

## Child-Protection Systems – Czech Perspective

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### ABSTRACT

The Czech Republic's child protection system, assessed as risk-oriented with high intervention thresholds, faces many challenges such as fragmentation, excessive institutionalisation of children care and inadequate participation of children and parents, despite recent strategic aims for reform. However, its guiding principles encompass the best interest of the child, family protection, respect for children's participation rights, non-discrimination, prevention, cultural sensitivity, rehabilitation and voluntary participation. The responsibility for maintaining the Czech child protection system is divided among various actors, mainly socio-legal protection bodies, courts and social service providers. The system pays special attention to children at risk, including those lacking care, exhibiting problematic behaviour, being crime victims or having been frequently institutionalised. The system provides some specific measures for children with disabilities, but some accessibility issues, as a heritage of the past, persist. The state's intervention in the family for children's protection relies strongly on the activities of socio-legal protection bodies, which are mainly preventive, advisory, educational, and protection measures. The system provides various benefits regarding social support, pension and tax law systems. Moreover, a variety of paid and unpaid child welfare is provided, mainly social activation services, low threshold facilities for children and minors, respite care, accompanying organisations services for foster parents and adoptive parents and residential care centres. When considering alternative care arrangements for children, courts have a wide array of options under the law, including placing the child under the care of a guardian, another person (typically a relative) or foster care, with various provisions for short-term and long-term arrangements. Additionally, institutional care is an alternative to be employed only if other substitute family care is impossible.

### KEYWORDS

child protection system, institutional care, social-legal protection of children, foster care, social services

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## 1. Aims, Foundations, Structure and Legal Regulation of the National Child Protection System

The child protection system in the Czech Republic is assessed as a risk-oriented system.<sup>1</sup> That means that the threshold for intervention in a family to protect children against harm is high.<sup>2</sup> At the linguistic level, ensuring a stable home and meeting children's basic needs for safe and continuous attachment to their caregivers is a key goal of the system. In practice, fulfilling this goal needs catching up. As an example, some studies indicate that the Czech Republic is considered among the least child-friendly Organisation for Economic Co-operation and Development countries, with a history of discriminating against groups of children.<sup>3</sup>

The most recent strategic document adopted by the Czech Government in December 2020 addressing the child protection system is the Strategy for the Protection of Children's Rights 2021 to 2029. The Strategy identifies some major systemic weaknesses, which are horizontal and vertical fragmentation and complexity of the system, unclear competencies and responsibilities between the different gestors. The fragmented system of children protection does not consider the complex needs of children that relate to other areas of a child's life (health, education etc.). There is also lack of a comprehensive quality management system approach across the whole system of services for children at risk, children's views are not sufficiently considered in decision-making processes and there is a high pervasiveness of the children protection system and uneven distribution of financial flows in the system. Based on those weaknesses, the Czech government sets the following aims (recommendations): unification of the system of rights protection and care for children at risk; coordination of activities and interdisciplinary cooperation; strengthening the offer of assistance and preventive services; promotion the offer of educational, leisure and other activities; measures in the field of public and judicial protection of children to improve the quality of life of children aimed at increasing efficiency of administrative agencies for reducing the time of court proceedings and improving the quality of decision-making processes; development of foster family care; reforming the institutional care for children; strengthening children's participation at all levels.

The origins of the current system are based on Foucauldian disciplinary society aims, meaning the proper education of children to engage in labour so that they do not become a burden to society, and can be traced back to the 19th century.<sup>4</sup> Despite the social changes after 1989 and the subsequent return to the concept of the rule of law, the system of the public protection of children has not yet succeeded in

1 Helland and Luhamaa, 2020, p. 29.

2 Gilbert et al., 2011. p. 248.

3 Tarshish, 2019, p. 162.

4 Sležková, 2022, p. 257.

eliminating the disciplinary effect of this system, either towards the children themselves or their parents.<sup>5</sup>

Individual protection of children's rights and the children themselves have been brought to the centre of attention only recently,<sup>6</sup> and arguably mostly on a linguistic level, not so much in practice.<sup>7</sup> The literature remarks:

‘three main waves of transforming child protection in the Czech Republic: 1) combatting residential (institutional) care and attempting to replace it with substitute family care in the 2000s; 2) focusing on the empowerment of biological families after 2008; and 3) providing campaigns against domestic violence, including the maltreatment of children.’<sup>8</sup>

Probably due to the grounds of the current system, there are some significant challenges that the Czech Republic still faces after the decades following the transition to standard democracy.

The first problem addressed by professionals<sup>9</sup> and international bodies such as the UN Committee on the Rights of the Child<sup>10</sup> is the abovementioned fragmentation of responsibilities among many different actors cooperating only to a limited extent (e.g. the agenda of services for at-risk children and their families belongs to three ministries, namely Ministry of Health, Ministry of Education, Youth and Physical Education and in part also the Ministry of Labour and Social Affairs).

Second, the excessive institutionalisation of care for children at risk and the involuntary removal of children from parental care are criticised.<sup>11</sup> Notably, the European Court of Human Rights recognised on some occasions that the Czech Republic violated fundamental human rights in specific cases of the involuntary removal of children.<sup>12</sup> The UN Committee on the Rights of the Child is also concerned about the high institutionalisation rates in general and specifically addressing the following problems: too large institutional care facilities; institutional care for children under three years of age; some aspects of institutionalisation of children upon the request of their parents; institutionalisation for “behavioural difficulties”, high level of institutionalisation of children with disabilities and Roma children, lack of family-based care options; and practice where socioeconomic circumstances, in particular poverty, poor housing conditions and loss of housing, are being used as grounds for family separation.<sup>13</sup> As literature pointed out already in 2014, in the

5 Ibid.

6 Gojová et al., 2020, p. 11.

7 Sležková, 2022, p. 258.

8 Shmidt, 2023, p. 425.

9 Gojová et al., 2020, p. 16.

10 CRC/C/CZE/CO/5-6, point 30 (a).

11 Vavrecková et al., 2017, p. 247.

12 ECHR, *Wallová and Walla v. Czech Republic*, 2006.

13 CRC/C/CZE/CO/5-6, points 30 (c) and (d).

‘Czech case, the state’s willingness to change course is evident, but the structure of institutionalization is dependent upon more than just current political authority. It is a deeply embedded and firmly established cultural practice, the deviation from which challenges current beliefs, knowledge, patterns, and processes’.<sup>14</sup>

Third, the schizophrenic role of the social-legal protection authority bodies serving as a guardian representing children in court proceedings but also as a public body controlling (and punishing) families or providing family services is criticised by experts.<sup>15</sup>

Finally, the insufficient participation of both children and parents in decision-making processes, coupled with institutional and domestic violence directed at children, are among the most significant concerns the literature points to.<sup>16</sup>

Concerning children’s rights, protection of the family and parenthood the main sources of contemporary Czech law are: at the constitutional law level, the Charter of Fundamental Rights and Freedoms (Constitutional Act No. 23/1991 Coll., the Charter of Fundamental Rights and Freedoms, re-adopted under No. 2/1993 Coll., as amended; “Charter”); at the substantive law level, the provisions of the Civil Code (Act No. 89/2012 Sb., as amended, “CC”) regulate family relations.

