



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 all, 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 hindrance, from encroachments and violations of their fundamental rights.

LIGA is a member organization of the International Federation of 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 of 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 derives especially from analyses, reports and recommendations elaborated by League of Human Rights (LIGA) including the Report on progress of Rights of Children in Czech Republic in 2003 – 2005 (LIGA 2006). Other sources are publicly accessible reports of 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 a kind contribution of Radka Dohnalová, attorney and LIGA outside expert.

SUMMARY OF THE REPORT

I. General Measures of Implementation: In this chapter we accent the fact that there is persisting fractionalism of powers concerning endangered children between several ministries. Then we deal with non-existence of an independent body for the monitoring of the implementation of the Convention, a body which would investigate individual complaints in a child-sensitive (as recommended by the Committee). Last but not least we dwell on difficulties in cooperation of state and NGOs.

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

III. Civil Rights and Freedoms: This chapter focuses on the right not to be subject to torture and other ill treatment. We analyze problems regarding support to children victims during investigation and criminal proceedings. 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 into institutions. The most common reason for placing the child into institution is problem with 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. We underline the importance of transfer of powers of the Ministries, reform of social care and finances.

V. Basic Health and Social Care: We point out that there is a serious problem of access of foreign children to health care contrary to Czech international obligations. We also focus on the issue of insufficient support of social housing.

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

VII. Special Protective Measures: In this chapter we deal 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 with the fact that despite the Committee's repeated recommendations¹, despite pressure from professional public, NGOs, the Committee for the Rights of the Child of the Government Council for Human Rights, despite findings of governmental analyses and general proclamations of the Government, **an effective institutional reform ensuring implementation of the Convention has not occurred yet.**

Pursuant to a government resolution², the Analysis of the present state of institutional ensuring implementation of the Convention was prepared in 2004. The government report mentions this analysis; nevertheless, it does not deal with the problem of disregarding analysis findings in practice. As regards implementing obligations established by the Convention, ensuring realization of those rights which fall within the scope of responsibility of one department which then determines the conceptual policy in that area as well (e. g. the Ministry of Education in the area of the right to education) was found satisfactory in the analysis. On the other hand, in respect to **rights of endangered children**, especially when the family is malfunctioning and the child needs active help from the state, **the analysis found ensuring these rights fully unsatisfactory.**

In these cases (i.g. social work, various forms of alternative family care) state authorities competences fall within several departments – the Ministry of Labour and Social Affairs, the Ministry of Education, Youth and Sports, and the Ministry of Health Care. These departments are authorised to design conceptual policy and search for solutions in a given area only within the scope of their competency. This fact restrains from an effective reform of the present system, because division of competencies, and thus also financial sources distribution, and other difficultness make it impossible to reach systemic change in favour of the children's interest. Moreover, the present lay-out of the issue makes from the question of the family, or endangered children, a "side issue" for the departments concerned. *"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

That is why **the analysis inclined to the variant of authorisation of the present Ministry of Labour and Social Affairs and to transfer of some competencies to it** - the analysis proposed an amendment to the Competencies Act in the way that the Ministry of Education,

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 from 1997 (CRC/C/15/Add.81) and 2003 (CRC/C/15/Add.201).

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

Youth and Sports will not be the central state administration body for the execution of institutional or protective care anymore and the Ministry of Health Care will not be the central state administration body for baby institutions and children's home for children under three years anymore; these powers should extend the competency of the Ministry of Labour and Social Affairs. **On 4th May 2005 the Government considered the analysis of institutional ensuring implementation of the Convention and accepted⁴ it with reservations as to that there will not be any change of the competencies in case of school establishments.** The said resolution only **imposed coordination of the domestic implementation of the Convention agenda on the Ministry of Labour and Social Affairs.** However, the Ministry of Labour and Social Affairs itself expressed the necessity of proposing an amendment to the Competencies Act transferring all activities relating to coordination of ministries and other central state administration bodies in the field of children's rights into the Ministry of Labour's competence as soon as possible⁵. Nevertheless, no such change has occurred in the meantime and there is no such change likely to be realized in the near future.

