



International Federation  
for Human Rights

**Comments on the Second Periodical Report of  
the Czech Republic  
on the Implementation of  
*The Convention on the Rights of the Child***

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## Executive Summary

It is doubtless that since 1993, when then Czech Republic took on the obligations arising from the Convention on the Rights of the Child (“CRC” below), there has been some progress in the field of protecting children’s rights. Children’s rights and the protection of families now belong among the priorities of current governmental policy. However, we are convinced that in reality neither of these is receiving the level of protection in the Czech Republic that they should have.

We appreciate that the governmental report provides Committee with information not only on the state of legislation, but also on problems with legislation in practice. However, we are convinced that this information is not complete in all cases. The parties writing this report—non-governmental organizations—want to provide the Committee with additional materials focused on implementation problems and the enforcement of the rights of the child in the fields, in which they provide their services. In this report they are focusing on problems of the Czech reality rather than legislative problems, and on the following areas:

**1. General measures and general principles.** In this chapter, we stress the problem that the Czech Republic does not yet have any authority capable of coordinating and supervising the observance of children’s rights in the Czech Republic.

**2. Civil rights and freedoms .** In this chapter, we focus on the right not to be exposed to torture or other cruel, inhuman or degrading treatment or punishment—and above all, on the deficient and fragmented system of aid for tortured and abused children and on their secondary victimization during the investigation of crimes. We point out the prevailing use of physical punishments and bullying. Part of the chapter is devoted to infractions of the right not to be exposed to inhuman or humiliating treatment and of the right to privacy in residential-care facilities.

**3. Family background and alternative care.** In the introduction to this chapter, we point out the insufficient guarantees for the child’s right to receive care from both parents and stay in contact with the “other” parent, especially the father, during divorce or separation. Further, we focus on the policy of care for children who have been deprived of their family. The current system gives preference to residential care and insufficiently supports aid to such children’s own families and alternative family care, which fundamentally complies better with the demands of the CRC. We analyze in more detail the respecting of children’s rights within the framework of residential care, the problems of foster care and adoptions (including international adoptions). Part of the chapter is devoted to insufficient protection of and aid for the victims of home violence.

**4. Special protective measures.** In this chapter, we focus on the problem of asylum seekers who are minors and are staying in the Czech Republic without the attendance of their legal guardians, and on the lack of respect for the demands of the CRC in the case of children placed in interim facilities for foreigners. A considerable part of the chapter is devoted to sexual abuse of children in the Czech Republic, and especially commercial sexual abuse and the deficient system for providing aid to sexually-abused victims.

# **1. General Measures and General Principles**

## **1. Coordination and Verification of Observance of Children's Rights**

**Art. 4**

In its final conclusions, following the presentation of the initial Report to the CRC, the Committee expressed its concerns regarding the insufficiently integrated strategy for handling child-related issues and the lack of a systematic mechanism for verifying all fields that the CRC covers.

The recommendations were left almost entirely unused. **Even today, no conception for protection of the rights of the child has been declared in the Czech Republic, and the government is taking no systematic steps in this direction. The system for protecting children's rights is markedly fragmented, and there is no authority that coordinates and supervises the observance of children's rights in the Czech Republic.**

It is true that a committee, the *Committee of the Republic for Children, Youth, and the Family*, was founded in 1999 and was meant to function as a consulting, initiating, and coordination authority of the government in this field. It was this committee's task to initiate the drafting and adjustment of legal norms in order to meet the demands of the CRC. However, *it halted its activities towards the end of 2001.*

The ability of the office of the Ombudsman (the public defender of human rights) to handle the verification function, as demanded in Act no. 349/1999, is questionable. At present, this office does not have a specialized division for children's rights.

### **We recommend:**

*The Committee could ask what steps the Government has taken to provide for a integrated and coordinated strategy for handling child-related issues and for a systematic mechanism for verification of all fields that the CRC covers.*

*The Committee could recommend the Government that it consider the creation of an institution (the best choice would be a ministry) that would comprehensively cover child-and family-related issues and would do so as the core of its activities.*

## **2. The Best Interests of a Child**

**Art. 3**

At the same time the role of the protector of the child is filled by so called "social/legal protection authorities"—i.e. district authorities, municipalities, regions, the Ministry of Labour and Social Matters, the Office for International Law Protection of Children, and accredited non-governmental organizations<sup>1</sup>—and by the courts, the police, the Ministry of Education, the Ministry of Health, and others. These institutions are often incapable of coming to agreements, they take many actions detrimental towards children and do so repeatedly, and due to the lack of a coordination "link" among them, court proceedings are often pointlessly prolonged.