The following sections are dedicated to a more detailed description of the child protection system in the Czech Republic and will address the system with specific attention to the following categories:

1. *The social-legal protection of children.* It is carried out mainly by public law entities (social-legal protection authorities) that are considered administrative authorities. The main functions of social-legal protection are supportive and advisory, protective, preventive, controlling and repressive.<sup>17</sup>

The powers of the social-legal protection authority bodies are regulated mainly by Act No. 359/1999 Coll., on the social-legal protection of children (hereinafter, “SLPA”).

Institutional care of children is regulated by Act No. 372/2011 Coll., on Health Services (“HSA”), Act No. 109/2002 Coll. on the Execution of Institutional Care and Protective Care (“ICEA”).

2. *Child justice (courts)* is considered part of the civil law court system, with some exceptions concerning non-contentious proceeding rules and the juvenile justice system. The court’s role within the meaning of child justice is, thus, to decide disputes and other matters within its jurisdiction. During the last decade, the evolution toward problem-solving justice in this area has been evident (e.g. interdisciplinarity or a pilot project introducing the position of court social

14 Schmidt and Bailey, 2014, p. 72.

15 Rogalewiczová, 2015, pp. 713–719.

16 Shmidt, 2023, pp. 440–441.

17 Rogalewiczová, 2018, pp. 2–3.

worker). The judges sitting for the juvenile courts are typically specialised, yet it depends mostly on the timetable issued and changed by the President of the Court.

Civil proceedings are regulated mainly by the Civil Procedure Code from 1963 (Act No. 99/1963 Sb., Civil Procedure Code, as amended, “CPC”) and Act on Special Civil Proceedings (Act No. 292/2013 Sb., on Special Civil Proceedings, as amended, “SCPA”).

3. *Social services*. Concerning children, those include activities that assist and support social inclusion or the prevention of social exclusion.

Legal regulation is included mainly in Act No. 108/2006 Coll., on social services (“SSA”).

4. *Benefits*. Provided to ensure basic needs and financial support to persons taking care of children or the children directly. Depending on the type of benefit, it falls within a state social support, pension or tax system.

Primary sources of law concerning the state social support system are Act No. 117/1995 Coll., on State Social Support (“StSocSA”) Act No. 588/2020 Coll. Act on Substitute Maintenance, Act No. 111/2006 Coll., on Aid in Material Distress and Act No.329/2011 Coll., on providing benefits to persons with disabilities.

Concerning pension system Act No. 155/1995 Coll. Pension Insurance Act (“PIA”) is the primary source of legal regulation.

Benefits that might be provided within the tax law system are regulated by Act No. 586/1992 Coll. Income Tax Act (“ITA”).

## 2. Guiding Principles of the National Child Protection System

The law does not define the guiding principles of the national child protection system. Still, these could be derived by interpreting the SLPA and other sources of Czech law (mainly CC) and international law, being mainly<sup>18</sup>:

1. *Best interest of the child principle* expressly stipulated in Art. 5 of SLPA as follows:

‘The primary aspect of social-legal protection is the interest and well-being of the child, the protection of parenthood and the family, and the mutual right of parents and children to parental education and care. At the same time, the broader social environment of the child is also taken into account.’

2. *Family protection*<sup>19</sup>
3. *Respect for children’s right to participation*<sup>20</sup>

18 Králíčková et al., 2022, pp. 289–290.

19 Art. 5 of SLPA.

20 Ibid., Art. 8.

4. *Non-discrimination*
5. *Free accessibility*<sup>21</sup> with the exception of the child's stay in an educational and recreational camp, the child's stay in an institution for children in need of immediate assistance and the administration of the child's property.
6. *Accessibility to all children*<sup>22</sup> on the territory of the Czech Republic under the age of 18, unless they attain a majority earlier.
7. *Positive obligation of the state* to safeguard children from physical or psychological violence and other risk<sup>23</sup>. If a situation threatens the proper upbringing and development of the child and the parents or other persons responsible for the upbringing of the child are unable or incapable of resolving it themselves, it is necessary to take social protection measures to protect the child and provide assistance.
8. *Prevention*<sup>24</sup>
9. *Special protection* of children without family care<sup>25</sup>
10. *Cultural sensitivity*: The choice of actions aims at continuity in the child's upbringing and respects their ethnic, religious, cultural and linguistic background.
11. *Biological family rehabilitation and preference*<sup>26</sup>
12. *Voluntary participation of other persons in the socio-legal protection of children*: Natural or legal persons may participate voluntarily in the social protection activities defined by law, subject to authorisation. Certain activities with significant impact are reserved for state authorities or delegated public administration bodies.

### 3. Maintenance and Financing of the Child Protection System

Responsibility for maintaining the *child protection system* is divided among many actors. As explained above, its fragmentation is criticised and aims to be reformed in the future.

Social-legal protection is provided by *social-legal protection authority bodies* (regional authorities, municipal authorities, the Ministry of Labour and Social Affairs, the Office for International Protection of Children and the Labour Office) ("SLPB"). The competencies are divided among those authorities, yet the primary workload (and highest number of employees) is given to municipal authorities. Data from 2018 show that the state covers approximately 73 % to 100 % of the cost of the

21 Ibid., Art. 58 para. 3.

22 Ibid., Art. 2.

23 Ibid., Art. 8 para 1 and Art. 9a and others.

24 Ibid., Arts. 10-10a.

25 Ibid., Art. 15 para 42 and others.

26 Ibid., Art. 9a para 2 and others.

municipal social-legal protection authorities (non-governmental funding is based on an estimate).<sup>27</sup> Moreover, other persons (entities) might provide *social-legal protection* for children if authorised by the regional authority for a specific agenda. Those may include, for example, assisting parents in solving educational or other problems related to the care of the child; organising counselling activities, lectures and courses; establishing and operating childcare counselling facilities; providing expert advice and assistance to applicants for adoption or foster care placement and provision of counselling assistance to individuals suitable to become adoptive or foster parents and to adoptive or foster parents. Entities providing service based on the authorisation are typically charities, societies, hospitals or even business corporations. There are no precise statistics on their financing, but vast variability can be assumed, including private (e.g. donations) and public funds (e.g. subsidies). The Ministry of Labour and Social Affairs is the state administration's central body in the social and legal protection of children. It carries out legislative, methodological and control activities concerning this area, including reviewing regional authorities' final decisions in appeal and review proceedings. The literature criticises fragmentation and insufficient coordination of state, municipalities and providers of social-legal protection.<sup>28</sup>

Regarding *child justice*, the courts are the primary actors of child protection. In practice, most cases concerning child protection are adjudicated by civil district courts (86 courts) at the initial stage, with civil regional courts serving as appellate courts (eight courts) and limited recourse for extraordinary appeal to the Supreme Court. Administrative, benefit and tax law cases are exceptions under administrative courts' jurisdictions. The Ministry of Justice acts as the central body of the state administration of the courts and is responsible for creating favourable conditions for the courts to administer justice effectively. This includes personnel, organisation, economics, finance and education, as well as supervising the proper execution of tasks within the boundaries prescribed by law.