Pursuant to the last-named government resolution the Ministry of Labour and Social Affairs introduced the Proposal of measures to transformation and integration of the care of endangered children system – basic principles⁶, and the following National action plan for transformation and integration of the care of endangered children system for the period 2009-2011. The Plan comes out 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 to the Government is the Minister of Labour and Social Affairs as the chairman of the newly established Interdepartmental coordination group which 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 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 children⁷. 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 Government recognizes the issue of ensuring children's rights as a topic to which attention must be paid and systematic efforts must be dedicated. *Unfortunately, the results of the above-mentioned government analyses and plans⁸ has remained on paper so far, these efforts have not been reflected at the level of*

⁴ The Government Resolution No. 530, from 4th May 2005.

⁵ 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.

⁶ The Government approved it on 10th January 2009.

⁷ 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 from 19th November 2009.

⁸ Including the Conception of care of endangered children and children living outside their family, accepted by the Government Resolution from 18th October 2006.

concrete children and families yet. Considering that nothing has been really changed in a system way, as the competencies in the field of ensuring children's rights remain fragmented, although the fragmentation could be diminished, it is feared that transformation of the care of endangered children will be, if not only cosmetic, 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 extend the 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 on the Rights of the Child 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 on the Rights of the Child, and having regard to the so called Paris Principles⁹, have to be considered as entirely insufficient. First of all, it is not an independent body – the Committee is only a working and advisory body of the Government which can suggest improvements in human rights protection and work out other documents for its use; however, these documents are subject to the Government approval. In the Czech Republic, an independent “control” of fulfilment of international human rights treaties may be represented for example by the activities of the Public Defender of Rights (Ombudsman)¹⁰.

On the other hand, it is not possible to consider the control by the present Public Defender of Rights¹¹ 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 on 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. 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.

⁹ 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.

¹⁰ Pursuant the Act No. 349/1999 Coll., on the Public Defender of Rights.

¹¹ Pursuant the Act No. 349/1999 Coll., on the Public Defender of Rights.

In its last final conclusions¹² 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. **LIGA 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 legislative proposal of the Act on the Defender of Children's Rights, which was preceded by broader discussion and a working seminar¹³. The body should have been established as an independent and separate body for promotion and supervision of fulfilment of the Convention on the Rights of the Child 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 a legal regulation at least with the force of an 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 of so called soft remedies, which means that he/she could have "only" given recommendations, not issue own decisions or reverse decisions of other authorities; it should have been a Government obligatory amendment place as regards documents relating to children.

Unfortunately, the proposal did not pass through the interdepartmental amendment procedure and 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 in 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 alternative¹⁴, the present Public Defender of Rights does not favour inclusion in 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 essential disagreement especially of the Ministry of Finance, the Ministry of Interior and the Ministry of Justice does not support it either. The main reproaches for the legislative design included inappropriateness of submitting such a suggestion in the time of the economic crisis, groundlessness of creation of a new office if it is possible, and according to opinions of some ministries it is, to ensure fulfilment of obligations within the present system of state administration, and 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.

¹² CRC/C/15/Add.201 para. 17.

¹³ The working seminar 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.

¹⁴ The Committee passed it at its session on the 28th January 2010.

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)

Involvement of NGOs, particularly in the area of providing social services as well as in the area of social-legal protection of children, is taken into account. According to the Act No. 359/1999 Coll., on Social and Legal Protection of Children it is necessary for NGOs to obtain a permission issued by a respective regional authority for execution of 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. Nevertheless, 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 for it.

Especially cooperation in solving concrete breaches of children's rights appears 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 concrete cases is minimal. Bodies of social and legal protection of children do not take advantage of NGOs dealing with family reconstruction and long-term social work with families enough, although they themselves do not have capacity to provide 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 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 on the Family and in the Act 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 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. **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 where 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)

There is an increasing tendency with regard to the respect for and the enforcement of the right of children to participation in everything which immediately concerns them in families, schools, communities and society¹⁵. 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 the law and in practice. Before the child can express their views, they first have to be provided with information on basis of which they would 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 Rights¹⁶, and the Czech Republic is obliged to follow it, in practice, children are rarely informed in the course of court proceedings.

