



LIGA LIDSKÝCH PRÁV

**SHADOW REPORT
TO THE COMMITTEE ON THE RIGHTS OF THE CHILD**

**On the Third and Fourth Periodical Report of the Czech Republic
on the Implementation of
The Convention on the Rights of the Child**

Prepared by the League of Human Rights

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SUBMITTING ORGANIZATION

League of Human Rights (Liga lidských práv, LIGA) is a non-governmental organisation based in the Czech Republic, which works towards the protection of human rights by working within the scope of the rights guaranteed by the Charter of Fundamental Rights and Freedoms, and other binding international conventions. LIGA promotes human rights with the aid of research and education in order to improve the quality of life for everybody, and by undertaking strategic cases in court, producing innovative arguments and landmark solutions.

Our ultimate vision is to develop a society in which human rights are respected in daily life, and where citizens are able to defend and protect themselves easily and efficiently, and without obstacles, from encroachments on and violations of their fundamental rights.

LIGA is a member organization of the International Federation for Human Rights (FIDH).

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This report is structured with respect to the Committee's General guidelines regarding the form and content of periodic reports CRC/C/58/Rev. 1 from 29 November 2005, with respect to the last recommendations of the Committee (CRC/C/15/Add 201) of 2003 and with respect to the Third and Fourth Periodical Report of the Czech Republic.

The report is based especially on analyses, reports and recommendations elaborated by League of Human Rights (LIGA) including the Report on Progress of Rights of Children in the Czech Republic in 2003 – 2005 (LIGA 2006). Other sources are publicly accessible reports of other NGOs and also reports, statistics and decisions of state administrative bodies.

The purpose of this report is not to cover all the areas covered by the Convention. It only deals with the most problematic issues in the Czech Republic which LIGA (and others cooperating NGOs) encountered during its activities. This report does not attempt to provide complex information on this issue – this is up to the Czech government. The report also follows previous shadow report prepared by LIGA lawyers under the Environmental Law Service (EPS) in September 2002.

This report would not exist without kind contribution of Radka Dohnalová, attorney and LIGA's external supporter.

SUMMARY

I. General Measures of Implementation: In this chapter it is accented that there is persisting fractionalism of powers concerning endangered children between several ministries. Then the non-existence of any independent authority which would enquire the applications of children or control the implementation of Convention (as recommended by Committee) is described. Last but not least, it dwells on difficulties in cooperation of state and NGOs.

II. General Principles: This chapter focuses on insufficient definition of the best interest of a child in particular areas and problem of not respecting children's opinions at schools, institutes and during judicial and administrative proceedings which concerns them.

III. Civil Rights and Freedoms: This chapter focuses on the right not to be subjected to torture and other ill treatment. Problems regarding support to children victims during investigation and criminal proceedings are analyzed. Another part of this chapter deals with the right to privacy at schools and institutions.

IV. Family Background and Alternative Care: This chapter focuses on policies regarding care over endangered children. Children are still too often taken away from the family and placed in institutions. The most common reason for placing the child in an institution are housing or other material problems in the family. Current system does not provide adequate support to families in need. Also system of foster care is not sufficiently supported, although it more complies with CRC requirements. The importance of transfer of powers of the Ministries, reform of social care and finances is then highlighted.

V. Basic Health and Social Care: This chapter points out a serious problem of access of foreign children to health care contrary to Czech international obligations. It is also focused on the issue of insufficient support of social housing.

VI. Education: This chapter deals with segregation of Roma children in access to education. The perceiving practice of segregation of Roma children out of the mainstream education and decrease in their chances to have full exercise in society is analyzed. Then the chapter deals also with problems of children with disabilities in access to education and situation of children living in institutions.

VII. Special Protective Measures: This chapter deals with problems of juvenile justice, especially with the issue of minimal age for criminal responsibility, insufficient legal representation of children below 15 before courts and missing alternative measures. We also focus on how international obligations of the Czech Republic regarding sexual exploitation of children are being fulfilled.

I. GENERAL MEASURES OF IMPLEMENTATION

I.1. Coordination of implementation of the Convention on the Rights of the Child and realization of children's rights

(para 12 and 13 of the Committee's Recommendation)

LIGA is concerned to state that despite Committee's repeated recommendations¹, despite the pressure of professional public, NGOs, the Committee for the Rights of the Child of the Government Council for Human Rights, despite government's findings from several analyses and general proclamations of the government, an effective institutional reform ensuring implementation of the Convention has not occurred in the meantime.

In 2004, pursuant to a government resolution², the Analysis of the Current State of Institutional Arrangements on Implementation of the Convention (hereinafter "Analysis") was prepared. The report of the government mentions this Analysis; however, the report does not deal with the fact that in practice the findings of the Analysis are not respected.

As regards implementing obligations established by the Convention, the Analysis has found out that realization of those rights which fall within the scope of responsibility of one department which then also creates conceptual policy (e. g. the Ministry of Education, Youth and Sports in the area of the right to education) is ensured satisfactory.

On the other hand, the Analysis has revealed that protection of the rights of endangered children is fully unsatisfactory. This is especially the case when a family is malfunctioning and a child needs active help from the state. Unfortunately, in these cases competences of state authorities are widely fragmented. In practice, there are several departments (e.g. – the Ministry of Labour and Social Affairs, the Ministry of Education, Youth and Sports, and the Ministry of Health Care) responsible for different areas. These departments are entitled to create conceptual policies and find out solutions to problems only in a given area which falls within their scope of competence. These fragmented competencies (and jointly distribution of financial resources) hinder an effective reform of current unsatisfactory system. Therefore, achievement of systematic change in favour of the children's interest seems to be impossible. Moreover, the current situation of fragmented competencies makes the question of family, or endangered children, a "side issue". According to several reports, *"this fragmentation of the care of endangered children agenda has a negative effect on the level of protection of children in the Czech Republic, which does not reach the level corresponding to developed European states, especially considering the high number of children in the institutional care and insufficient offer of alternative forms of work with an endangered child and her/his family."*³

Therefore, one of the conclusion of the Analysis is, that the Ministry of Labour and Social Affairs should be the responsible state body for implementing the Convention, which means that some competencies should be transferred to the afore-mentioned ministry. Hence, the

¹ Final conclusions of the Committee on the Rights of the Child during consultations over 1st and 2nd Periodical Report of the Czech Republic on the Implementation of the Convention on the Rights of the Child of 1997 (CRC/C/15/Add.81) and 2003 (CRC/C/15/Add.201).

² The Government of the Czech Republic Resolution No. 898, of 10th September 2003, by which the Government approved final recommendations of the Committee on the Rights of the Child of January 2003.

³ The Government Council for Human Rights report on the human rights state in the Czech Republic in 2008, p. 92, similarly the legal comparative study Public Authorities Interference with Parents' Rights and Their Impact on Family Life, Counselling Centre for Citizenship, Civil and Human Rights, 2006.

Analysis proposed an amendment to the Act no. 2/1969 Coll., on The Establishment of Ministries and Other Central Bodies of State Administration (Competencies Act) in the way that the Ministry of Education, Youth and Sports will no longer be the central state administration body for institutional or protective care and the Ministry of Health Care will no longer be the central state administration body for baby institutions and children's home for children under three years. Competencies of the Ministry of Education, Youth and Sports and the Ministry of Health Care should be henceforward conferred to the Ministry of Labour and Social Affairs.

The Analysis was considered by the Government on 4th May 2005 and was consequently accepted by the Government Resolution no. 530. However, the resolution only placed an obligation to coordinate the implementation of the Convention agenda on the Ministry of Labour and Social Affairs.

Despite of this fact, the Ministry of Labour and Social Affairs itself expressed the necessity of proposing an amendment to the Competencies Act which rests in transferring all activities relating to coordination of ministries and other central state administration bodies in the field of children's rights into its scope of powers as soon as possible⁴. Nevertheless, neither such change has occurred in the meantime nor it probably will in the future.

Pursuant to Government Resolution no. 530 the Ministry of Labour and Social Affairs introduced the Proposal of Measures to Transformation and Integration of the Care of Endangered Children system – Basic Principles⁵, and also the following National Action Plan for Transformation and Integration of the Care of Endangered Children System for the Period 2009-2011. The Plan is result from interdepartmental cooperation and defines the key activities necessary for increasing quality of work with endangered children and families. According to the Action Plan, the person responsible for realization of transformation is the Minister of Labour and Social Affairs as the chairman of the newly established Interdepartmental Coordination Group. The group consists of representatives of ministries and responsible local governments organizations.

Establishment of the Ministry of Labour and Social Affairs as the coordinating body and establishment of the regular Interdepartmental Coordination Group can be seen as a certain progress since the last final conclusions of the Committee on the Rights of the Child. However, it is still feared that the present powers of the Minister of Labour and Social Affairs are not sufficient for the transformation to be effective.