Other significant stakeholders in the child protection system include *social service* providers, encompassing municipalities, regions, non-governmental and non-profit organisations and individuals. Among others, the Ministry of Labour and Social Affairs is the incorporator of five specialised social care institutions.<sup>29</sup> The Ministry of Labour and Social Affairs is the central body of the state administration in this field and is responsible for the concept of the social services system, its development and implementation, subsidies, coordination, control, among others. Social services are mostly financed by the state and municipal budgets and various national and supra-national grants. Public expenditure on social services is considered to be low.<sup>30</sup>

27 Ministry of Labour and Social Affairs, 2019a.

28 Pemová and Ptáček, 2022, p. 19.

29 Ministry of Labor and Social Affairs, 2019b.

30 Horák et al., 2016.

The state *social support system* primarily relies on the Regional Branches of the Labour Office of the Czech Republic (*Úřad práce ČR*) serving as contact points for processing applications, assessing eligibility and distributing benefits funded by the state. The Ministry of Labour and Social Affairs is the central body of the state administration in this field and the appellate body. The *pension system* relies on the District Social Security Administrations (*Okresní správa sociálního zabezpečení*), which are local organisation units of the Czech Social Security Administrations (*Česká správa sociálního zabezpečení*). Benefits provided under this system to the children (orphan pension, as will be explained in the subsection 7.1) are funded through the insurance system. Again, The Ministry of Labour and Social Affairs is the central body of the state administration in this area.

The *tax system* relies on Financial Administrative Bodies (*Orgány finanční správy*), with the Ministry of Finance as the central state administration body.

#### 4. Child at Risk

The Czech legislation does not provide a comprehensive definition of a child at risk, a fact that is criticised by professionals.<sup>31</sup> However, children at risk for the purpose of socio-legal protection could be categorised into at least four groups:<sup>32</sup> a) children who lack adequate care or whose proper development is jeopardised; b) children whose behaviour is problematic (e.g. illegal or criminal activities); c) children who are victims of crime or are at risk of becoming victims; d) children who are repeatedly placed or have been placed for a long period of time into institutional care.

This categorisation relies on the demonstrative list included in the legal definition provided by Art. 6 of the SLPA, encompassing the following groups of children:

‘(a) whose parents

1. are deceased,
2. fail to fulfil the obligations arising from parental responsibility, or
3. fail to exercise or abuse the rights of parental responsibility;

(b) who have been entrusted to the care of another person responsible for the upbringing of the child, if that person fails to fulfil the obligations arising from the entrustment of the child to his or her care;

(c) who lead an idle or immoral life consisting in particular of neglecting school attendance, not working, even if they do not have a sufficient source of livelihood, using alcohol or addictive substances, being at risk of addiction, living in prostitution, have committed a criminal offence or, in the case of children under the age of 15, have committed an act which would otherwise be

31 Pemová and Ptáček, 2022, p. 15.

32 Rogalewiczová et al., 2018, p. 42.

a criminal offence, repeatedly or persistently commit offences under the law governing offences or otherwise endanger civil coexistence;

(d) who repeatedly abscond from their parents or other natural or legal persons responsible for the upbringing of the child;

(e) on whom an offence endangering life, health, liberty, their human dignity, moral development or property has been committed or is suspected of having been committed;

(f) who, at the request of their parents or other persons responsible for the child's upbringing, are repeatedly placed in institutions providing continuous care for children or whose placement in such institutions lasts longer than 6 months;

(g) who are threatened by violence between parents or other persons responsible for the upbringing of the child, or violence between other natural persons;

(h) who are applicants for international protection, asylum seekers or persons enjoying subsidiary protection and who are in the territory of the Czech Republic unaccompanied by their parents or other persons responsible for their upbringing;

if these facts *persist for such a period of time* or are of such *intensity* that they adversely affect the development of the children or are or may be the cause of the adverse development of the children.'

Social workers employed by the SLPB are responsible for assessing whether an individual child is in a situation that poses a risk. However, a recent analysis reveals notable differences in the methods used by different social workers.<sup>33</sup> Similarly, research shows difficulties in introducing and strengthening the principle of the child's best interests in the practice of social workers.<sup>34</sup>

Statistics continually show that most children at risk are neglected children and sexually, physically and mentally abused children.<sup>35</sup>

## 5. Children With Disabilities in the Child Protection System

In former Czechoslovakia, the families with children with disabilities faced prevailing institutional care, neglect of rights and the absence of essential services in the area of healthcare, education and social care.<sup>36</sup> The literature outlines the numerous challenges those families have encountered since 1989, encompassing issues such as discrimination in benefit allocation, limited accessibility of public places and the

33 Ďuraško Mádlová and Mertová, 2023, p. 100.

34 Hloušek et al., 2020, p. 189.

35 Ministry of Labour and Social Affairs, 2024 and Pemová and Ptáček, 2012, p. 24.

36 Sedláčková et al., 2022, p. 4.

use of cage beds in social care homes.<sup>37</sup> The education system in the Czech Republic has been based on a principle of “duality” (education within special schools outside the mainstream education remains available), which serves as another example, although a significant shift in inclusion has been visible in recent years.<sup>38</sup>

Specific measures available to children with disabilities are:

1. *Social services for families caring for a child with a disability*<sup>39</sup> include, among others, early care, nursing care, personal assistance, relief service (field and outpatient) and social activation service for families with children. Recent research on early care accessibility indicates the potential challenges in the accessibility of the service, with variations depending on the region and type of disability.<sup>40</sup>
2. *Support measures in education*<sup>41</sup>. A child with a disability should be entitled to support measures in his or her education, which include a teaching assistant in school or kindergarten, counselling assistance, adjusting the organisation, content, evaluation, forms and methods of education, modifying the conditions for admission to education and for leaving education, the use of compensatory aids, special textbooks and special teaching aids, adjusting the expected learning outcomes within limits set by the framework education programmes and accredited education programmes, education according to an individual education plan, the use of an additional pedagogical worker, the provision of structurally or technically adapted education or school services in premises.
3. *Benefits*:
  - a. *Care allowance* is provided monthly to individuals unable to manage basic life needs without assistance<sup>42</sup>. The amount of the allowance depends on the level of dependency (four categories) and is based on an assessment of the ability to manage basic needs of life like mobility, orientation, communication, eating, dressing and footwear, physical hygiene, exercising physiological needs, health care, personal activities while considering the age of the child. The allowance might cover care provided by family members or professionals.
  - b. *Mobility allowance*<sup>43</sup> is provided to a person over the age of 1 who holds a so-called disability card and repeatedly transports to school, culture, social activities, medical appointments etc.
  - c. *Special assistance allowance*<sup>44</sup> is a comprehensive benefit that enables persons with disabilities to obtain funds for the purchase of various types

37 Sinecka, 2009, pp. 199–201.

38 Pivarč, 2019, p. 705.

39 Art. 32 of SSA.

40 Veřejný ochránce práv, 2020, p. 62.

41 Art. 16 of Act No. 561/2004 Coll., Education Act.

42 Arts. 7–30 of SSA.

43 Arts. 6–8 of Act on providing benefits to persons with disabilities.

44 Ibid., Arts. 9–12.

of compensatory aids (e.g. motor vehicle or a special restraint system). Persons with severe locomotor and weight-bearing disabilities and persons with severe visual and hearing impairments are entitled to this allowance.