The amendments¹⁷ to the Rules of Civil Procedures¹⁸ came into effect on 1st October 2008. These amendments reinforced the right of the child to be heard before the court in order to find out their views, which would consequently be taken into consideration with regard to the child's age and maturity. Only rarely can the court find out the child's views through their legal representative, an expert, or the social and legal protection authority. In some cases the

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

16 54/2001 Coll., European Convention on the Exercise of Children's Rights (ETS No.: 160), art. 3

17 Act No. 295/2008 Coll.

18 § 100 art. 4 of the Rules of Civil Procedure.

courts **neglect** the obligation to hear the child, although the law requires them to do so. Although the law states that children must be heard, it is very often done merely by the social and legal protection authority; however, neither this institution is often used. Judges tend to avoid hearing children before court likely because they do not know how to communicate with children or because they fear that the hearing would be psychically exhausting for the child. **There is no training for the custodial judges and for the representatives of the social and legal protection authority so that they would learn to communicate with children** in order to obtain their views in an effective yet 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 concerning children's views given in the proceedings is not sufficient and contributes to the fact that each court and each judge work differently. Therefore we think that a legislation based on division of children according to age would be more appropriate, provided that the court has the possibility to refuse to hear the child, should it cause any damage to the child. But the court would have to state the reasons of any such refusal based on particular arguments and evidence. The Czech legislation does not provide any reason why a child's views should be given, 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 state reasons why it was not possible to satisfy the child's wishes, in other words why the child's wish was in conflict with their interests.

Until now, no comprehensive provisions were adopted, which would ensure that children can express their views on all matters that concern them. The amendments to the Education Act No. 561/2004 Coll. states, in § 21 art.1e) defined the right of pupils and students to express their views on any matters concerning their education, and their opinions must be taken into consideration with regard to their age and maturity. The situation is the same in case of children in institutional care; they have the right to give their opinions on any planned or realised measures which concern them, and again their opinions must be taken into consideration with regard to their age and maturity. Although these legal regulations guarantee the right of the child to express their views, **the implementation in practice fails to be sufficient.**

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's opinions.*

III. CIVIL RIGHTS AND FREEDOMS

III.1. Privacy protection

We have come across the issue of **use of surveillance cameras in schools and institutions**. The Office for Personal Data Protection has noted in its Statement from May 2007 the failure to fulfil the legal conditions¹⁹ and the inappropriateness and disproportional use of the camera systems in schools.²⁰ The Government Council for Human Rights has repeatedly called for a more complex regulation including supervision on the usage of the video cameras.²¹

In 2003 a dispute broke out between the Public Defender of Rights (Ombudsman) and Ministry of Education, youth and sports on admissibility of use of the audiovisual recording devices in institutional education facilities in the Czech Republic. 18 monitoring devices were installed in two homes for children and institutional education facilities.²² The monitoring devices have been used not only to monitor the activities around the entrance and other areas, but for monitoring the club-rooms, cafeterias, separate rooms, medical isolation rooms, classrooms and 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 from the Section of Special Education in the Ministry of Education, that has even helped financing it with around 26 million Czech crowns. After repeated intervention of the Ombudsman, the usage of the devices in bedrooms was abandoned. The devices in the other areas of the institutions were banished by the order of the District state prosecutor against the objections of the Ministry.²³ Ministry of Education was defending the usage of audiovisual devices although this was not anchored in any law.²⁴ They based their arguments on an analysis of the Institute of State and Law, which said "from the legal point of view, there is no difference between surveillance of a person on an metro escalator or of a child in an institutional care facility. The surveillance in neither of cases does interfere with their home or privacy." Consequently, the Act on institutional education was amended on January 1st 2005 and since then it allows the usage of the audiovisual devices in case of protective education. The doubts still remain whether in case of children isolated in institutional education facility, less restrictive measures could be used in order to achieve a better educational effect. The video cameras are still used in areas where the law does not allow it, such as in the classrooms where the children without protective education are taught too.²⁵

¹⁹ E.g. Breach of the Act. No. 101/2000 Sb. about Protection of Personal Data.