No Czech law defines the "interest and well-being of the child" in detail. In practice, this interest is judged primarily by workers in "social/legal protection authorities", and this in turn bring risks in practice—of a lack of objectivity, of the impossibility of overturning an opinion that has been expressed in court in situations where the "interest of the child" is being expressed by the same person who expressed that opinion in his or her role as a "collision guardian", of children pointlessly being taken away from their parents.

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<sup>1</sup> § 4, Act No. 359/1999 On social/ legal protection of the children

No conception or provision exists for continuing education and acquisition of psychosocial skills by those working in the professions in the field of children's rights. And a conception is truly needed here—not just for social workers, but also for other professions, e.g. judges and the like. Members of the professions in question receive no motivation to continue their education and self-development.

**Case study:** *A court decision condemned a seven-year-old girl with above-average intelligence (an IQ of 116) to placement in an institute for children from 0-3 years. Despite intervention on her behalf, she ended up spending six months there and during that time she could not attend school. The complaint against this approach was sent to a host of entities: 1) the district authority whose worker submitted a proposal that the girl be placed in the given institute; 2) the court that made the placement decision; 3) another district authority, the one that established the institute; 4) the Ministry of Health, which determines the methodology for facilities for children under three years of age; 5) the Ministry of Education, which manages diagnostic institutions (these had the obligation to examine the child and recommend placement into a suitable institution); 6) the Ministry of Labour and Social Matters, which directs the social/legal protection departments at district authorities; and 7) the Ombudsman (the public defender of human rights).*

The authority for the social/legal protection of children lies primarily in the hands of municipalities and district authorities, or in some cases, directly in the hands of staff at district authorities' social-matters departments. The number of **social workers** is insufficient<sup>2</sup>, they are overloaded with administrative work, and there is no time left for actual children protection.

We can find other problems when we examine the levels of education of social workers employed at authorities' child-welfare departments. The Ministry of Labour and Social Matters has set a required educational path that these workers must take, but this requirement is only observed at about 60%; i.e., 40% of these workers have secondary-school education in other fields than law and social welfare<sup>3</sup>. This may be the reason why social workers are unable to use all the means available for them to protect children's rights. It further explains why many legal institutions (e.g. the representing of children before the court) work only on paper.

Under the CRC, the **courts** make the decisions related to the rights provided by the Convention. A child's legal representative can submit a proposal to commence proceedings, as can a worker at a child welfare department, and a court can also make a decision without such a submission. ***In practice, children receive minimal information regarding the proceedings that concern them, and their opinions are determined more or less "offhand" by experts, and only when evidence in the form of an expert opinion from the field of psychology has been ordered.***

The social worker in the role of "collision guardian" has the responsibility of representing a child's interest in trials where the child is a participant and in those where his or her interests are affected. Such representation is usually merely formal, and if proposal for institutional care is in question, a conflict of interests arises, because the very same social workers are representing the proposing party.

***Proceedings concerning children are unbearably long and formalistic in the Czech Republic.*** Often, the court rejects a proposal made by a social worker or by the parents because of formal defects, and delays a hearing for this reason, without having pointed out these defects when the proposal was submitted. Courts do not respect the fact that time "runs faster" for a child than for an adult, and thus in 2001 the average length of a court proceedings concerning children was 233 days for

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<sup>2</sup> In 2000 there were 2 406 701 children living in the Czech Republic (Statistic annual) and regulated state of social workers is 1 504. One social worker is theoretically responsible for social law protection of 1 634 children.

<sup>3</sup> Source: Ministry of Labour and Social Affairs—Statistic annual in filed of Labour and Social Matters

alimony, 540 days for determining/denying fatherhood, and 258 days for adjustments to relatives' visitation rights. Some court cases, especially those concerning fatherhood, lasted over 1,000 days.<sup>4</sup>

**Case study:** *The father of Štěpánka (born 1994) has been denying contact to her mother since 1997. Eventually, after more than three and a half years of court proceedings, Štěpánka was placed in her mother's custody on the basis of a decision by an appeals court in January 2000. The father, however, refused to give in to the court's decision. The relevant district court ruled that the decision be put into effect via the forcible removal of the daughter from her father's care and transfer to her mother very late: in February 2001. And furthermore, this change of custody still has not yet occurred. At present, the father is hiding with his daughter in some place other than his permanent residence.*

**We recommend:**

***The Committee could recommend that the Government:***

- *establish a system of a continuing education for those in the professions that affect the rights of the child and motivate state employees to employ in it;*
- *take measures to ensure that the rights of the child are effectively and quickly secured in the framework of the court system by e.g. strengthening the guardians divisions of the courts;*
- *support the assignment of a different legal/physical entity in the role of "collision guardians" than the entity that is the state authority for social/legal child protection in cases based on the proposal to place a child in institutional care.*

### **3. Cooperation of State and Non-Governmental Organisations to Protect the Interest of the Child**

The majority of projects focused on work with children assumes cooperation of the state and non-governmental organisations. Often it has a form of a competition, and regardless of the quality of the services provided, state facilities are being preferred to non-state ones.