## 6. Necessary Intervention

The SLPB plays a crucial role in fulfilling the Czech Republic's positive obligation to protect children even though many other authorities or persons are also responsible for intervening (e.g. Police, schools, and health service providers). Therefore, the following text focuses on the competencies of SLPB in relation to necessary intervention. Generally, the SLPB must intervene in situations that endanger the child's proper upbringing and favourable development<sup>45</sup>.

The intervention measures

'must be chosen so that they build on each other and influence each other. In the execution and implementation of measures, priority shall be given to those which ensure the proper upbringing and favourable development of the child in his or her family environment and, if this is not possible, in a foster family environment; this shall be done by using methods of social work and procedures corresponding to current scientific knowledge.<sup>46</sup>

The intervention measures available to the SLPB could be classified as:

1. *Preventive and advisory* measures<sup>47</sup> of SLPB include influencing parents to fulfil their parental responsibility obligations, discussing with the child any deficiencies in his or her behaviour, assisting parents in solving educational or other problems related to the care of the child, providing or facilitating advice to parents on the upbringing and education of the child and on the care of a disabled child etc.
2. *Educational measures*<sup>48</sup>. Namely, the SLPB may issue: a) a *warning* to the child, parents and other persons as a reprimand intended to make a particular person behave as required by law; b) an order on child *supervision* to ensure control over the child's behaviour and conduct. The supervision is mainly performed by social workers of the municipal authority, with the cooperation of other entities like schools, sports clubs, and employers of a child over 15 years of age; c) a *restriction order* imposing duties on a child, parents and other persons to prevent negative influence on the child's life. For example, an obligation to abstain from specified activities and prohibit visits to certain places, events, or

45 Art. 9a para 1 of SLPA.

46 Ibid., Art. 9a para 2.

47 Ibid., Arts. 10–12.

48 Ibid., Arts. 13–13a.

- facilities might be imposed. Persons responsible for the upbringing of a child will usually be subject to such a prohibition; for example, if they visit places where they consume addictive substances or are under the influence of such substances and are subsequently unable, for example, to care for the children.
3. *Child protection measures* encompass various actions taken by the SLPB a motion to a court for an *interim measure* according to Art. 42 SCPA is needed when a child is in a state of lack of proper care or is in danger of life or other important child's interests are endangered. If the conditions are met, the court will issue an order placing the child out of the care of the parents or the care of a person related or close to the child and place the child into another type of care (e.g. institutional, foster); a motion to a court requesting a *decision on the merits* in matters such as foster family care, institutional care (temporary foster care, placement of a child in a facility for children in need of immediate assistance, ordering, prolonging or abolishing institutional care), adoption (whether the consent of the parent is required or not, deprivation of the parent's right to consent to the adoption in case of deprivation of parental responsibility) and interference with parental responsibility and its exercise (limitation, deprivation, suspension; suspension of the exercise of the duty and right of custody of a parent that is minor; retention of the duty and right of custody and personal contact with a parent with limited capacity); *provision of urgent care (temporary placement)*. In situations where a child finds himself or herself without care, such as in instances of parental death or for unaccompanied migrant minors, the municipal authority in the place where the child is currently located has to arrange for urgent care for the child. This usually requires the location of persons related to the child or close to the child.

## 7. Structure of the Child Protection System

### 7.1. Monetary and In-Kind Benefits

The structure of the monetary benefits is complex and could be differentiated into the following groups:

1. *State social support system benefits*:
  - a. *Child benefit*<sup>49</sup> is the basic long-term benefit for families with children. Families with an income up to 3.4 times the minimum subsistence level are eligible. Child benefit is provided in three amounts depending on the child's age and in two rates, basic and enhanced, depending on the type of income.
  - b. *Parental allowance*<sup>50</sup> is available to all parents of children under four years of age, and eligibility is not contingent on household income or whether the child's mother or father is the recipient.

49 Arts. 17–19 of StSocSA.

50 Ibid., Arts. 30–31.

- c. *Housing allowance*<sup>51</sup> is financial support assisting low-income families or individuals in meeting their housing expenses. The allowance is determined based on the family's income and housing expenditures.
- d. *Substitute maintenance* (Act on Substitute Maintenance) is a social benefit designed to assist dependent children when a parent fails to adequately fulfil their court-ordered maintenance obligations. This may involve non-payment or payment of an amount lower than the court's determination. Applications for substitute maintenance can be submitted starting from 1 July 2021.
- e. *Subsistence allowance*<sup>52</sup> is designed to meet the basic living needs of an individual or a group of individuals jointly assessed. This encompasses necessities such as food, clothing, footwear, essential hygiene items, and other fundamental requirements. To qualify for this allowance, a person must be recognised as being in material hardship and have an income and the income of the persons jointly assessed below the subsistence level.
- f. *Material distress benefits*<sup>53</sup> are intended for immediate assistance as a one-time benefit (in case of serious health risks; extraordinary events such as natural disasters; unforeseeable events such as a pandemic or additional payment for energy supply; one-off expenditure such as overnight accommodation, in the event of loss of funds to pay for initial medical check-ups; purchase or repair of necessary essential long term need items such as refrigerator, washing machine, bed or stove; cost of education, counselling or leisure activities of a dependent child such as camp, special interest groups, family counselling; on social exclusion, that is, released).
- g. *Foster care benefits*<sup>54</sup> include (a) foster carer's remuneration to which foster parents providing professional foster care are entitled; (b) allowance to cover the child's needs to which any foster parent or children up to 26 years old if he or she is still dependent and living with foster parents and; (c) foster care allowance to which non-professional foster parents are entitled; (d) one-off foster care benefits including allowance upon taking custody of the child and allowance for the purchase of a personal motor vehicle.
- h. *Recurrent maintenance allowance*<sup>55</sup> benefits young adults transitioning out of residential care or foster care arrangements. This state allowance aims to support these individuals in covering essential expenses such as housing costs, clothing, shoes, personal needs and school supplies. A young adult must have experienced at least one year in professional foster care or court-ordered institutional care to be eligible. Alternatively, the young adult must have resided in non-professional foster care for at least three years before

51 Ibid., Arts. 24–28.

52 Arts. 21–29 of Act on Aid in Material Distress.

53 Ibid., Arts. 33–35a.

54 Arts. 47a–47n of SLPA.

55 Ibid., Arts. 50b–50u.

- reaching full competence. The *one-off maintenance allowance*<sup>56</sup> supplements this allowance and assists in covering the expenses of a young adult, including housing costs, clothing, shoes, personal needs or school supplies.
- i. *Care allowance*<sup>57</sup> for individuals unable to manage basic life needs without assistance.
  - j. *Mobility and special assistance allowances* (Act on providing benefits to persons with disabilities) serve as comprehensive benefits for persons with disabilities described in section 5.
2. *Pension system benefits: Orphan's pension*<sup>58</sup> is granted to an orphaned dependent child in case of parent (custodian/caregiver) death if the parent received an old-age or disability pension or passed away due to a work-related accident. In cases outside these circumstances, the orphan's pension is contingent upon the deceased person fulfilling the required pension insurance period.
  3. *Tax system benefits: Dependent child tax credit*<sup>59</sup> The taxpayer is eligible for credit if taking care of their child, an adopted child or a child in foster care. The taxpayer will be eligible for a special tax bonus if the child tax credit exceeds the total tax amount. The bonus is equivalent to the difference between the child allowances and the individual's tax liability.