²⁰ In its Opinion from May 2007 The Office for Personal data Protection stated, that: "due to the special character of camera systems aimed at spying spaces where people are occurring, which could present a breach of private and personal life of these subjects, its usage is possible in particular under a special permission, or its usage should represent ultima ratio in solving concrete situation (as in the case of school buildings)".

²¹ E.g. Resolution of Council for Human Rights of the Government of Czech republic from 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.

²² 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.

²³ Under the § 39 Act. No. 109/2002 Sb.

²⁴ 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.

²⁵ Report of Ombudsman for the Rights of Children from visits of facilities where institutional and protective care is exercised from the year 2007.

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 subject to torture, inhuman or degrading treatment or punishment
(para. 39 - 41 of the Committee's Recommendation)

III.2.1. The issue of violence against children falls under the competencies of 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 which all can lead to a systematic abuse of children.**

Although the situation has slightly improved lately, **the secondary victimisation of a child in criminal proceedings still occurs.**²⁶ 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 education 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 the persons 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 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 free of charge. However, in case only moral damage was caused and thus the damage can not be claimed during the criminal proceedings, there is no legal right to free representation. **The state should ensure the legal representation of the child victim free of charge at least for all the violent criminal offences against a child.**

Another legal insufficiency of the current regulation is the fact that **it is impossible to get compensation of the immaterial (moral) damage during the criminal proceedings** (within the adhesive proceedings). Moral damage is the only damage in many cases of an abused child and is much more serious than any material damage due to its 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 rarely as the civil

²⁶ 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 from www.llp.cz

proceedings bring a financial burden on the side of the victim as well as the risk of further examination and thus another traumatising of the child.

In cases of violence against children, the **trend of using the repressive measures ex post and underestimating the prevention is still present**. Nevertheless, prevention in the family and support to overcome problems in an early stage should be the priority. This role is assigned to the organs of social and legal protection of children. These organs 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 of the children is insufficient, they do not have capacities for prevention work and often a specialised CAN worker is lacking.

Also **the issue of therapy (for family and child victim) and rehabilitation of a child needs more attention**. These services are mostly accommodated by the non-profit sector, thus only in a limited range (the non-profit organisations work on a regional basis and to the extent to 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 for 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**.

III.2.2. Despite the efforts of the Government Council for Human Rights, the Czech Republic does not have a legislative ban of physical punishment. 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 did or does experience some kind of physical punishment...27...

Recommendations for Governmental Action:

- *to ensure effective and coordinated system for 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 on 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.²⁷

The system of institutional care remains fragmented from a methodological and coordination view. 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 blocks the effective reform of care of endangered children and obstructs the works on conception materials and strategies.²⁸

The most frequent reason (more than 50% of children) for taking the child away from the family is the social situation, particularly the material conditions of the family.²⁹ 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 background.³⁰ European Court of Human Rights also criticises placement of children in institutional care for material reasons. In case of Wallová and Walla v. the Czech Republic,³¹ 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 court ordered an institutional care. ECtHR stated a violation of right to a family life 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.*”³²

The reason for many problems in the exercise of social and legal protection of the children is a regulation of a current system, where the advisory (supportive) and repressive function is concentrated under one body, or even one person. This system is causing feelings of distrust on the side of the receivers of the support – the endangered family, and a too complicated position of the social workers on the other side. These problems are

²⁷ See for example Annual Report of the Council for Human Rights of the Government of Czech republic for the year 2007.

²⁸ See for example Annual Report of the Council for Human Rights of the Government of 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.

²⁹ See for example Annual Report of the Council for Human Rights of the Government of Czech republic for the year 2006.

³⁰ Poradna pro občanství, občanská a lidská práva “Zásahy veřejné moci do rodičovských práv a jejich dopad na rodinný život”, 2006, p. 24.

³¹ Wallová and Walla v. Czech Republic, application No. 23848/04, judgment from 26.10.2006.

³² § 78 ibid.

further elevated by the insufficient number of social workers and high number of families.³³ We experience a situation, mostly in smaller districts, where one social worker is responsible for several different agendas.

