decision, a request for an administrative review with the Regional Police Directorate of Prague and an appeal of the author's deportation at the Supreme Administrative Court is pending). The Committee notes that the author has been represented through the course of the judicial proceedings and has been provided with interpretation.

6.5 The Committee notes the State party's argument that the author could have used other domestic avenues related to her claims of being a victim of human trafficking, both preventive and compensatory, against her detention and expulsion and could have challenged the legality of her detention before the Constitutional Court. The Committee notes notably the State party's assertion that the author could have sought remedies for expulsion, including a petition to an administrative court, an application for international protection under the Asylum Act or an application for a residency



permit, owing to her alleged victim status, yet she failed to make timely applications or use these options effectively.

6.6 The Committee takes note of the author's submission that the proceedings would have taken several months, which is not appropriate in her case, and that lodging a constitutional complaint is therefore not an effective remedy. As to application for international protection under the Asylum Act, or an application for a residency permit, the Committee notes the author's claim that those are also not effective remedies given the specificities of her case.

6.7 The Committee observes, however, that doubts about the effectiveness of domestic remedies do not absolve the author from exhausting them.<sup>13</sup> The Committee finds that although there is no obligation to exhaust domestic remedies if they have no chance of success, authors of communications must exercise due diligence in the pursuit of available remedies and that mere doubts or assumptions about their effectiveness do not absolve the authors from exhausting them.<sup>14</sup>

6.8 In addition, the Committee takes note that on 21 May 2020, the Supreme Administrative Court quashed the decision of the Prague Municipal Court of 3 October 2019 on prolonging the author's detention and that on this legal basis the author's representative filed a request for compensation for non-pecuniary damage under the State Liability Act. In light of the information on file, the Committee is of the opinion that the author has not established that the application of remedies by the judicial courts in the State party is unreasonably prolonged or unlikely to bring effective relief. The Committee therefore considers that the author has failed to exhaust all available domestic remedies and declares the communication inadmissible under article 4 (1) of the Optional Protocol.

6.9 In light of this conclusion, the Committee does not deem it necessary to examine any other grounds for inadmissibility.

7. The Committee therefore decides:

- (a) That the communication is inadmissible under article 4 (1) of the Optional Protocol;
- (b) That this decision shall be communicated to the State party and to the author.

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<sup>13</sup> See [CCPR/C/45/D/397/1990](#), para. 5.4; and [CCPR/C/115/D/2048/2011](#), para. 8.3.

<sup>14</sup> See *D.C. v. Lithuania* ([CCPR/C/134/D/3327/2019](#)), para. 8.3.