## **7.2. Child Welfare Services Within the Framework of Personal Care**

*Social activation services for families with children*<sup>60</sup> are provided as field services or ambulatory services if a child's development is endangered because of the effects of a long-term crisis social situation that the parents cannot overcome on their own without help, and for whom there are other risks of endangering their development. Services include educational, training and activation activities, facilitating contact with the social environment, social therapeutic activities, assisting in exercising rights and legitimate interests and managing personal affairs.

*Low threshold facilities for children and minors.* The service targets children and minors at risk of social exclusion, especially those referred to as "street kids". Social workers aim to provide support by offering meaningful ways to spend the free time and assistance to families facing neglect or personal problems. The service adopts a low-threshold approach, allowing individuals to access it without presenting proof of identity, adhering to a regular schedule or being obligated to participate in activities.

*Respite care* is provided to families, for example, in children's centres or summer camps.

*Accompanying organisations services* for foster parents and adoptive parents that provide support (to children – being in contact with a child at least every three

56 Ibid., Art. 50c.

57 Arts. 7–30 of SSA.

58 Arts. 52–53 of PIA.

59 Art. 35c of ITA.

60 Art. 65 of SSA.

months), foster parents and family) exercise control, monitor ongoing substitute family care and educate the competencies of foster parents.

The daily *residential care* centre is a type of health care facility where the patient (child) goes during daytime but goes home for the night (non-inpatient care). The weekly residential care centre (stationary) provides services to children who have reduced self-sufficiency due to medical, mental, physical or combined disabilities and also provide overnight stays. Depending on the target group and their focus, they are nursing, rehabilitation, resocialisation or therapeutic.

Despite the range of services available, research shows limited or unsatisfactory results of the system towards some groups of vulnerable children (e.g. minority children's education)<sup>61</sup> or homeless children.<sup>62</sup>

### 7.3. Authority Measures

A wide range of options are available to the court when considering the child's placement to someone's other care than a parent's. According to Art. 34 para. 4 of the Charter,

'the care and upbringing of children is the right of parents; children have the right to parental education and care. The rights of parents may be limited and minor children may be separated from their parents against their will only by a court decision based on the law.'

The substantive law thus allows the placing of children by court order into another environment in the following order of preference:

1. *Care of guardian (péče poručníka)*<sup>63</sup>: As subsequently explained, if no parent holds and exercises full parental responsibility for the child, guardianship (*poručenství*) includes the exercise of all rights and duties belonging to parental responsibility. This means the guardian, if a natural person, might physically care for the child. If it is not contrary to the child's interests, the court shall appoint the person nominated by the parents as guardian unless that person refuses guardianship. Otherwise, the court shall appoint a person related to or close to the child or the child's family as guardian unless the parent has expressly excluded this person. If no such person exists, the court shall appoint another suitable guardian<sup>64</sup>, which might also be a social-legal protection authority. In such a case, the possibility of physical care by the guardian is excluded by its nature.
2. *Care of another person* (typically a relative)<sup>65</sup>: If neither parent nor guardian can care for the child personally, the court may entrust the child to the personal

61 Merhaut et al., 2022, pp. 13–14.

62 Glumbíková and Mikulec, 2021, pp. 188–189.

63 Arts. 928–942 of CC.

64 Ibid., Art. 931.

65 Ibid., Arts. 953–957.

care of another person. If a person related to or close to the child has already taken care of the child, the court shall prioritise him or her over another person, unless this is not in the child's best interest.

3. *Foster care, pre-foster care (pěstounská, předpěstounská péče)*<sup>66</sup>: If neither parent nor guardian can care for the child personally, the court may entrust the child to the personal care of one or two (only if married) foster parents. The foster parent is then obliged and entitled to care for the child personally, exercise the parents' duties and rights proportionately in the child's upbringing and may decide on the ordinary affairs of the child (parental responsibility, decision making included, remains vested to the parents). Foster parents can be professionals (who have completed training and are registered in the register of persons who can carry out foster care maintained by the social-legal authority and are under the supervision of SLPB)<sup>67</sup> or non-professionals, usually relatives or other persons close to the child. The statistics show that about 72 % of foster parents are relatives (mostly grandparents).<sup>68</sup> The duration of a child's stay in foster care can vary depending on the circumstances and type of foster care. The following options are available:
  - a. *Pre-foster care*<sup>69</sup>. If a person wishing to accept a child in foster care is a non-professional, there is an option for facultative short-term court-ordered care. For professional applicants, pre-foster care is mandatory before entrusting a child to their foster care<sup>70</sup>. This aims to establish a relationship between the child and the foster parent, or even the foster parent's family, to get to know each other and bring them closer together in the conditions and space where the child will live with the foster family.<sup>71</sup>
  - b. *Short-term foster care*<sup>72</sup> involves specially trained professional foster parents equipped to handle the situation when a child is placed in their care for a limited period. They thus receive foster care benefits even when they do not have any child in their care. The statutory time limit for such care is one year<sup>73</sup>. This type of foster care provides interim care for a child without sufficient care until it is clear whether the child can be returned to his or her natural family, can be adopted or some other measure must be applied.
  - c. *Foster care*, in general, could be provided by both non-professionals and professionals during the time when neither a parent nor guardian can care for the child personally. There is no statutory time limit for its duration (except adulthood or full legal capacity of the child).

66 Ibid., Arts. 958–970.

67 Fabián, 2022, p. 62.

68 Lipová et al., 2019, p. 8.

69 Art. 963 of CC.

70 Ibid., Art. 24.

71 Westphalová, 2020, p. 1148.

72 Art. 958. para 3 of CC.

73 Art. 27 para. 9 of SLPA.

4. *Institutional care (ústavní výchova)*<sup>74</sup>
- a. If the upbringing of the child or the child's physical, mental or intellectual state or his or her proper development is seriously endangered or impaired to such an extent that it is contrary to the best interests of the child, or if there are serious reasons why the child's parents cannot provide for his or her upbringing, the court may also order institutional care.
  - b. *Child centres (nursery homes) for children of up to three years (dětské domovy pro děti do tří let věku)*<sup>75</sup> whose health condition requires the provision of healthcare in the form of inpatient care and who cannot grow up in a family environment, especially abused, neglected, abused or disabled children. On 1 January 2025, an amendment of the legislation will come into effect to forbid placing children up to three years of age in nursery homes by court order with some very strict exceptions (e.g. sibling groups).
  - c. *Educational institutions:*
    - I. *diagnostic institutions (diagnostické ústavy)*<sup>76</sup> are coeducational boarding facilities that perform diagnostic tasks, training, education and therapy for children of preschool and school age. The primary outcome of the stay should be comprehensive diagnostic reports with a personality development program. A stay in this type of institution should be at most eight weeks. After that period, the child should be returned to the family, substitute family care or other institutional care.<sup>77</sup>
    - II. *children's homes (dětský domov)*<sup>78</sup> for children over three years of age (in effect since 1 January 2015, the age limit should be raised to four years) who do not have severe behavioural problems. These children are educated in schools that are not part of the children's home. The basic organisational unit in a children's home is a family group of six to eight children, usually of different ages and sexes. Siblings shall be placed in one family group.
    - III. *children's home with a school (dětský domov se školou)*<sup>79</sup> for children over six years of age who have severe behavioural disorders or who require educational and therapeutic care because of a temporary or permanent mental disorder until the end of compulsory school. The basic organisational unit in a children's home with a school is a family group of five to eight children.
    - IV. *educational institution (výchovný ústav)*<sup>80</sup> takes care of children over 15 years of age with severe behavioural disorders. It performs mainly

74 Arts. 971–975 of CC.

75 Arts. 43–44 of HAS.

76 Arts. 5–11 of ICEA.

77 Blažková and Nováková, 2018, p. 91.

78 Art. 12 of ICEA.

79 Ibid., Art. 13.

80 Ibid., Art. 14.

educational, training and social tasks. The basic organisational unit in educational institutions is an educational group consisting of five to eight children.