There is a raise of number of children in institutional care while the new big institutions with more than 30 children in care³⁴ can not ensure the full enjoyment of all the aspects of life for the children.³⁵ According to the official statistics, there are around 22 000 children in institutional care. Between 2004 and 2006, the number of children raised from 7159 to 7621 and the number of institutions from 198 to 227. The number is still increasing, in 2008 there were 1820 children in institutional care in 232 institutions.³⁶ The Czech Republic is among the top countries from the EU in number of children under the age of 3 in institutions.³⁷

Number of children in institutional care (according to the Ministry of Social Affairs, Ministry of Education and Ministry of Health)³⁸:

together	Approx. 21 000 - 22 000
Institutions for persons 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 (The rest of the children are placed in the institutions after the consent of the parents)	9 269 (on Jan. 1 st 2008)

The current system of protective education is not able to ensure the environment close to the one of a family, 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 teachers.³⁹ The placement of the child does not take into consideration the specific

³³ According to data of Ministry of Labour and Social Affairs there was approx. 337 clients (cases) for one social worker dated to 31. 12. 2007. Therefore, there is decrease in number of cases for one social worker compared to 31. 12. 2006 when there was 362 clients for one worker.

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 home in Lety – 32 children or newly reconstructed home in Písek for 48 children etc.

³⁶ Source: Czech statistical Office – Schools and scholar institutions in Czech republic in the school year 2008/2009.

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>

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.

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 juveniles 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 school.⁴⁰ In practice this means that children under protective education are subject to the same coercive measures, such as surveillance cameras or bars, as children with institutional education.

Deinstitutionalisation and family support remains only in political proclamations, which can be seen on a growing number of institutions and children within, financial support of, especially large, institutions and investment strategies in new big institutions that do not satisfy the need for more family-like services.⁴¹ Although the Ministry of Social Affairs is initiating the project for transformation of social care institutions, these do not involve children institutions.

The obstacle for the reform cannot be the lack of financial resources, because according to many analyses⁴² the institutional care in the Czech Republic is much more expensive than support of endangered families or foster care. Average costs at one child in the institutional care counts approx. 20.250,-CZK (approx. 785 Euro) per month⁴³, on the other hand average costs at one child in family care costs 3.391,-CZK (131 Euro) and in foster care 4.708,-CZK (182 Euro).⁴⁴ This situation promotes institutions to be filled to maximum with children and on the other hand municipalities are not motivated to support sanitation of endangered families.

According to materials from Ministry of Internal Affairs there are these alarming facts:

- Average length of placement of a child in the institutional care is 14,5 year and 61% of them are leaving institutions after reaching their majority
- The majority of cases of children who were put in the institutional care could be precluded by duly care
- 82% of children placed in institutions have not committed any crime before, but after leaving the institution 51% of the children committed a crime
- In connection with transformation of social-legal protection of children from county offices to municipalities in the year 2002 there appeared also decline in 20% of number of social workers

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 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", komparative legal study, 2006, s. 69 an., stejně tak 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 Ligue 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,- CZJ (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", komparative legal study, 2006, s. 78.

Preventive work with families as well as work with family after the children is placed into the institution is still insufficient, also return of the child into the former family is not supported enough.⁴⁵ There is often preference of care of surrogate family instead of biological family of the child. There still exists a lack of respect of a child's right to regular contact with its parents due to regulars in certain institutions.

Despite the fact that there is an obligation by law, 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 farer from the domicile of the parents. This enables the exclusion in law in case of full capacity of the closest institution. This situation causes cases when children are placed to institutions very far from the domicile of their parents and it restricts social work with the family or makes it completely impossible.

Recommendations for Governmental Action:

- *to uniform 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 preclude cases when the child is taken from its biological family only for social reasons by enacting this as a forbidden reason;*
- *to provide education to judges of guardian courts for their deeper specialization and to secure that they will prefer in their judgments biological family care;*
- *to provide effective social help to endangered families, to prevent withdrawing their children to institutional care;*
- *to ensure that in case of withdrawal of the child 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 sanitation 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 financial support the way that it will be more financially favourable to put child in foster care or support the biological family instead of placing and leaving the child in institutional care (e.g. municipal financial responsibility for children placed in institutions);*
- *to stop growing of numbers of facilities for institutional care for children (e.g. stop development of new facilities, cancel facilities with exceeded number of children in one group, cancel facilities which do not comply with conditions of home atmosphere for children);*
- *to ensure that all the personnel in facilities of institutional care for children have sufficient education, to establish common criteria for evaluating facilities (e.g.. number of children returned into biological families, success of children from the institution in its future working life);*
- *increase motivation for people to take children into foster care (financially, society value), make the process of choosing foster parents easier and quicker, ensure that decisions of the department of social-legal protection of children are "administrative decision" according to Administrative Procedure Act (reasoned, can be subject to review), sufficiently support foster families.*

⁴⁵ Comp. Report of the Council for human rights of the Czech Government on human rights in the Czech Republic in the year 2006.