In conclusion, it is possible to sum up that both professional public and government analyses agree that the institutional ensuring fails in case of endangered children⁶. LIGA admits that since the last assessment of the Committee on the Rights of the Child the Government has paid certain attention to the issue of institutional ensuring rights of the child, including the area of care of endangered children. It is necessary to appreciate that the Action plan defines some goals and methods of work with endangered children which have been standard in other post-communist countries for longer time and for which some professionals has called for decades. Thus, LIGA appreciates the progress that the

⁴ The notification of the Minister of Labour and Social Affairs from 28th July 2005, ref. no. 2005/38481-24, addressed to the Government Commissioner for Human Rights.

⁵ The Government approved it on 10th January 2009.

⁶ Apart from the cited government Analysis of the Present State of Institutional Ensuring Implementation of the Convention see also the Declaration of the Committee for the Rights of the Child of 19th November 2009.

Government recognizes the issue of ensuring children's rights as a topic which attention must be paid to and systematic efforts must be dedicated.

Unfortunately, the results of the above-mentioned government analyses and plans⁷ have remained on paper so far, these efforts have not been reflected at the level of individual children and families yet. Considering that nothing has been really changed in a systematic way, as the competencies in the field of ensuring children's rights remain fragmented, it is feared that transformation of the care of endangered children will be unnecessarily lengthy. The Ministry of Labour and Social Affairs as the coordinating body without real powers will not be strong enough to enforce real changes.

Recommendations for Governmental Action:

- *to make the system of the care of endangered children more effective, meaning that the Government should extend powers of the responsible Ministry of Labour and Social Affairs in the field of institutional care for children.*

I.2. Independent review bodies

(para. 16 and 17 of the Committee's Recommendation)

In the Czech Republic, the power to supervise and control compliance with the Convention is **vested in the Committee for the Rights of the Child** which forms part of the Government Council for Human Rights. However, the powers of this Committee relating to the Convention, and having regard to the so called Paris Principles⁸, have to be considered as **entirely insufficient**.

First of all, the Committee is **not an independent body** – it is only a working and advisory body of the Government which can suggest improvements in human rights protection and prepare other documents for its use. However, these documents are subjected to the Government approval. An independent control body in the field of fulfilment of international human treaties may be represented for example by the activities of the Public Defender of Rights.

On the other hand, it is not possible to consider the **control by the present Public Defender of Rights⁹ sufficient** in case of children rights. The main reason of this fact is that the law defines the scope of power of the Public Defender of Rights more narrowly compared to what should be the scope of power of an independent body supervising fulfilment of the Convention (above all, as regards who can be subject to its control); its control is not specialized in rights of the child and fulfilment of the Convention; the staff of the Public Defender of Rights is not adapted to handle children's complaints in a child-sensitive manner as the UN Committee for the Rights of the Child requires. The possibility of individual children's complaints is limited and the Public Defender of Rights is allowed to consider whether and in what way he/she will deal with eventual isolated complaints coming straight from children.

⁷ Including the Conception of care of endangered children and children living outside their family, accepted by the Government Resolution from 18th October 2006.

⁸ The UN General Assembly Resolution No. 48/134, from 2nd December 1993, on the principles relating to the status of national institutions for the promotion and protection of human rights.

⁹ According to the Act No. 349/1999 Coll., on the Public Defender of Rights.

Furthermore, **children are not informed sufficiently of the possibility to turn with their complaints** and suggestions directly to the appropriate authorities. Children's awareness of their rights and possibilities of complaints is generally low. Especially in case of children in institutional care or within the system of social and legal protection of children, these children are not provided with sufficient information on the possibilities of control and complaints.

In its last Final Conclusions¹⁰ the Committee recommended the Government to establish an independent body for the monitoring of the implementation of the Convention, a body which would investigate individual complaints in a child-sensitive manner as well. The Committee also pointed out that this may be done by broadening the mandate of the Public Defender of Rights and providing him/her with the necessary human and other resources or by establishing a separate independent children's commissioner or ombudsperson. The League of Human Rights is concerned to state that the mentioned **recommendation to establish an independent defender of children's rights has not been fulfilled yet**, even despite the direct pressure of the nongovernmental sector and the Government Council for Human Rights.

In 2009 the Government Council for Human Rights prepared a Bill on the Defender of Children's Rights, which was preceded by broader discussion and a working seminar¹¹. The body should have been established as an independent and separate body for promotion and supervision of fulfilment of the Convention and it should have helped to greater participation of children in public affairs administration as well. The Defender should have been appointed by and responsible to the Parliament (through submitting annual reports on his/her activities), the body should have been constituted by an legal act. The person who would hold the office of the Defender of Children's Rights should have been a person dealing with children's rights protection for a long time and whose personal profile and education should have ensured the respect for the Defender's opinions. The operation of the office should have been adapted to the fact that its main "clients" should have been children, the complaints acceptance and investigation mechanism should have functioned also in a very informal way. Pursuant to the proposal, the Defender should have disposed only with so called "soft remedies", which means that he/she could have provided "only" recommendations, cannot issue own decisions or change decisions of other authorities; the Bill also entitled the Defender to take part in the comment procedure as regards legislation concerning children.

Unfortunately, the proposal did not pass through the interdepartmental amendment procedure and since then it has not been worked on the proposal anymore. The proposal was prepared in conformity with the so called Paris Principles and it had two alternatives: a separate office alternative and inclusion of the office of the present Public Defender of Rights alternative. The Committee for the Rights of the Child of the Government Council prefers the separate defender alternative¹², the present Public Defender of Rights does not favour inclusion of the structure of his/her office by an amendment of the Act No. 349/1999 Coll. either. However, the establishment of a separate body meets with an essential disagreement especially of the Ministry of Finance and the Ministry of Interior and the Ministry of Justice does not support it either.

¹⁰ CRC/C/15/Add.201 para. 17.

¹¹ The working seminar took place in Hrzánský Palace, Prague in June 2009. The demand for establishment of the defender of children's rights in the Czech Republic appeared also in Final Conclusions of the Children-Friendly Europe Conference, taking place in Prague in April 2009.

¹² The Committee passed it at its session on 28th January 2010.

The Bill was criticized from several reasons. Among the most frequently mentioned are: inappropriateness of submitting such a proposal in the time of financial crisis and disapproval with creation of a new office, when it is possible to ensure fulfilment of obligations within the present system of state administration. There were also some explicit refusing opinions based on the argument that the recommendations of the Committee on the Rights of the Child are not binding and they do not constitute a duty to establish such a body.

Recommendations for Governmental Action:

- *to establish an independent body which would monitor the implementation of the Convention and settle individual complaints lodged by children.*

I.3. Cooperation between the state and NGOs in the area of protection of rights of the child

(para. 24 and 25 of the Committee's Recommendation)

According to para 24 of the Committee's Report from 2003, the Committee welcomes the transfer of all decision-making related to the issuance of authorizations to NGOs as service providers. According to the Act No. 359/1999 Coll., on Social and Legal Protection of Children, it is necessary to obtain an authorization issued by a competent regional authority for exercising social and legal protection in a defined extent. However, the Act only defines activities which the authorised NGOs can carry out; it does not specify any of their competencies.

The same act also contains a general provision declaring cooperation between bodies of social and legal protection of children and the authorised NGOs. However, the cooperation is not regulated in more detail; a unified methodology of this issue is completely missing. The mentioned provision implies not the duty to carry out such cooperation, only the possibility of it.

Especially cooperation in solving concrete breaches of children's rights seems problematic. The degree of cooperation is different in each region and depends mainly on personal involvement and the attitude of concrete representatives of public authorities. Some bodies of social and legal protection, police, and judges still see NGOs as adversaries or competitors rather than collaborators; cooperation in solving individual cases is minimal. The services provided by NGOs in the field of long-term social work with families and family rehabilitation are significantly underused by bodies of social and legal protection of children. This is even more serious comparing to the fact, that the state bodies do not have capacity for providing these services.

Recommendations for Governmental Action:

- *to involve systematically and support NGOs dealing with protection of children's rights and other segments of civil society at all levels of public administration relating to children.*

II. GENERAL PRINCIPLES

II.1. The best interest of the child

(para 31 and 32 of the Committee's Recommendation)

The term 'best interest of the child' is still not sufficiently defined. Although the principle of the 'interest and welfare' of the child is contained in the Act no. 94/1963 Coll., on the Family and in the Act no. 359/1999 Coll., on Social and Legal Protection of Children, the principle is still not adequately defined and reflected in all legislation, court decisions and policies affecting children.

Furthermore, there is insufficient research which would define the best interest of the child with regard to the particular problems of the system of children's rights protection. Those who decide about the best interest of the child are representatives of the social and legal protection authorities and custodial judges. However, there are no defined standards of what the term 'best interest of the child' means. Therefore, the term is interpreted in an arbitrary way.

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

Recommendations for Governmental Action:

- *to carry out an expert analysis of the concept of "the best interest of the child" with regard to different situations which children can find themselves in, and the different groups of children. The concept should be consequently implemented into amendments to Acts concerning children, legal procedures and court and local authorities' decisions, into educational projects aimed at professionals in question, and into any other projects or services concerning children.*

II.2. Respect for the views of the child

(para. 35 and 36 of the Committee's Recommendation)

According to the Declaration of the Committee for the Rights of the Child¹³, there is an increasing tendency to respect the right of the children to participate in all matters which immediately concern them in families, schools, communities and society.