- d. *Homes for people with special needs (domovy pro osoby se zdravotním postižením)*<sup>81</sup> provide residential services to children with disabilities and reduced self-sufficiency if their situation requires regular assistance from another person. The service includes, among others, accommodation, alimentation, assistance, educational, training and activation activities and social therapeutic activities.
- e. *Facilities for children requiring immediate assistance (zařízení pro děti vyžadující okamžitou pomoc)*<sup>82</sup> serve as crisis accommodation centres for children, offering a temporary residence, meals, clothing, and care. The child's stay in these facilities is limited to six months if placed there by court order due to the inability of parents to take care of him or her<sup>83</sup>, three months if placed there at the request of the child's legal representative with the possibility of prolongation upon social-legal protection authority approval<sup>84</sup> or six months if placed there at the request of the child or social-legal protection authority with the possibility of prolongation up to 12 months in total<sup>85</sup>. The facilities are operated by regional offices, municipalities, or private entities, and the Ministry of Labour and Social Affairs provides supervision.

Except for the above-described options being outcomes of court judgments on merits, a court may also issue *interim measure orders*. The law provides the following options:

1. *General interim measure order*<sup>86</sup>: If there is a necessity for the temporary adjustment of the minor child's circumstances, the court shall issue an interim order. Motion for such an order might be lodged with the court by parents or SLPB, or the court might issue such an order even without any motion (*ex officio*). The court shall decide on the motion without any delay, but if there is no risk of delay, the court up to seven days after the motion has been lodged.
2. *Special interim measure orders in respect of minor children*<sup>87</sup>: If the child lacks proper care or his or her life, normal development or other important interests are seriously threatened or impaired, the court shall issue an order placing the child into a suitable environment. If the child is placed out of the care of the parents or persons related to or close to the child, only the SLPB may bring the motion for interim measure order to the court.<sup>88</sup> The court shall decide on

81 Art. 48 of SSA.

82 Arts. 42–42ab of SLPA.

83 Art. 917 of CC.

84 Art. 45 para 5 point a) of SLPA.

85 Ibid., Art. 42 para. 5 point c).

86 Art. 74 of CPC.

87 Art. 452 of SCPA.

88 Šínová, 2021.

the motion without any delay. If it decides after the expiry of the 24 hours, it shall explain in the decision why it was not possible to decide earlier.

Parents, in general, can entrust the care and protection of the child, the exercise of his or her upbringing or certain aspects thereof or the supervision of the child to another person; the agreement of the parents with that person need not affect the duration or extent of parental responsibility<sup>89</sup>. However, if the parents entrust the child to another person with the intention that this person should take over the permanent care of the child, the parent must notify the SLPB<sup>90</sup>. The SLPB must then assess whether taking subsequent measures to protect the child is necessary<sup>91</sup>. If the parents entrust the child to the permanent or long-term care of another person without the decision of the competent authority (court), the SLPB should take advisory and educational measures and, if parents are not activated, lodge a motion to the court to formalise the care of another person.<sup>92</sup>

Parents also may<sup>93</sup> entrust a child to the care of a facility for *children requiring immediate assistance*, especially in situations where the child's favourable development is threatened, the child has educational problems that the parents cannot cope with or they are temporarily unable to provide care for the child themselves. For three months, there is no need for SLPB's or court's approval with such placement; after that, SLPB's approval is necessary.

## 8. Guardianship of Those Under Child Protection Care

The Czech law differentiates two institutes that traditionally fall within the meaning of guardianship. The guardianship of children under protection is generally regulated by CC<sup>94</sup> with some specific rules included in the SLPA<sup>95</sup>. In respect of procedural rules, CPC<sup>96</sup> and SCPA provide regulation.

The first institute (*poručenství*) is invoked when no parent holds or exercises full parental responsibility for the child<sup>97</sup>. This typically arises in the scenarios where both parents are deceased or their parental responsibility has been terminated by court order. In such cases, a court-appointed guardian (*poručník*) exercises parental responsibility rights and duties instead of the parents.

89 Art. 881 of CC.

90 Art. 10a, para. 2 and para. 4 of ASLP.

91 Ibid., Art. 16a.

92 Westphalová, 2020, p. 835.

93 Art. 42 of ASLP.

94 Arts. 465–471 and Arts. 943–952 of CC.

95 e.g. Art. 17 of SLPA.

96 Art. 29 of CPC.

97 sec. 928 of CC, Art. 928.

The second option (*opatrovnictví*) resolves the specific situations provided by law. Specifically, a court shall appoint such a guardian (*opatrovník*) to a minor when there is a risk of conflict of interests between the child and the person exercising parental responsibility, the legal representative does not sufficiently protect the child's interests or the child's interests require it<sup>98</sup>. Moreover, an *ad litem* guardian is appointed to the child in almost all civil proceedings if a minor.

In general, when appointing a guardian, the court is required in the decision to delineate the reasons for the appointment, duration or limitation of the function; outline the guardian's rights and obligations; detail reporting requirements; address potential compensation for expenses; and determine whether remuneration is applicable<sup>99</sup>. Moreover, the appointed guardian must consistently act in the child's best interests and safeguard his or her rights<sup>100</sup>. Guardianship *ad litem* will be explained in the following sections.

## 9. Aftercare

The preparation of young people for leaving institutions takes place throughout their stay, yet research shows its limited impact.<sup>101</sup> Any child in foster or institutional care is considered to be an endangered child. As such, an individual protection plan must be prepared for any such child. The plan's goal is to support young people in becoming independent, activate them and gradually prepare them to take responsibility for fulfilling their own goals. The plan's objectives relating to empowerment will likely include the critical areas of securing housing, preparing for future employment and/or a career, material provision and possibly various other forms of support.

In some cases of institutional care, a social curator (social worker) is assigned to monitor the child's rights. The main job of this social worker is to work with the child, the child's family and other entities involved in case cooperation; be in direct contact with the child; monitor the influences on the child; identify the causes and seek measures to reduce the adverse influences. Moreover, the director of the institutional care facility is obliged<sup>102</sup> to inform the competent municipal authority at least six months before the child's discharge from the institution and enable the child to meet with a social worker – social curator.