V. BASIC HEALTH AND SOCIAL CARE

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

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

Until now no solution has been found to the important system deficiency – the **non-existence of a generally available health insurance for children of foreign citizens⁴⁶ from outside the EU countries.⁴⁷ In the Czech Republic foreigners – even those who reside here legally – do not have access to the public solidarity system of health insurance unless they are employees. Therefore, they have to pay the so-called commercial health insurance.⁴⁸ 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. Apart from children of foreign citizens another group of people experiencing problems with health insurance are mothers who are about to give birth. They have to pay charges for birth; their amount being fixed by the health care centres without any regulations. The situation as it is does not provide families with legal certainty and has negative impact on the stability of foreign citizens' families and the health of both born and unborn children.

The situation has been viewed negatively by the EU, the Government Council for Human Rights and other human rights organizations, who were all referring to articles 23 and 24 of the Convention. The problem does not lie in the non-profitability of foreign citizens' health insurance, as this insurance is very profitable⁴⁹ 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

46 In 2008 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); source: Czech Statistical Office 2008.

47 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”, <migraceonline.cz>. March 2010.

48 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”, <migraceonline.cz>. March 2010, p. 4).

49 E.g. according to the Annual Report of the VZP 2006 the insurance benefits amounted only to 49 million out of total 172 million CZK.

citizens with legal residence. At the suggestion of the Government Council for Human Rights the Ministry of Health were asked⁵⁰ to propose legislative or other measures to eliminate the deficiencies in the system of health insurance of foreign citizens' children.⁵¹ The Chamber of Deputies rejected the suggestion in May 2004.⁵² Neither did the consequent amendments effective from 1st January 2010⁵³ 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 companies.⁵⁴

Recommendations for Governmental Action:

- to eliminate discrimination of immigrants from third countries in access to health insurance and health care, and adopt measures to allow third country children access appropriate health care services and grant them the rights to achieve the highest possible health conditions. 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 neither legislation covering social housing nor support of any such concept which would prevent the social exclusion and the removal of children from their parents due to social reasons. Finding affordable housing presents a major problem for families on a low income (see Chapter IV/1 Family and alternative care).⁵⁵ Experience shows that the system of social benefits (housing allowances, etc.) and the vaguely defined obligations of communities to take care of social needs of their citizens do not form a systematic solution which would prevent social exclusion. It does not solve the lack of social housing both in use and in construction.

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.

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

51 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 Czech Republic citizens the foreign citizens would pay insurance for their children (which would amount to 13.5% of minimum wage).

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

53 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.

54 See Hnilicová, H.: "Od ledna 2010 se změnily podmínky zdravotního pojištění cizinců v ČR, dlouhodobé problémy to ale neřeší", <migraceonline.cz>, May 2010.

55 The Report on the Human Rights Condition in the Czech Republic issued by the Government Council for Human Rights in 2006, then in 2008; see also the recommendation of the Ombudsman to the Chamber of Deputies issued in 2005 for adopting a law concerning the support of housing for socially disadvantaged people.

VI. EDUCATION

VI.1. Segregation of Roma children

(Para 55a) Concluding observations of the Committee on the Rights of the Child: Czech Republic)

In general it can be said, that despite continuing critics, there is still not provided an equal access to full-valued primary education for Roma children. Concretely, **articles 54 and 55 of the Concluding observations of the Committee on the Rights of the Child** are not respected 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 not observed in current situation.