However, in practice, children's views are very often disregarded. The majority of Czech judges and social workers employed at the social and legal protection authorities still perceive children as objects rather than as subjects of rights.

The right of the child to be informed is disregarded both by law and in practice. One of the conditions to exercise the right to freedom of expression is that children are provided with information. Otherwise, children cannot form their opinions. Although the right of the child to be informed in the course of court proceedings is guaranteed by the European Convention on the Exercise of Children's Rights¹⁴, and the Czech Republic is obliged to follow it, in practice, children are rarely informed in the course of court proceedings.

¹³ The Declaration of the Committee for the Rights of the Child issued by the Government Council for Human Rights on 19th November 2009.

¹⁴ Act no. 54/2001 Coll., European Convention on the Exercise of Children's Rights (ETS No.: 160), art. 3

With effect from 1 October 2008, the Act no. 99/1963, Rules of Civil Procedure, was amended¹⁵. These amendments reinforced the right of the child to be heard before the court in order to find out his/her views, which would consequently be taken into consideration with regard to the child's age and maturity. The amendment also stated in s. 100 (4) of the Rules of Civil Procedure, that the court may only in extraordinary situations find out the child's views through their legal representative, an expert, or the social and legal protection authority. However, in some cases, the courts neglect the obligation to hear the child, although the law requires them to do so.

Although the law expressly states that children must be heard by the court, it is very often done merely by the social and legal protection authority. The likely reason, why judges tend to avoid hearing children, is that they do not know how to communicate with children or because they fear that the hearing would be psychically exhausting for the child.

Again, there is no training for the custodial judges and for the representatives of the social and legal protection authority which would teach them how to communicate with children in order to obtain their views in an effective and sensitive way. In cases when the child refuses to see one of the parents, the courts are very often unable to distinguish whether the child's attitude was adopted upon their own decision or upon the views of the other parent.

The current legislation and practice concerning ascertaining children's views in the court proceedings is not sufficient and contributes to the fact that each court and each judge work differently. Therefore we suggest adopting legislation based on division of children according to their age, provided that the court has the possibility to refuse to hear the child of certain age, should it cause any damage to the child. But the court would have to explain the reasons of any such refusal based on particular arguments and evidence.

The problem of the Czech legislation is that it does not provide any reason why a child's views should be ascertain. Therefore, some of the judges may consider this obligation to be merely formal. Although the courts are obliged to take into consideration the child's views with regard to their age and maturity, it often happens that they solely state the child's views in the court judgement. But especially in case that the court decision differs from the child's wishes, the court should explain reasons why it was not possible to satisfy the child's wishes, in other words explain why the child's wish was in conflict with his/her interests.

Till now, no comprehensive provision ensuring that children can express their views on all matters that concern them was adopted. There are several acts, which guarantee the right of the child to express their views (e. g. the Education Act, the Act on Execution of Institutional or Protective Upbringing). However, the practical implementation has shown to be insufficient.

Recommendations for Governmental Action:

- *to ensure that children are provided with appropriate information concerning themselves in court and administrative proceedings;*
- *to ensure that children have the opportunity to express their views and that their opinions are respected and taken into consideration with regard to their age and maturity;*
- *to ensure that professionals in question are properly trained in providing children with information in a sensitive yet sufficient way, and in finding out children' opinions.*

¹⁵ Act no. 295/2008 Coll.

III. CIVIL RIGHTS AND FREEDOMS

III.1. Right to Private Life

(Art. 16 of the Convention on the Rights of the Child)

According to the Art. 16 of the Convention, no child shall be subjected to arbitrary or unlawful interference with his or her privacy.

However, in the period under consideration a problem with usage of surveillance cameras in schools and homes for children has occurred. The Office for Personal Data Protection in its Statement form May 2007 pointed out the failure to fulfil the legal conditions¹⁶ and the inappropriateness and disproportional usage of the camera systems at schools.¹⁷ The Government Council for Human Rights has repeatedly called for a more complex regulation including supervision on the usage of the surveillance cameras.¹⁸

In 2003, a dispute between the Public Defender of Rights and Ministry of Education, Youth and Sports broke out on admissibility of usage of the audiovisual recording devices in institutional education facilities in the Czech Republic. Surveillance cameras were installed in eighteen homes for children and institutional education facilities and listening device were installed in two homes for children and institutional education facilities¹⁹. The monitoring devices have been used not only to monitor the activities around the entrance and outdoor areas, but also for monitoring the club-rooms, cafeterias, separate rooms, medical isolation rooms, classrooms, halls, and even bedrooms. The installations of monitoring devices and infra-red camera has been approved by the School Inspectorate and was backed by an affirmative statement of the Section of Special Education in the Ministry of Education, that has even provided funding (around 26 mil Czech Crowns – approx. 1 040 000 Euro).

After repeated intervention by the Public Defender of Rights, the usage of the devices in bedrooms was abandoned. The usage of devices in the other areas of the institutions was forbidden against the objections of the Ministry of Education by the order of the District State Prosecutor.²⁰ However, the Ministry of Education insisted on the usage of audiovisual devices although this was not set in any law²¹. The Ministry based their arguments on the scandalous analysis of the Institute of State and Law, which stated: *"from the legal point of view, there is no difference between surveillance of a person on underground escalator and of a child in an institutional care facility. The surveillance in neither of cases does not interfere with their home or privacy."*

¹⁶ E.g. breach of the Act. No. 101/2000 Coll. on Personal Data Protection/

¹⁷ In its Opinion of May 2007, the Office for Personal data Protection stated, that: *"due to the special character of camera systems laying in monitoring spaces where people are occurring, which might constitute a gross interference into the right to private and personal life of monitored subjects, usage of surveillance cameras is possible only in cases where special permission was issued, or in cases where usage of surveillance cameras is a last resort (ultima ratio possibility) and when other formerly used and less invasive means has failed (as in the case of school buildings)"*.

¹⁸ E.g. Resolution of Council for Human Rights of the Government of Czech Republic of 5th December 2005 or Report of Council for Human Rights of the Government of Czech Republic about Human Rights in Czech Republic in the year 2007.

¹⁹ Information gained from Ministry of Education, Youth and Sports, based on the application of LIGA under the Act. No. 106/1999 Sb., application No. 5033/2003-KM.

²⁰ Under the s. 39 of Act. No. 109/2002 Coll.

²¹ Contrary to the rulings of European Court of Human Rights, e.g. Kahn v. The United Kingdom (§§26-28), Halford v. The United Kingdom, Malone v. the United Kingdom, 1984 (§67), Taylor-Sabori v. the United Kingdom.

Consequently, the Act on Institutional Education was amended on 1 January 2005 and since then it allows the usage of the audiovisual devices in case of protective upbringing. Nevertheless, there are still doubts whether in case of children isolated in institutional education facility, less restrictive measures could be used in order to achieve a better educational effect (e.g. more intensive social and educative work with children). Moreover, according to the findings of Public Defender of Rights, the video cameras are still used in areas where the law does not allow it, e. g. in classrooms where the children without protective education are taught too.²²

Recommendations for Governmental Action:

- *to adopt measures to ensure the respect for privacy in school facilities where a special attention should be given to children in institutions and to ensure that any measures that interfere with the privacy of children are necessary and proportional.*

III.2. Right not to be Subjected to Torture, Inhuman or Degrading Treatment or Punishment

(para 39 to 41 of the Committee's Recommendation)

The issue of violence against children falls under the competencies several public bodies (the Ministry of Interior, Ministry of Labour and Social Affairs, Ministry of Health, Ministry of Justice and Ministry of Education, Youth and Sports). The result of this fragmentation is a poor coordination of the system, insufficient amount of interconnected statistical data, inconsistent monitoring and methodological administration; all of these problems can lead to a systematic abuse of a child.

Although the situation has changed recently, the secondary victimisation of a child in criminal proceedings still occurs.²³ This is caused by multiple interrogations, media publicity of the child's identity, insufficient information on the criminal proceedings and other measures followed by the discovery of the abuse. Other causes of secondary victimisation are placement of the child in institutional care even if not necessary and bad accessibility to qualified legal assistance in criminal proceedings. Although the legal regulation concerning the interrogation of children is quite exhaustive, the problem is the lack of personal qualification of people involved and multiple interrogations. The lack of technical equipment, such as one-sided mirrors and audio-visual recording devices also contributes to the need to repeat the questioning.

There is a need for a legal representation (an advocate) of a child in the criminal proceedings in order to ensure the effective protection of the rights of the child. In cases where the child is represented by the guardian from the organ of social and legal protection of a child, the protection of child's interest is sometimes not sufficient due to the lack of knowledge of legal regulation. The main reason why the children are often not legally represented is the financial burden of the representation. If the financial situation of the victim is bad and the victim claims damages during the criminal proceedings, he/she has the right to a representation

²² Report of the Public Defender of Rights on the Rights of Children from visits of facilities where institutional and protective care is exercised from the year 2007.