Institutional care generally ends when a child attains 18 years of age (or earlier if a child acquires full legal capacity by court order or enters marriage). Under exceptional circumstances, the institutional care might be prolonged by a court order for one additional year<sup>103</sup>. Reasons for such a prolongation are usually: (i) the inability of

98 Art. 943 of CC.

99 Ibid., Art. 945.

100 Ibid., Art. 457.

101 Blahová, 2020, pp. 48–49; or Daněk, 2022, pp. 33–34.

102 Art. 24 of ICEA.

103 Art. 975 of CC.

the concerned child to become independent (e.g. needs to complete education) or (ii) a serious medical condition.<sup>104</sup> Nevertheless, even in such situations, the court should not order prolongation against a child's wishes capable of formulating them.<sup>105</sup>

Any child then has a statutory right 'to support and assistance after the end of the stay in the institution in accordance with the aim of the child's reintegration into the family and society'.<sup>106</sup> Assistance for young adults would be provided mainly by the social curator voluntarily (as opposed to minor children).

After the end of institutional care, young adults may *stay in an institution* based on a contract between an institution and a young adult, but no longer than until the age of 26 years<sup>107</sup>.

Moreover, the so-called *halfway houses*<sup>108</sup> are also accessible to young adults transitioning from institutional care. Those provide temporary residence services for individuals up to 26 years old and encompass accommodation (in principle for up to 12 months), facilitation of social connections, therapeutic activities, and support in advocating for rights and interests. These services are charged.

Another possibility for temporarily providing housing to young adults is *asylum house*<sup>109</sup>. The daily accommodation facility provides 24-hour care and temporary accommodation for homeless people.<sup>110</sup>

Regarding monetary benefits, young adults transitioning from institutional or foster care might also be eligible for social benefits – *the recurrent maintenance allowance or one-off maintenance allowance* to cover his or her needs up to 26 years of age (as explained in subsection 7.1).

## 10. Procedural Background

### 10.1. Client: The Child

The contemporary Czech child protection system could be defined as “child-centred”,<sup>111</sup> hopefully being on the path towards family-centred. Therefore, a child is perceived more as a client or subject of protection, than an object of protection. This leads to the child having a role in initiating the procedure, being heard and participating, as explained in the following subsections.

104 Enochová, 2023.

105 Kornel and Šínová, 2016.

106 Art. 20 para 1 point q) of ICEA.

107 Ibid., Art. 2. para 6 and Art. 24 para 4.

108 Art. 58 of SSA.

109 Ibid., Art. 57.

110 Blažková and Nováková, 2018, p. 97.

111 Gojová et al., 2020, pp. 13–14.

### **10.2. Initiation of the Procedure**

Regarding *socio-legal protection*, the initial phase<sup>112</sup> of the procedure should be: the identification of a child at risk (usually not by the SLPB but other persons – police, health professionals, teachers, parents, children themselves); receipt of information about the child at risk by the SLPB; and initial assessment determining the severity of the child’s vulnerability and determining the speed and intensity of follow-up.

Most *court procedures* with respect to child protection may be initiated by the court without any motion (*ex officio*). Some exceptions are listed in Art. 468 SCPA (decisions on important matters for a child or representation of the child in case of parental disagreement) or Arts. 429 and 446 SCPA (adoption); then, the procedure would be initiated by a motion of the subject specified by the law in respect of each procedure (parents, adoptees, foster parents etc). Moreover, the SLPB may initiate some court procedures with respect to the children. Some exclusively, meaning no one else may initiate court procedure, and even the court cannot start the procedure and issue *ex officio* (as for special interim measure order under Art. 458 SCPA). Some non-exclusive, meaning other persons (mostly parents), may motion to the court, or the court may start the procedure without any motion (listed in Art. 14 SLPA, e.g. ordering institutional care or foster care placement and termination).

### **10.3. Representation**

Regarding *socio-legal protection*, a minor child has the right to act independently to some degree. For example, the child shall have the right to request assistance from the SLPB and other state authorities<sup>113</sup> even without the knowledge of the parents or other persons responsible for the child’s upbringing. However, the parents and other persons responsible for the child’s upbringing or a guardian will generally represent the child.

According to Art. 20 para. 1. CPC, every individual possesses procedural capacity to the extent that they can independently engage in *civil law proceedings*, as determined by substantive law. Therefore, minors without full legal capacity cannot generally act directly and must be represented. However, for certain legal proceedings, particularly those concerning family law matters, the law may grant full procedural capacity to minors, deviating from the general rule mentioned above (e.g. procedure for authorisation to marry of a child over 16 years of age, proceedings for granting full legal capacity).

If child needs a guardian ad litem for civil proceedings<sup>114</sup>, the court shall appoint someone close to the child or another suitable individual, with lawyers appointed only if no other suitable candidates are available. For the so-called custodial proceedings defined by Art. 466 SCPA (including foster care proceedings, adoption or institutional

112 Pemová and Ptáček, 2012, p. 51.

113 Art. 8 para 1 of SLPA.

114 Art. 29 para. 4 of CPC.

care); the court shall usually appoint an SLPB as a guardian<sup>115</sup>. If a social-legal protection authority initiates the court proceedings, the court must choose another social-legal authority (typically a different municipality) to serve as guardian ad litem in such proceedings.

The social-legal authority as ad litem guardian should ascertain the child's circumstances (i.e. how the child is cared for, in what conditions he or she lives and what his or her behaviour is like).<sup>116</sup> The employees of social-legal authority are entitled<sup>117</sup> to visit the child and the parents or other persons responsible for the child's upbringing at their residence in a school and educational establishment or in any other environment where the child resides. The guardian also must respect and ensure the participatory rights of the child.

#### **10.4. Hearing**

If a child is identified as at risk within the system of socio-legal protection, the SLPB should have a conversation with the child immediately after the child's intake into the system, typically without the presence of parents.<sup>118</sup>

In *civil law proceedings* (especially in the so-called non-contentious custodial cases listed in Art. 466 CC), the court must ensure that the views of the child regarding the matter at hand are ascertained, ideally through direct questioning of the child<sup>119</sup>. A child is usually heard by a judge without the presence of the parents or their lawyers. However, the social worker of SLPB is usually present and the child has a statutory right to a chosen confidant presence.<sup>120</sup>

In civil law matters, holding a hearing before the court's decision is the norm with a limited scope for exceptions. In some proceedings, especially non-contentious ones, it is even expressly stipulated that a hearing is obligatory. However, the court may issue decisions on interim orders motions without holding a hearing and *ex parte*, as the law does not require serving the parties the motion in matters at hand.

#### **10.5. Appointment of an Expert**

If the civil law court decision depends on assessing facts requiring specialist knowledge, the court may appoint an expert<sup>121</sup>. The court shall hear the expert and may order the expert to prepare a written report. Expert authorisation is granted through registration in the List of Expert Witnesses, maintained by the Ministry of Justice. Experts are listed by field, branch, and specialisation, ensuring transparency and verification of their qualifications. An expert's status is strictly tied to their registered expertise, while acting outside their scope disqualifies them as an expert for that act.

115 Art. 469 of SCPA.

116 Killarová, 2018, p. 160.

117 Art. 52 para 1 of SLPA.

118 Pemová and Ptáček, 2012, pp. 80–81.

119 Art. 100 para. 3 of CPC.

120 Čilečková et al., 2021, p. 340 et seq.