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 education.⁵⁶

Today all schools are called grammar schools (eventually grammar practical schools), but in fact segregations still exist 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:

- Former special schools were only formally renamed on grammar schools but in practice the curriculum and also teachers stayed the same. In these schools there are still educated approx. 60 – 90% of Roma children. Minimum of these pupils then continue in 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 to 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 remuneration from state for every disabled child. Despite this idea there exist a lot of “group integrated” Roma children who were tagged as disabled children and de facto segregated in these special classes. Only by this way can directors of schools reach higher remuneration for every Roma child, because in Czech law there exist higher remuneration only for disabled

⁵⁶ D.H. and Others v. the Czech Republic, complaint No. 57325/00, decision of Grand Chamber 13/11/2007.

children and not for socially disadvantaged children as another group which Czech law distinguish

- 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, so 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 origination of new ghetto schools and growing of existing ghetto schools;
- to cancel also in practice former special schools so that there will be only one common curriculum for all children – Grammar school curriculum;
- to support by higher remuneration also socially disadvantaged children, 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 the acknowledgment of parents of the child that this child will be replaced to school with lower curriculum basis is really acknowledged and the parents are deeply informed about any consequences connected with this acknowledgment;
- 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).

6.2. Children with disabilities

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 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 from concern to lose 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 for 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 for transformation of the educational system to inclusive.

Many children with disabilities are placed in the institutions, due to the lack of support for the family from the side of the state (as mentioned in 4). **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 ground of disability. The 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 Col. (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 the Executive ordinance to the Education Act no. 73/2005 Col. Under §3/4 of the ordinance, 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 in a distance 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 Ordinance above should abandon the possibility for 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 Education,⁵⁷ a concept for 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 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 a disabled children, which may discourage the parents from attempts to integrate their children. The parents also lack the support and information from the local governments and the city authorities 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*

⁵⁷

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

- access to primary, secondary, tertiary and life-long education*
- *to change the system of financing 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 Czech Republic to maintain the minimal age of criminal responsibility on 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 Justice⁵⁸, Public Prosecutor or the experiences of the police do not confirm the suggestion that the number of minor offenders increases⁵⁹. The report of the Supreme Public Prosecutor from 2006⁶⁰ 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 lowered.⁶¹ 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.

Laws currently in force do allow for taking measures towards a minor that has conducted an act that would be otherwise considered an offence.⁶² The discussions that need to be carried out should involve effectivity of such measures on 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.

⁵⁸ 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).

⁵⁹ Situation of juvenile criminality is not getting worse, Teacher's newspapers 25/2007.

⁶⁰ 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. Accessible from <http://portal.justice.cz/nsz/hlavni.aspx?j=39&o=29&k=2750&d=165695>