²³ E.g. Analysis of LIGA prepared in 2007 within the project "Strengthening of the Protection of Human rights of the Victims": Kristková, V., Langhansová, H., Matiaško, M., Legislative Protection of Victims in front of the Secondary Victimization and Rights of Victims for Privacy during Criminal Procedure – legal analysis and proposals of system changes. Available at www.llp.cz

free of charge. However, in case only moral damage was caused, the damage can not be claimed during the criminal proceedings, and thus there is no legal right to free representation. The state should ensure the legal representation free of charge at least for all the violent criminal offences on a child.

Another legal insufficiency of the current regulation is the lack of possibility for compensation of the immaterial damage within the adhesive proceedings. Moral damage is the only damage in many cases of an abused child and is much more serious than physical damage due to the effect on the future life of the child. The compensation of the immaterial damage is possible only through the civil proceedings on personality protection. This possibility is, however, used very rarely as the civil proceedings bring another financial burden on the side of the victim as well as the risk of further examination and thus traumatism of the child.

In cases of violence against children, the trend of using repressive measures *ex post* and underestimating the prevention is still present. However, the priority should be put on prevention in the family and support to overcome problems in an early stage should be stressed. This role is assigned to the social and legal protection authorities. These state bodies, however, do not fulfil their obligations in adequate manner. They are not active in the family environment nor in the proceedings concerning children. The number of social workers in the social and legal protection authorities is insufficient. According to the press release of Ministry of Labour and Social Affairs from 17 June 2010, there are 354 children to one social worker per year²⁴. This fact implies that the social workers do not have capacities for preventive work. A specialised CAN worker is also often missing.

Also the issue of therapy (family and child victim) and rehabilitation of a child needs more attention. These services are mostly accommodated by the non-profit sector, thus they are provided only in a limited range (the non-profit organisations work on a regional basis and to the extent of their financial resources). The reaction of the state on children abuse is still mostly provided by the placement of the child in an institution, even in cases the relationship between the family and the child is good (there is a lack of asylum homes for parents with children). The system of recovery and re-integration of child victims, guaranteed and financed by the state, still does not exist in the Czech Republic.

To sum up, the system of services which would allow a quick and effective response to individual cases and systematic and complex data processing necessary for further monitoring and analysis of the violence against children *pro futuro* is still lacking.

Despite the efforts of the Government Council for Human Rights, in the Czech Republic physical punishment is still not prohibited by law. Most parents in the Czech Republic still use physical punishments as the most common educational instrument. According to the research carried out in 2005 by the Third Faculty of Medicine in Charles University, 86% of the children that attend the fourth grade of elementary school did or does experience some kind of physical punishment²⁵.

²⁴ Press release of Ministry of Labour and Social Affairs from 17 June 2010, accessible on http://www.mpsv.cz/files/clanky/8955/tz_170610a.pdf (29 October 2010).

²⁵ According to the research, every fourth child is regularly physically punished by belt, strap or wooden spoon, which is by experts regarded as a torture.

Recommendations for Governmental Action:

- *to ensure effective and coordinated system of prevention, reporting and investigating of the cases of maltreatment and abuse of children, including sexual abuse in families and domestic violence;*
- *to adopt legislative and other measures to prevent the child victims of the maltreatment and abuse from secondary victimisation, that would respect the vulnerability of child victims and guarantee all their rights, such as right to legal representation, privacy protection, right to compensation for immaterial damage, prevention from multiple interrogation;*
- *to ensure that the victims of maltreatment, violence and abuse and their families receive quality, effective, consistent help including psychological, legal and social advisory, care, treatment and re-integration;*
- *to adopt a legal ban of physical punishments in schools, institutions, families and all other situations and to support other necessary steps for support of positive parenting and violence-free education.*

IV. FAMILY ENVIRONMENT AND ALTERNATIVE CARE

IV.1. Family environment and alternative care

(para. 42-45 of the Committee's Recommendation)

Since the last report, there were no important changes in the area of family support and alternative care. Almost **none of the recommendation of the Committee was implemented**. Placement to an institutional care is still the most common way to solve the situation of a dysfunctional family. Although the Czech Republic is one of the countries with a very high number of children in institutional care, there has been no significant change in policy of family support.²⁶

From a methodological and coordination view the **system of institutional care remains fragmented**. The issue of institutional care falls under three different ministries that do not cooperate and do not mutually coordinate their activities. Unwillingness of the Ministry of Education and Ministry of Health to transfer their powers over the institutional care to the Ministry of Labour and Social Affairs hinders the effective reform of care of endangered children and obstructs the work on conception materials and strategies²⁷.

The most frequent reason for taking the child away from his or her family (more than 50% of children) **is the social situation**, particularly the material deprivation of the family²⁸. The parents living in poverty, in insufficient housing conditions are often seen as parents who do not care about their children. In assessing the functionality of a family, the material conditions prevail over the emotional background²⁹.

The practise of state authorities, where children are placed into institutional care because of the material deprivation, was also **criticised by the European Court of Human Rights (ECtHR)**. In case of Wallová and Walla v. the Czech Republic³⁰, five children have been taken away from the family after the organ of social care declared the family environment "endangering to children", because of poor housing conditions. The Czech court ordered an institutional care. ECtHR stated that a right to a family life was violated because "*although the reasons given by the Czech administrative and judicial authorities had been relevant, they had not been sufficient to justify such a serious interference in the applicants' family life as the placement of their children in public institutions. In addition, it was not evident from the facts of the case that the social protection authorities had made serious efforts to help the applicants overcome their difficulties and get their children back as soon as possible.*"³¹ The judgment of the ECtHR in case Wallová and Walla v. Czech Republic was in June 2007 succeeded by judgment of the ECtHR in case Havelka and others v. Czech Republic³²,

²⁶ See for example Annual Report of the Council for Human Rights of the Government of the Czech Republic for the year 2007.

²⁷ See for example Annual Report of the Council for Human Rights of the Government of the Czech Republic for the year 2007 or Legal Comparative Study of organization Poradna pro občanství, občanská a lidská práva "Zásahy veřejné moci do rodičovských práv a jejich dopad na rodinný život", 2006, p. 27.

²⁸ See for example Annual Report of the Council for Human Rights of the Government of Czech republic for the year 2006.

²⁹ Report of the NGO Counselling Centre for Citizenship, Civil and Human Rights (Poradna pro občanství, občanská a lidská práva) - "Zásahy veřejné moci do rodičovských práv a jejich dopad na rodinný život", 2006, p. 24.

³⁰ Wallová and Walla v. Czech Republic, App. No. 23848/04, judgment of the ECtHR from 26.10.2006.

³¹ Ibid, Art. 78.

³² Havelka and Others v. Czech Republic, App. no. 23499/06, judgment of ECtHR from 21 June 2007.

where the Court once more ruled that bad financial situation in the family cannot be the only reason for placing children into institutional care.

The reason for many problems in the exercise of social and legal protection of the children is current system, where the **advisory (supportive) and repressive function are concentrated under one body**, or even one person. This system leads to mistrust of the endangered family towards the social workers. The position of social workers is therefore complicated – they should provide advices and support to the family but they also exercise the repressive competencies (i.e. taking children from their parents and placing them into institutional care). These problems are further worsened by the insufficient number of social workers and high number of families³³. Moreover, we experience a situation, predominantly in smaller districts, where one social worker is responsible for several different agendas. As a result, a social worker cannot pay desirable attention to every case.

There is **increasing number of children in institutional care** while the new big institutions with more than 30 children in care³⁴ cannot ensure the full enjoyment of all the aspects of life for the children³⁵. According to the official statistics, there are around 22 000 children in institutional care³⁶. Between 2004 and 2006 the number of institutions raised from 198 to 227. The Czech Republic is among the top countries from the EU in number of children under the age of 3 in institutions.³⁷

Table IV.1 Number of children in institutional care (according to the Ministry of Social Affairs, Ministry of Education and Ministry of Health), 2009³⁸:

Together	Approx. 21 000 - 22 000
Institutions for people with disabilities	Approx. 11 000 - 12 000
School institutions (homes for children, educational institutions, diagnostic institutions)	7 000 - 7 500
Health institutions (nursing homes, homes for children under the age of 3)	Approx. 1 800
Number of children placed into institutions on court decisions (on 1 January 2008) (The rest of the children are placed in the institutions after the consent of the parents)	9 269

³³ According to the press release of Ministry of Labour and Social Affairs from June 2010, there were 354 endangered children per one social worker. Altogether, there are 560 social workers missing in the system. Press release available at: < http://www.mpsv.cz/files/clanky/8955/tz_170610a.pdf >

³⁴ Source: Institute for Information on Education: according to statistical data there is approx. 32,6 children in one facility.

³⁵ E.g. newly established children home in Lety – 32 children; or newly reconstructed home in Písek for 48 children etc.