121 Art. 127 para 1 of CPC.

Expert reports may also be obtained from expert institutes and, in cases where no registered expert is available, a one-time appointment may be granted by the court. In proceedings related to child protection, the court may request a psychology or psychiatry expert to answer questions related to parental competence, child development and specific needs, or ascertain the child's views. However, it is clear from practice that the number of experts available is insufficient, as far as it often takes from six months to one year for an expert to prepare deliver their report to the court.

### **10.6. Enforcement**

Two types of court decisions, as described above, delivered in custodial proceedings might be enforced by: a) special interim measure orders in respect of minor children (sec. 452 et seq. SCPA) or b) general interim measure orders and decisions on merits (typically judgement).

A *special interim measure order* shall be executed immediately<sup>122</sup>. Enforcement shall be carried out by the court, in cooperation with the competent public authorities (SLPB, court bailiff, police), transferring the minor child to a suitable environment; if the child is with another person or in an institution, he or she shall be removed from them for the purpose of placement in an environment indicated by the court order. The enforcement of the decision must not result in unacceptable interference with the child's psychological or emotional development or unjustified infringement of rights. As will be explained below, even in the case of this interim measure order, the court should take necessary steps to ascertain the child's opinion, considering his or her age and intellectual capacity.

*General interim measure orders and decisions on merits* enforcement<sup>123</sup> will depend on the chosen measure. If the child is to be transferred from institutional care to the care of parents or other persons responsible for his or her upbringing, foster parents or prospective adoptees, the institution's director has a statutory obligation to comply with the decision<sup>124</sup>. If a child is to be transferred from parental (or another person's) care to the care of someone else and the obliged parent (or another person) does not comply willingly, a court should inform such person of the consequences of non-compliance, impose fines or order removal of the child.

## **11. Participation of Children in the Child Protection System**

The effective participatory rights of children are, on a textual level, strongly embedded in Czech national law<sup>125</sup> and are structured across the following four levels, varying depending on the matter and the circumstances of the individual child: a)

122 Art. 497 of SCPA.

123 SCPA, Art.500.

124 ICEA, Art. 24, para. 1, point c); Art. 24., para 2, point c).

125 Hoblíková and Kropáčková, 2019, pp. 951–954 or Kissová, n.d.

right to information; b) right to express his or views; c) right to be given his or her views due weight; d) right to decide (give consent, veto right).

First, *parents* must enable their children to participate in decision-making, and the general rule<sup>126</sup> dictates to provide information to the child, allow expression of his/her views and take them into account. Similarly, according to Art. 946 CC,

‘Before the guardian proceeds on behalf of the child to the legal act he has been appointed to perform, he shall ascertain the opinion of the parent or guardian, if applicable, and the opinion of the child and, if appropriate, other persons’.

On the substantive law level, the general rule regarding children’s participation in a *judicial* proceeding is stipulated in Art. 867 of CC,

“before making a decision affecting the child’s interests, the court shall provide the child with the necessary information to enable him or her to form his or her own opinion and to communicate it”.<sup>127</sup>

‘if, in the court’s opinion, the child is unable to receive the information, or is unable to form his or her opinion, or is unable to communicate that opinion, the court shall inform and hear the person who is able to protect the interests of the child, provided that the person must be a person whose interests do not conflict with the interests of the child; a child over the age of twelve shall be presumed to be able to receive the information, form his or her own opinion and communicate that opinion. The opinion of the child shall be given due weight by the court.’<sup>128</sup>

Moreover, SLPB has to respect participating rights, as stipulated by Art. 8 para. 2 SLPA,

‘a child capable of forming his or her own opinions shall have the right, for the purposes of social protection, to express those opinions freely in the discussion of all matters affecting him or her, even without the presence of his or her parents or other persons responsible for the child’s upbringing. The child’s views shall be given due weight, appropriate to his or her age and mental maturity, in the consideration of all matters affecting him or her. In its action, the social welfare authority shall take into account the wishes and feelings of the child, taking into account his or her age and development, so as not to endanger or impair his or her emotional and psychological development.’

126 Art. 875. para 2 of CC.

127 Art. 867 para. 1.

128 *Ibid.*, para. 2.

and by sec. 8 3 SLPA,

‘A child who is capable, having regard to his or her age and intellectual maturity, of assessing the impact and significance of decisions arising from judicial or administrative proceedings to which he or she is a party, or in the case of other decisions relating to his or her person, shall receive information from the social protection authority on all relevant matters concerning his or her person; a child over the age of 12 shall be deemed to be able to receive the information, form his or her own opinion and communicate it.<sup>1</sup>

Regarding procedural rules, Art. 20 para. 4 SCPA stipulates that:

‘In proceedings involving a minor who is capable of understanding the situation, the court shall proceed in such a way that the minor receives the necessary information about the court proceedings and is informed of the possible consequences of the compliance with his/her opinion and the consequences of the court decision. The minor’s legal representative or guardian has a similar duty towards the minor.’

Research shows that the actual participation of children in family law practice still needs to be improved, as the approach of individual district courts to ascertaining the child’s opinion in proceedings varies considerably; court rulings often do not specify the reasons why the child’s opinion was not ascertained; moreover, direct ascertaining of the child’s opinion by the judge is an exception rather than a rule.<sup>129</sup> Additionally, Constitutional Court case law provides anecdotal evidence of insufficiencies, particularly concerning institutional care placement of children. One of the recent cases involved a minor close to the age of majority (16 years old).<sup>130</sup> The district court placed the child in an educational institution by interim order because ‘*the minor has long ignored all his obligations, lives an idle life and does not educate himself*’. However, the district court did not ascertain his opinion in the proceedings, and the first contact with the young man was only when the bailiff delivered the decision to him. A guardian has not even been appointed to the child to explain the proceedings to him before the district court.

129 Čilečková et al., 2021.

130 Constitutional Court case No. II. ÚS 2225/23.

## 12. Adoption

The prerequisites for adopting a minor child, as stipulated by the law<sup>131</sup>, include: a) establishment of a parent-child relationship between the adopter and the adopted person<sup>132</sup>; b) submission of an adoption application by the prospective adopter to the court<sup>133</sup>; c) attainment of legal majority and full legal capacity by the adoptive parent<sup>134</sup>; d) reasonable age difference between the adopter and the adopted child, typically at least 16 years, with exceptions<sup>135</sup>; e) non-sibling or direct line relationship between the adopter and the adopted child<sup>136</sup>; f) consent of the adopted child is required if the child is at least 12 years old; otherwise, the guardian provides consent on his or her behalf<sup>137</sup>; g) consent of the child's parents, although exceptions when consent will not be required or substituted by the court judgement exists (e.g. the parent is in an unknown place and the court, in cooperation with other public authorities, is unable to ascertain that place even with the exercise of due diligence)<sup>138</sup>; h) Provision of care for the adopted child by the adoptive parent, at the adoptive parent's expense, for a sufficient period to establish a conclusive relationship, lasting at least six months<sup>139</sup>.

131 Arts. 794–845 of CC.

132 *Ibid.*, Art. 795.

133 *Ibid.*, Art. 796.

134 *Ibid.*, Art. 799.

135 *Ibid.*, Art. 803.

136 *Ibid.*, Art. 804.

137 *Ibid.*, Arts. 806–807.

138 *Ibid.*, Arts. 809–822.

139 *Ibid.*, Art. 829.

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