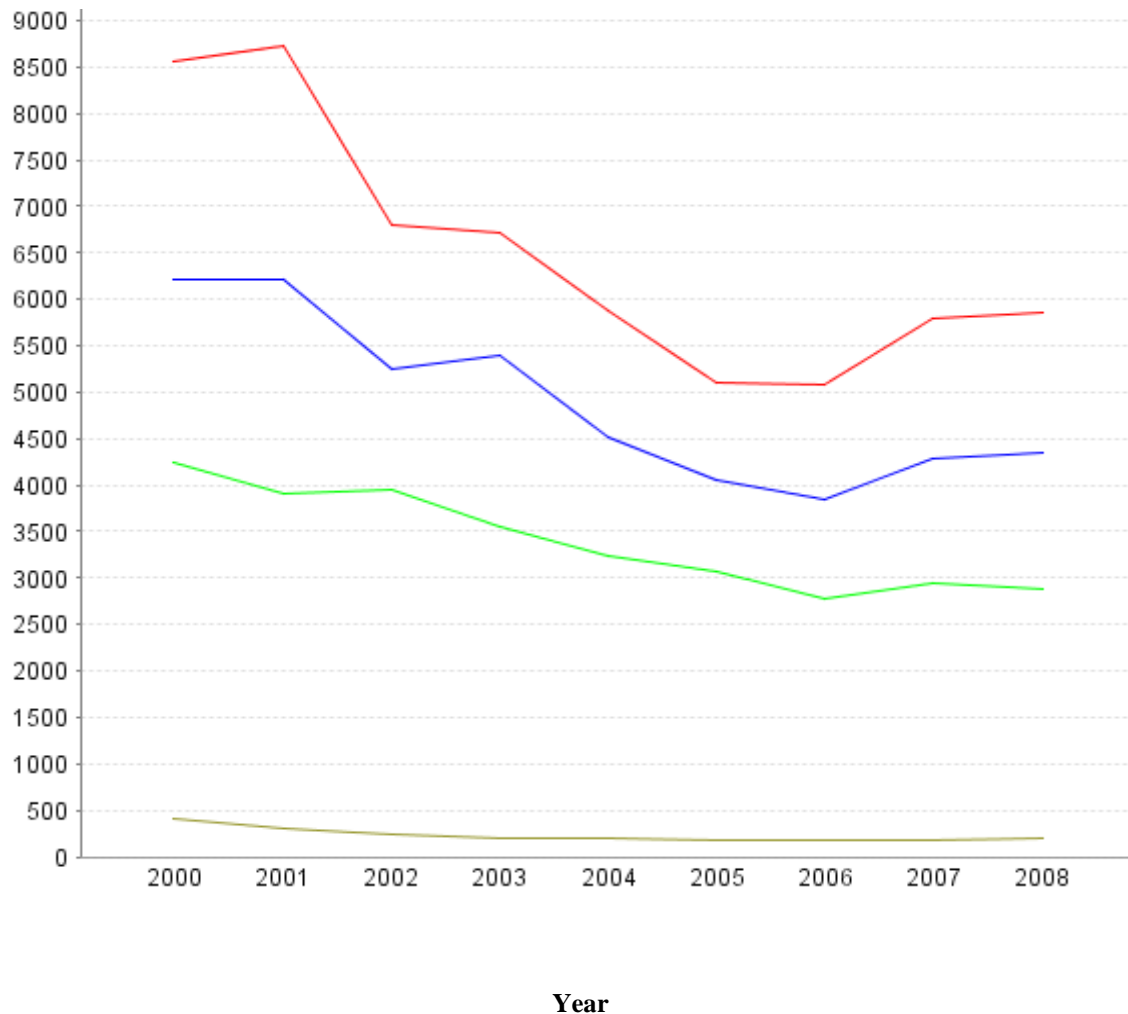
⁶¹ Ibid.

⁶² Válková, H., 15-14-15 = bottom age level of criminal liability in Czech republic in the year 2009, Právní rozhledy, 15/2009, 17. volume, s. p. II.

The development of the minor (15 – 17) criminal policies in numbers

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

Number of minors



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

	Criminal offender under 15 years of age - number of persons ⁶³													
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

The numbers show that since the special law on juvenile justice, Act no. 218/2003 Col. 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.⁶⁴

⁶³ Source: Annual Statistic Data of Ministry of Justice of Czech republic from the year 2008.
⁶⁴ Doubrava, L., Juvenile Justice Act after six years of practice. 2009.

The purpose of the new legal regulation is paralysed by the insufficiency of the probation programs and other supportive services that would enable for taking of the appropriate measures within the juvenile justice. Probation programmes 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 proceedings⁶⁵, but civil proceedings under the principles of proceedings on judicial care for minors⁶⁶. However, this proceeding consists of two parts, the first part, in which the police investigate the act, can not be considered 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 150 years of age.**⁶⁷

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 for 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 on suspicion of an offence under a preliminary measures. Preliminary measures under §76a of the Code on 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 in stake and when in a 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 can not be treated as a criminal before the court decision.

⁶⁵ § 90 para. 1 of the Act No. 218/2003, about Juvenile Justice states that “Child under 15 years of age is not criminally liable.”

⁶⁶ Is regulated by the Civil Procedure Code.(§ 96 Juvenile Justice Act).

⁶⁷ 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. 11. 2007.

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 from 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)

Commercial Sexual Exploitation of Children, Including Child Trafficking

Collection of data about 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 for possibility to order the sentenced to undergo through protective treatment while serving the sentence of imprisonment, a system of protective treatment for paedophile aggressors and other sexual deviants while serving the sentence of imprisonment 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 has not also 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 liability of the legal entities, neither criminal, nor administrative nor civil.

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 for 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.*