³⁶ See for example Annual Report of the Council for Human Rights of the Government of the Czech Republic for the year 2009, available at <<http://www.vlada.cz/cz/ppov/rlp/dokumenty/zpravy-lidska-prava-cr/zprava-o-stavu-lidskych-prav-v-cr-v-roce-2009-74864/>>

³⁷ Source of this statistics is the Report of WHO „Mapping the number and characteristics of children under three in institutions across Europe at risk of harm“ available at: http://www.daphne-toolkit.org/documents/projets/2002-017/01_Final-Report_2002-017.doc

³⁸ Source: Ministry of Labour and Social Affairs: Application for Information from 1.7.2009 No. 2009/49923-21 Information about social facilities for children; available at: <http://www.mpsv.cz/cs/7513>

The **current system of protective care is not able to ensure the environment close to the one of a family**. This is partly because it does not comply with the conditions of expertise and specialisation. Most of the institutions do not have a sufficient number of psychologist or special teachers³⁹. The placement of the child does not take into consideration the specific problems of each child, and thus lacks the specific and individual approach towards every child in the institutional care.

A possibility to impose a protective treatment on a child younger than 15 and place him/her to an institution together with young offenders over 15 still remains. Also, it is still possible to place a child under 15 under a protective treatment together with children under institutional treatment in house for children with a school⁴⁰. In practice this means that children under protective care are subject to the same coercive measures, such as surveillance cameras or bars, as children with institutional care.

Deinstitutionalisation and family support remains only in political proclamations, which can be seen on a growing number of institutions and children living within. Also there is a trend of growing financial support to large institutions rather than small one evoking family environment⁴¹.

The lack of financial resources cannot be the obstacle for the reform, because according to many analyses⁴² the **institutional care in the Czech Republic is much more expensive than preventive support of endangered families or foster care**. Average costs per one child in the institutional care is approx. 20.250,-CZK (approx. 785 Euro) per month⁴³, on the other hand average costs per one child in family care is 3.391,-CZK (131 Euro) and in foster care 4.708,-CZK (182 Euro).⁴⁴

Current **system of funding** should be changed from many reasons. First of all, contemporary way of funding institutional care leads to the fact, that institutions are filled with children to maximum capacity, because it is more profitable. Secondly, institutional care is funded from state budget whereas family support services and alternative care (foster care, adoption) is funded by municipalities. This results in poor motivation of social workers (who are employers of municipalities) for providing social services to endangered families or for prioritizing alternative care, because institutional upbringing is 'cheaper' for local governments' budgets.

³⁹ According to data from Institute for Information on Education there was 0,21 work load for Psychologist and 0,84 work load for special pedagogue for one facility in the year 2006.

⁴⁰ See the Ombudsman report from visits of facilities, where institutional and protective care is exercised 2007.

⁴¹ Average annual remuneration from the state for one child in state's creche is approx. 240 000,-CZK, while in private creche its only 180 000,-CZK.

⁴² See Poradna pro občanství, občanská a lidská práva (Clinic for citizenship, civil and political rights), "Zásahy veřejné moci do rodičovských práv a jejich dopad na rodinný život", comparative legal study, 2006, s. 69 an., also Svobodová, M., Vrtbovská, P., Bártová, D.: Zpráva o stávajícím stavu náhradní výchovné péče o děti a mládež bez rodinného zázemí v ČR, DOM, Praha 2002, str. 54, or League of Human Rights, Policy paper No. 3: Care of children withdrawn from biological family, 2007.

⁴³ The amount is equal to average wages in Czech republic for year 2009, 23 598,- CZK (914 Euro)

⁴⁴ Poradna pro občanství, občanská a lidská práva (Clinic for citizenship, civil and political rights), "Zásahy veřejné moci do rodičovských práv a jejich dopad na rodinný život", comparative legal study, 2006, s. 78.

Institutional upbringing has also other alarming consequences. During the years 1995 and 2005 a research amongst children who left the institutional care was conducted by Department of Prevention of Ministry of Interior⁴⁵. According to this research:

- Average length of placement of a child in the institutional care is 14,5 year.
- 61% of children are leaving institutions after reaching their majority (18 years old).
- The majority of cases of children who were placed in the institutional care could be prevented by an early intervention and social support from social workers.
- 82% of children placed in institutions had not committed any crime before, but after leaving the institution 51% of the children committed an offence.
- In 2002, where the reform of socio-legal protection took place consisting in transferring the responsibility from state to municipalities (i.e. from the state competence to the competence of local governments), number of social workers has declined by 20%.

According to the Report of the Council for Human Rights of the CR from previous years⁴⁶, the **preventive work with families is still insufficient**. Also **social work with the family after placement of the child into institutional upbringing is unsatisfactory**. Furthermore, **return of the child into the former family is not supported enough**. Moreover, it is not a seldom case when care of surrogate parents is favoured instead of returning the child to biological family.

Despite the fact that there is a legal obligation that the child should be placed the closest to the domicile of parents, there are still a lot of cases where the child is placed into another institution further from the domicile of the parents. This is enabled by the legal exclusion in case of full capacity of the closest institution. However, placing child far away from his or her family disables social work with the family or makes it completely impossible. This is even more alarming in cases, where children are placed into institutional upbringing because of material deprivation of the family. Long distance does not allow regular contacts between child and his or her family, because family often does not have enough money for frequent commuting.

Recommendations for Governmental Action:

- *to unify the issues of substitution care, institutional included, under one Ministry*
- *to reform the system of care of endangered children in the way that the preferred care will be the care in former biological family instead of institutional care; institutional care should remain subsidiary mean of care of these children*
- *to prevent cases when the child is taken from its biological family only for social reasons by enacting this as a forbidden reason*

⁴⁵ Ministry of Interior, Report on „Hodnocení systému péče o ohrožené děti“ (Assessing the system of care about endangered children), accepted by the government on 15 October 2007, available at <http://aplikace.mvcr.cz/archiv2008/dokument/2007/prevence/mladez1016/hodnoceni_systemu3.pdf> (in Czech only)

⁴⁶ See Reports of the Council for Human Rights of the Czech Government about Status of Human rights in the Czech Republic in the year 2006, 2007, 2008, 2009.

- *to provide education to judges of guardian courts for their deeper specialization and to secure that they will prefer biological family care in their judgments*
- *to provide effective social help to endangered families in order to prevent placing their children to institutional care*
- *to ensure that in case of taking a child away from its family there will be taken effective steps to return the child as soon as possible in its former family; for this purpose provide social services for sanation of the family and accessible social living*
- *to ensure sufficient number of social workers, who will have professional qualification for social work, to create hierarchical structure between social workers for effective control of their work*
- *to reform system of funding in the way that it will be financially more favourable to put child in foster care or leave it in former biological family instead of an institutional care (e.g. municipal financial responsibility for children placed in institutions)*
- *to stop the rising number of facilities for institutional care for children (i.e. stop development of new facilities, cancel facilities with exceeded number of children in one group, cancel facilities which do not comply with conditions of family environment for children)*
- *to ensure sufficient education of all the personnel in facilities of institutional care for children, to establish common criteria for evaluating facilities (ei. number of children returned into biological families, success of children from the institution in its future working life)*
- *increase motivation for potential foster carers to take children in their care (financially, social value); make the process of choosing foster parents easier and quicker; subordinate the decision of the department of socio-legal protection of children to Administrative Procedure Act; provide sufficient support to foster families*

V. BASIC HEALTH AND SOCIAL CARE

V.1. Foreign citizens' children's access to health care

(para. 47a of the Committee's Recommendation)

Till now no solution has been found to the crucial system deficiency – the **non-existence of a generally available health insurance for children of foreign citizens**⁴⁷ from outside the EU countries⁴⁸. Foreigners in the Czech Republic – even those who reside here legally – do not have access to the public system of health insurance unless they are employed here. Therefore, they have to pay the so-called commercial health insurance⁴⁹. This type of insurance is much more expensive than the public insurance, it covers a lesser scope of health care – it concerns mainly necessary health care, and most importantly it does not assure sufficient care in case of serious or chronic illness. The insurance companies are not obliged to insure foreign citizens and their families, children included.

Children of foreigners living in the Czech Republic are **denied the access to preventive medical check-ups and vaccination**. This situation has the most severe impact on premature babies and on babies born with inborn defects or severe illnesses; these babies are denied insurance because commercial insurance companies find them “financially disadvantageous”. Thus the parents of such children find themselves in considerable debt because they have to pay to save their child's life.

Moreover, these children live in the Czech Republic illegally, although their parents stay here legally, because on one side the insurance companies are not obliged to insure these children and on the other side any foreigner living here is obliged to be insured otherwise they would not obtain residence permit.

Another group of foreigners who experience problems with health insurance are mothers who are about to give birth. They have to pay **charges for birth**; however, decision about amount of these charges is completely up to individual health care centres; there are no regulations. This situation results in **high legal uncertainty** of the families which has negative impact on the stability of these families and also on the health of both born and unborn children.

The situation has been for a long time criticised by the EU, the Government Council for Human Rights and other human rights organizations, who were all referring to Arts. 23 and

⁴⁷ According to data of Czech Statistical Office, there were 438,000 foreign citizens living in the Czech Republic, which represents about 4% of total population, two thirds of these people were from so-called third countries, i.e. outside EU countries (mainly Ukrainians, Vietnamese, citizens of former USSR countries) in 2008.

⁴⁸ See e.g. the Reports on the Human Rights Condition in the Czech Republic issued by the Government Council for Human Rights in 2004, 2007, 2009 or the suggestion of the Committee for the Rights of Foreigners, part of the Government Council for Human Rights, issued in February 2009, see also the Updated Concept of Integration of Foreigners in the Czech Republic – 2005 approved by the government resolution from 8th February 2006 No. 126; in more details: an analysis carried out for the Government Council for Human Rights - Hnilicová, H., Dobiášová, K., Čížinský, P., “Komerční zdravotní pojištění cizinců v ČR” (Commercial Insurance of Foreigners in the CR) from March 2010, < <http://www.migraceonline.cz/e-knihovna/?x=2210418> >

⁴⁹ According to Hnilicova, H. et al, the number of foreigners who have to pay the commercial insurance is between 100,000 and 130,000 (it concerns only legally residing people); source: Hnilicová, H., Dobiášová, K., Čížinský, P., “Komerční zdravotní pojištění cizinců v ČR” (Commercial Insurance of Foreigners in the CR), March 2010, p. 4, <<http://www.migraceonline.cz/e-knihovna/?x=2210418>>.

24 of the Convention. The problem does not lie in the non-profitability of foreign citizens' health insurance, on the contrary, this insurance is very profitable⁵⁰ in the long term; the problem arises from the lack of public law regulation and from the pressure the insurance companies put on profit. In many EU countries the conditions are the same for both the country citizens and foreign citizens with legal residence. At the suggestion of the Government Council for Human Rights the Ministry of Health was asked⁵¹ to propose legislative or other measures to eliminate the deficiencies in the system of health insurance of foreign citizens' children⁵². The Chamber of Deputies rejected the suggestion in May 2004⁵³. Neither did the consequent amendments effective since 1 January 2010⁵⁴ solve the problem of sufficient health care for immigrants from third countries who have long term residency in the Czech Republic. The repeatedly criticised insufficient scope of health care guaranteed within the commercial insurance was not enlarged; it merely led to an unfounded favouritism toward domestic insurance companies⁵⁵.

Recommendations for Governmental Action:

- *to eliminate discrimination against immigrants from third countries in access to health insurance and health care*
- *to adopt such measures as to allow third country children access appropriate health care services and grant them the rights to achieve the highest possible health condition. The children should be allowed to use health and rehabilitation centres; e.g. these children should be part of the solidarity system of public health insurance, and the insurance companies should be obliged to appropriately insure these children.*

V.2. Social housing

(para. 53 of the Committee's Recommendation)

In the Czech Republic there is **no legislation covering social housing**. Experience shows that the system of social benefits (housing allowances, etc.) and the vaguely defined obligations of municipalities to take care of social needs of their citizens do not form a systematic solution which would prevent social exclusion.

The need of social housing is even greater when we consider the fact, that **one of the most common reasons for institutional upbringing of children is the material deprivation of**

⁵⁰ E.g. according to the Annual Report of the VZP (General Insurance Company) from 2006 the insurance benefits amounted only to 49 million out of total 172 million CZK.

⁵¹ The government resolution from 6 June 2001 No. 546 and from 8th February 2006 No. 126.

⁵² The government resolution from 9 July 2003 No. 664; after more than two years of legislative proceedings a government suggestion concerning the health insurance of foreigners' children was brought up in the Parliament. The suggestion concerned unprovided foreign children, that is minors under 18, who reside in the Czech Republic on the basis of family integration; the children would be voluntarily included in the system of public health care insurance upon their parents' request as long as their visa was valid; in the first place the insurance companies should be obliged to insure children, unlike the Czech Republic citizens the foreign citizens would pay insurance for their children (which would amount to 13.5% of minimum wage).

⁵³ Pavel Čížinský: "Zamítnutí zákona o zdravotním pojištění dětí cizinců", Counselling Centre for Citizenship, Civil and Human Rights.

⁵⁴ Amendments to the Act No. 326/1999 Coll., concerning the residence of foreign citizens (§180i and 180j) and the Act No. 277/2009 Coll., concerning insurance.

⁵⁵ See Hnilicová, H.: "Od ledna 2010 se změnilly podmínky zdravotního pojištění cizinců v CR, dlouhodobé problémy to ale neřeší", May 2010, < <http://www.migraceonline.cz/e-knihovna/?x=2229027> >

their family. Poor housing was for instance reason for placing children into institutional care in case Walla and Wallova v. Czech Republic⁵⁶ (for more details see chapter IV.1).

LIGA welcomes efforts of the Agency for Social Inclusion which tried to initiate the public debate about availability of housing for people endangered by social exclusion⁵⁷. Regrettably, the new government which was appointed in July 2010 in its programme statement expressed a very little interest in this field.

Recommendations for Governmental Action:

- *to adopt and develop a concept of housing for socially disadvantaged people so that socially deprived families with children would have access to basic living conditions.*

⁵⁶ Wallová and Walla v. Czech Republic, App. No. 23848/04, judgment of the ECtHR from 26.10.2006.

⁵⁷ The Agency for Social Exclusion in co-operation with Institute of Sociology prepared a study "Podpora dostupnosti bydlení pro lidi akutně ohrožené sociálním vyloučením – mezinárodní perspektiva a návrhy opatření v ČR" (Support of Availability of Social Housing for People Currently Endangered by Social Exclusion – International Perspective and Proposals of Measures in the CR), available at < <http://www.socialni-zaclenovani.cz/dokumenty/dokumenty-k-oblasti-bydleni/podpora-dostupnosti-bydleni-pro-lidi-akutne-ohrozene-soc-vyl-sociologicky-ustav-av-cr-2010/download>>

VI. EDUCATION

VI.1. Segregation of Roma children

(Para 55 of the Committee's Recommendation)

In general it can be said, that despite continuing critics, an equal access to full-valued primary education for Roma children is still not provided. In more details, para 54 and 55 of the Concluding observations of the Committee on the Rights of the Child are not fulfilled when speaking about education in relation to Roma children. Due to above mentioned, Articles 28 b), e) and 29 a) of the Convention on the Rights of the Child are presently not observed.

In the year 2005 the new Educational Act entered into force, which formally cancelled so called special schools. In these former special schools mostly Roma children were educated and this was criticized also on the international area, especially by the European Court for Human Rights ruling that there is indirect discrimination towards Roma children in access to education⁵⁸.

Today all schools are called grammar schools (eventually grammar practical schools), but in fact segregation still exists in the following schools (or classes):

- a) Former special schools where majority of pupils are still Roma children.
- b) So called ghetto schools – in social excluded areas, where most of inhabitants are Roma.
- c) Classes which are separated only for Roma children – these Roma pupils are taught in accordance with curriculum for Grammar schools (usual curriculum).
- d) Separated classes for children with disabilities (mostly Roma children) – these pupils are taught in accordance with curriculum for special schools (former curriculum for former special schools).

The main problems of Czech educational system in relation to Roma children remain following:

- Former special schools were only formally renamed as grammar schools but in practice the curriculum stayed the same, as well as the teachers. In these schools approx. 60 – 90% of Roma children are still educated. Minimum of these pupils then continue with secondary education.
- There still remain so called ghetto schools – schools where 30-40% pupils are Roma children. This type of schools is connected with a trend that non-Roma parents are not enrolling their children into these schools, when they discover that there is a ghetto school in their area.
- According to implementing legislation of the Educational Act there is possibility of so called *group integration* of pupils. This group integration enables directors of schools to create special class for disabled children. This provision was meant to help directors of schools to handle with children, who needs special care and they are provided with certain state funding for every disabled child. Despite this idea there exist a lot of “group

⁵⁸ D.H. and Others v. the Czech Republic, complaint No. 57325/00, decision of Grand Chamber 13 November 2007.

integrated” Roma children who were labelled as disabled children and de facto segregated in these special classes. Only in this way directors of schools can reach higher remuneration for every Roma child, because in Czech law there exist higher remuneration only for disabled children and not for socially disadvantaged children as another group which Czech law distinguishes

- Roma children are often sent to pedagogical-psychological clinics for testing their educational abilities. According to these tests they are sent to special classes or schools for disabled children. They are reaching lower levels in these tests, because these tests are not culture sensitive. Thus, child from minority cannot reach same results as a child from majority population. This practice leads to indirect discrimination of Roma children.
- Czech law prefers in general individual integration, but it is weakly fulfilled in practice. The same applies for fight against discrimination, which is enacted in Educational Act, but only in very vague way.

Recommendations for Governmental Action:

- *to integrate all Roma children to regular grammar schools, where preferred tool of integration will be inclusion (as in many developed countries in Europe)*
- *to prevent creation of new ghetto schools and growing number of existing ghetto schools*
- *to cancel former special schools also in practice so that there will be only one common curriculum for all children – Grammar school curriculum*
- *to support also socially disadvantaged children by higher remuneration, not only disabled children – this will prevent from labelling Roma children as disabled children, only because school needs more finance for their education*
- *to secure that tests in pedagogical-psychological clinics will be sensitive to any culture or ethnical background (e.g. so called culture-free tests)*
- *to secure that parents of child which should be placed into school with lower curriculum basis is giving well informed consent (not only formal consent) and also that they are duly informed about any consequences connected with this consent*
- *to create supporting educational and social programs for Roma children and also for Roma minority to enable this minority to reach comparable school results as majority population and also comparable work opportunities*
- *to reach ethnical diversity at schools comparable to sample of inhabitants in every region*
- *to support education to human rights, non-discrimination and tolerance*
- *to secure, that Roma children will be provided equal access to all levels of education (primary, secondary and also tertiary)*

VI.2. Children with disabilities

(Para 55 of the Committee's Recommendation)

There has been no significant progress in education of children with disabilities. **Children with physical or intellectual disabilities are educated in special schools and classes and according to special educational programs.** This causes exclusion of children with disabilities from the society from an early age and lowers their chances to succeed later at the labour market. Some of the special schools educate children with certain type of disability (e.g. autism) in special classes within the special school, which creates a double segregation.

The system of state financing is very beneficial to special schools, which receive an extra allowances for each disabled child. This system is contra-productive for the development of inclusive education for two reasons. (1) The special school do not attempt to integrate their pupils into different, „common“ schools due to concern about losing money and (2) the well-financed environment of the special schools, with enough resources for special educational tools is a very powerful argument to advocate special schooling system. The government must therefore ensure the financing structures change to allow „common schools“ to provide special tools and assistants for disabled children as well and thus not undermine the attempts to transform the educational system to inclusive.

Many children with disabilities are placed in the institutions, due to the lack of state support for the family. **The education in the institutions is mostly provided by the schools that are part of the institutions.** Such education is often unsatisfactory, putting children of different ages into the same class, which does not ensure their development to their full potential.

According to the Art. 24 of the Convention on Rights of Persons with Disabilities, which was ratified by the Czech Republic in 2009, each member state has to ensure access to an inclusive education for every child without discrimination on the grounds of disabilities. Czech Republic fails to do so, the „common schools“ are neither accessible (physically or systematically) nor inclusive. Although the wording of the Act no. 561/2004 Coll. (Education Act) does express the need for integration of the children with disabilities primary by an individual form, in practice this rarely happens. According to s. 3 (4) of the Executive Ordinance to the Education Act no. 73/2005 Coll., the school may refuse to individually integrate a child in case of lack of material resources. This goes against the principle of the right to education in the child's community (local school) and creates segregation. It also obliges parents to look for another school, sometimes far from their place of residence, especially in more remote or rural areas. In some cases, the parents must end their career and stop working in order to ensure the every-day transport of their child. In addition, this also creates extra costs for these families.

A prepared Amendment of the above-mentioned Ordinance should abandon the possibility of refusal of disabled child on material grounds. However this Amendment has not been passed yet.

The Ministry of Education has prepared the National Action Plan on Inclusive Education⁵⁹, a concept of transformation of the current education system to inclusive system. It contains a comprehensive list of all the areas and measures that must be taken in order to ensure

⁵⁹ Available at: <<http://www.msmt.cz/socialni-programy/narodn-akcni-plan-inkluzivniho-vzdelavani>>

inclusive education. The plan is, however, still in a preparatory phase and the new Government has not yet expressed its will to proceed with its realisation.

The problems that parents of disabled children often experience, is mostly the lack of precise and proper information. The counselling centres, school director, teachers or other professional often show negative attitude for the integration of disabled children, which may discourage the parents from attempts to integrate their children. The parents also lack the support from the local governments and the city authorities, as well as information on the procedure of the integration and other issues concerning education (e.g. who are the decision makers, what measures can a parent take against the decisions of the director, what are the legal remedies).

Recommendations for Governmental Action:

- *to ensure the proper implementation of the National Action Plan for Inclusive education*
- *to change the legislation in a way that it does not exclude children with disabilities from their local schools*
- *to ensure that there is no discrimination of people with disabilities concerning their access to primary, secondary, tertiary and life-long education*
- *to change the system of financing of the “common” and special schools*
- *to ensure that children in institutions can attend “common” schools together with other children*
- *to provide a source of precise information for the parents on the possibilities of education and further development for their children*

VII. SPECIAL PROTECTION MEASURES

VII.1. Juvenile justice

(para. 26, 24 and 66 of the Committee's Recommendation)

In the Concluding Observations, The Committee has urged the Czech Republic to maintain the minimal age of criminal responsibility at the set limit of age 15. However, the wording of the proposal for the new criminal Code did reduce the minimum age to 14. In August 2009, the limit was changed again, by a Parliamentary bill back to the age of 15. The issue is still widely communicated and is a part of populist campaigns by the politicians prior to every elections and whenever media portray a case of a serious crime conducted by the minor. The media together with the politicians create an impression of the current generation as a „generation of criminals“.

The expert analysis and statistics of the Ministry of Justice⁶⁰, Public Prosecutor or the experiences of the police do not confirm the suggestion that the number of minor offenders is increasing⁶¹. The report of the Supreme Public Prosecutor from 2006⁶² states that the level of crimes conducted by minors has not changed. Concerning children less than 15 years of age, the number of cases has even lowered⁶³. The Supreme Public Prosecutor came into a conclusion that lowering the limit of the criminal responsibility from 15 to 14 appears to be inappropriate. In addition the most common type of offences conducted by minors remains offences against property.

Statutes currently in force do allow for taking measures towards a minor that has conducted an act that would be otherwise considered an offence.⁶⁴ The discussions that need to be carried out should involve the effectiveness of such measures on the resocialisation of the child. Lowering the limit for criminal liability would mean unnecessary criminalisation of children and could lead to misusing even younger children for criminal offences.

⁶⁰ Juvenile Perpetrators on the Edge of the Third Millennium, Institute for Criminology and Social Prevention, Prague, 2004 (Mladiství pachatelé na prahu třetího tisíciletí, Institut pro kriminologii a sociální prevenci, Praha 2004).

⁶¹ Situation of Juvenile Criminality Is Not Getting Worse, Teacher's Newspapers 25/2007.

⁶² Report about activity of State's Office of Prosecution for the year 2006, text part, Supreme Office of Prosecution, 2007, 7 NZN 601/2007, p. 30. Available at

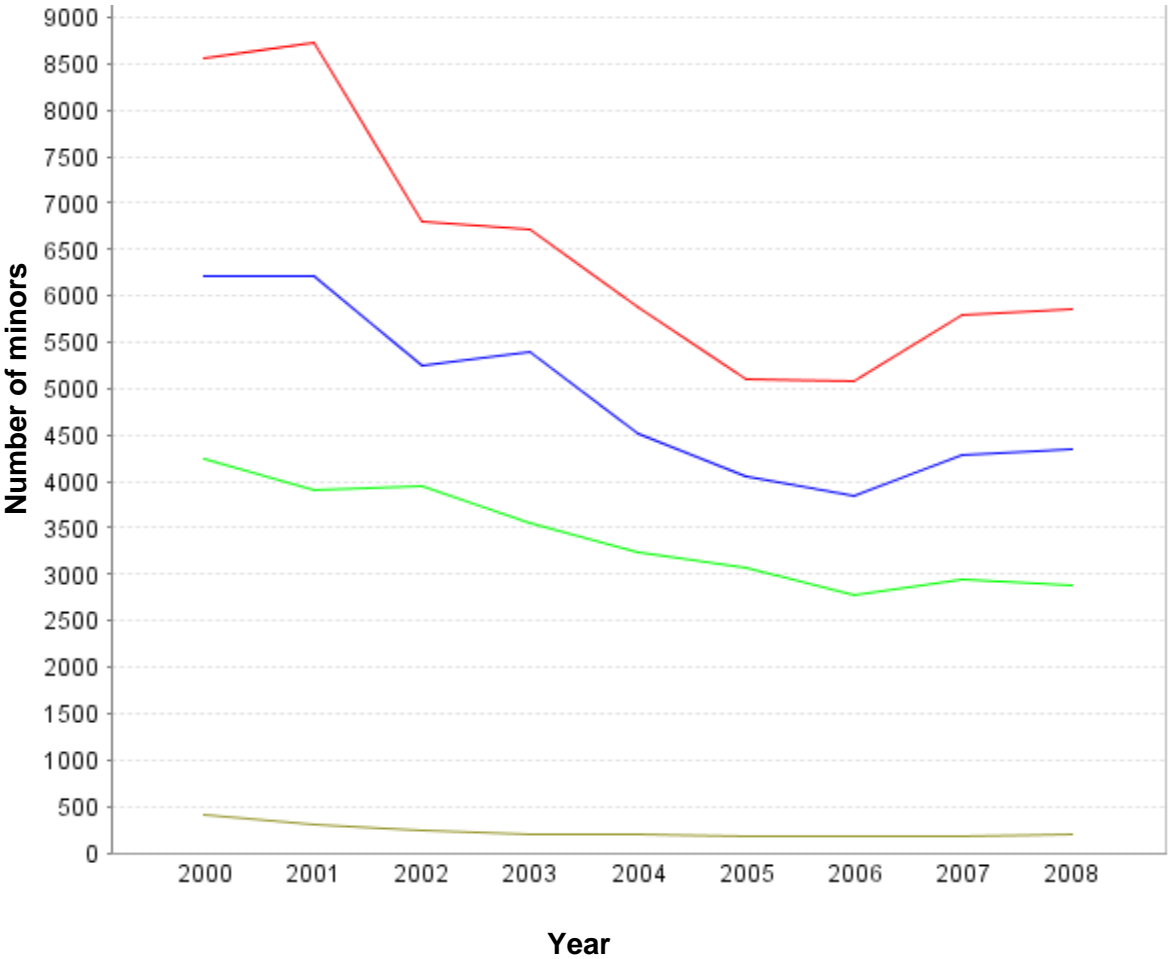
<http://portal.justice.cz/nsz/hlavni.aspx?j=39&o=29&k=2750&d=165695>

⁶³ Ibid.

⁶⁴ Válková, H., 15-14-15 = Bottom Age Level of Criminal Liability in the Czech Republic in the Year 2009, Právní rozhledy, 15/2009, 17. volume, s. p. II.

Graph VII.1 The development of criminal policies against minors (15 – 17) in absolute numbers

□ prosecuted
 □ accused
 □ convicted (total)
 □ convicted and sentenced to imprisonment



Source: *Statistical Yearbook of the Ministry of Justice of the Czech Republic, 2008*

Table VII.1 Criminal offenders under 15 years of age - number of persons

Year	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007
Convictions	6632	7118	10899	10296	10175	10757	10313	10224	6232	5724	3977	3643	3294	3040

Source: *Annual Statistic Data of Ministry of Justice of Czech Republic from the year 2008*

The numbers show that since the special law on juvenile justice, Act no. 218/2003 Coll. came into force, the rate of minor offences have lowered. The application of the new law, however, falls short mostly due to the lack of financial, technical and personal support.⁶⁵

The purpose of the new legal **regulation is paralysed by the insufficiency of the probation programs** and other supportive services that would enable taking of the appropriate measures within the juvenile justice. Probation programs that are one of the pillars of the new law are available only in certain number of districts or cities. The reason is not only the lack of the appropriate programs but also a high level of commitment needed from the state prosecutor and Mediation and Probation Service. The exercise of many of the measures is very formal and not sufficiently controlled.

The professionals involved lack specialisation. Especially in smaller districts with smaller amount of state prosecutors, the prosecutors have to deal with number of different offences, part of which are juvenile crimes. In some courts, due to the small occurrence of juvenile offences, none of the judges have been appointed to deal with them. In case there is only one judge dealing with such offences, the specialised judge is legally excluded from the preparation proceedings, thus another (non-specialised) judge needs to be appointed. **Most of the specialised judges still fail to have any education in special pedagogy or child psychology.**

Proceedings in juvenile justice are not considered criminal proceedings⁶⁶, but civil proceedings under the principles of proceedings on judicial care for minors⁶⁷. However, this proceeding consists of two parts, the first part, in which the police investigate the act, cannot be considered as civil proceedings. The law does not regulate basic issues of the investigation, and thus unable to use the guarantees of the criminal proceedings in connection to the children under 15 years of age.⁶⁸

A child younger than 15 falls under the Act on Juvenile Justice from the moment he/she appears before the court. Since this moment the child has the right to protection by the guardian (advocate). On the contrary, the Act on Juvenile Justice awards a higher level of protection to the minor (15 -17 years of age), whose interests must be protected by the advocate from the moment any measures according to this law or Code of Criminal Procedure are taken. Thus, the child under 15 years does not have a right to legal defence during the investigation process. Some courts decide to investigate the case by them. Only by the legal obligation of the representation of the child during the whole process can the child be sufficiently protected.

Another important issue that we came across was that although the imprisonment of children under 15 years of age is not legally possible (the specific regulation can be found only in case of minors), a child is often committed to a institutional care due to suspicion of an offence under a preliminary measures. Preliminary measures under Art. 76a of the Code of Civil Procedure shall serve to protect the children, not to protect the society from the children. This measure should be used only in case a right or safety of a child is at stake and it is in a

⁶⁵ Doubrava, L., Juvenile Justice Act after six years of practice. 2009.

⁶⁶ § 90 para odst.1 Act No. 218/2003 Sb., about Juvenile Justice states, that "Child under 15 years of age is not criminally liable."

⁶⁷ Is regulated by the Civil Procedure Code.(§ 96 Juvenile Justice Act).

⁶⁸ Report on progress of Children's Rights in years 2003-2005, League of Human Rights, 2005, p. 71 (Zpráva o vývoji práv dětí v ČR v letech 2003-2005, Liga lidských práv, 2005, str. 71), http://www.llp.cz/files/file/Zprava_deti.pdf, 13 November 2007.

best interest of a child. In such situation, the best interest of child is not to be taken away from the parents. The presumption of innocence needs to be protected in this case; the child cannot be treated as a criminal before the court decision.

Recommendations for Governmental Action:

- *to maintain the limit of the criminal responsibility on the age of 15*
- *ensure that the guarantees of the criminal and quasi-criminal procedures anchored in UN documents, especially a right to a defence and presumption of innocence is respected in case of juveniles and children*
- *to ensure the specialisation, expertise and education in law, child psychology and special pedagogy of professionals involved*
- *to ensure the implementation of the Act on Juvenile Justice, e.g. by providing of all the mentioned measures*

VII.2. Commercial Sexual Exploitation of Children, Including Child Trafficking

(para. 62 of the Committee's Recommendation)

Collection of data on sexually abused children is not centralized. The statistics on sexual abused children are compiled by Police, Ministry of Labour and Social Affairs and Ministry of Justice (within the statistics of courts and public prosecution). Because the methodology of the statistics is not unified and interconnected, they are incompatible.

A few partial studies have been carried out on commercial sexual exploitation of children (CSEC), but comprehensive research study on the prevalence of CSEC, its causes, typology of victims and perpetrators, latency, and effectiveness of so far adopted measures to combat it is lacking. Systematic information about CSEC is missing.

The coordinated system of cooperation among child protection agencies, educational institutions, health care facilities, police and NGOs does not exist. That leads to unsystematic responses to individual cases of sexual abuse and CSEC, which might cause needless secondary victimization. An elaborated, unified and coordinated system of crisis intervention, long-term care for victims, and rehabilitation is not in place. The victims are granted neither legal nor psychosocial assistance; the system of social rehabilitation is insufficient and rambling. Due to the shortage of staff, the child protection agencies can not exercise their preventive function and undertake terrain social work with children and families at risk.

Although the National Action Plan includes educational programs on CSEC, these programs are targeted to experts. Public awareness campaigns targeted to children, parents, and the public are missing.

Although the Penal Code provides the possibility to impose a protective treatment on a convicted while imprisoned, a system of protective treatment for paedophile aggressors and other sexual deviants while imprisoned is lacking.

An important factor contributing to CSEC is the number of institutionalized children. The children who run away from institutions or dysfunctional families are considered to be the group most at risk of CSEC. Another particularly vulnerable group is unaccompanied minor foreigners.

The Czech Republic has not ratified neither the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography nor the

Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime. The Czech Republic also has not signed the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse CETS No.: 201. The reason for not ratifying these instruments is insufficient legal regulation of criminal, administrative and civil liability of the legal entities.

Recommendations for Governmental Action:

- *to establish the liability of legal entities and ratify promptly the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography as well as the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime;*
- *to unify the methodology of collecting statistical data on sexually abused children and establish a nation-wide register of these children;*
- *to undertake a comprehensive study to map real prevalence of CSEC, its causes, typology of victims, perpetrators and effectiveness of the measures adopted so far;*
- *to establish a coordinated system of response of the involved state authorities (e.g. child protection agencies, police, public prosecutor, judge and social and rehabilitation services) to the cases of child sexual abuse;*
- *to establish a state guaranteed system of assistance and rehabilitation services for the child victims of sexual abuse while providing funding of non-governmental organizations offering these services;*
- *-to strengthen the preventive capacity of child protection agencies through increasing staff numbers and the qualifications and competence of the staff to undertake terrain social work, and detect children at risk as well as to appropriately react to child abuse to reduce the secondary victimization of the child to a minimum;*
- *to undertake awareness raising campaigns targeted to children and parents, especially those at risk;*
- *to establish a system of treatment of perpetrators of sexual violence against children, including juvenile offenders in prisons;*
- *to ensure that all state officials (child protection agencies workers, police investigators, public prosecutors, and judges) dealing with cases of child sexual abuse are trained and apply the best practices to reduce secondary victimization of the child.*