The state prefers state facilities by unequal financing conditions—state contributions for children in state facilities are higher than in non-state ones, whereas quality of provided services is minimally comparable, or it speaks in benefit of non-state facilities<sup>5</sup>.

In order to provide services in the field of social/legal protection of children, non-governmental organisations must go through accreditation procedure and gain permission of Ministry of Labour and Social Affairs; since January 2002 district authorities have been granting this permission. Non-governmental organisations are obliged to insure against damages committed by the enforcement of social law protection, it is possible to penalize them. The state does not have any similar obligation.

**We recommend:**

***The Committee should recommend that the Government:***

- *elaborates standards for the provision of social services, including the requirement for equal quality between state and non-state providers;*
- *encourage the work of NGOs involved with children, including through appropriate fiscal measures, which would grant higher tax deduction for activities benefiting children.*

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<sup>4</sup> Ministry of Justice statistics

<sup>5</sup> In the Czech Republic, where there was nearly no-one to donate to under Communism, there is still no strong tradition of making donations. Situation in Czech Republic does not mean that non-state organizations can work absolutely without state support. Yet, the organization of the financial support remains inadequate : projects are being planned for one year. Hence, the continuity of the financing is not guaranteed, while the majority of projects targeting endangered children groups is impossible to be planned as one-step activity.

## II. Civil Rights and Freedoms

### 1. The Right Not to Be Exposed to Torture or Other Cruel, Inhuman or Degrading Treatment or Punishments

Art. 19, 37 point a), 39

As introduction of this chapter we would like to appreciate the progress which the Czech Republic has made in this field in the last decade—Contact telephone lines or centres have been established (above all thanks to non-governmental initiatives), affected ministries have taken the associated problems into account, methodical regulations have been made, education of professionals coming into contact with injured children are organised. Nevertheless, albeit all these measures, injured children and their parents still do not receive adequate help in practice.

#### A. Physical and Psychological Abuse Including Recovery and Reintegration

Cruelty, abuse and neglect of children have serious consequences for their additional physical and mental development. This identification, therapy and rehabilitation demand interdisciplinary approaches, using medicine, psychological, social and legal aspects. But as highlighted in Chapter 1-1, *there still is no integrated system of services in the Czech Republic*. Cooperation of professionals in particular cases (e.g. social worker, investigator, guardian judge, an NGO) is rather accidental. Accessibility of help to children endangered by violence varies in different districts—especially according to whether the services have been established by non-governmental initiative in those districts. The problem of children with CAN<sup>6</sup> syndrome is most frequently being solved by means of non-governmental facilities. State authorities concentrate on sentencing of the perpetrator or parental rights removal in these cases, when solutions could be found through meetings or a “case-conference”, whose participants would be concerned professionals as well as the child and parents.

The problem of an abused child or child with CAN syndrome comes within the **competence and under the authority of several ministries**—Ministry of Health, Ministry of Education, Ministry of Labour and Social Affairs, Ministry of Interior and Ministry of Justice. They work with different conceptions, they have different priorities, unclear competences and *there is no authority to coordinate their effort, which lowers efficiency of their outputs considerably*.

Ministry of Labour and Social Affairs started to observe statistically a rate of abused children in 1994. Gained statistic data are incomparable to Police and Courts data. Data gained this way are hardly controllable and it is difficult to make reliable conclusions from them. *There is no reliable and usable monitoring of sexually abused and neglected children so far*<sup>7</sup>.

*Custody proceedings are very formalistic and long* (they take months and years), which does not enable to react efficiently for the benefit of the child. During these proceedings services of mediators, probation workers, community and family centres are seldom used.

**Neglected children** represent more than 50% of children with CAN syndrome in the Czech Republic. There are almost no social services for these children, except reformative measures of the court. In The Czech Republic “neglecting neglected” takes place in the state-wide measure.

**Sexual abuse** see chapter IV. Special protective measures, p. 26.

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<sup>6</sup> Child Abuse and Neglect

<sup>7</sup> Between September 2000 and May 2001, an experimental project led by the Ministry of Labour and Social Affairs monitored as experiment monitoring of tortured, neglected and abused children, given criteria were formed by physical, psychological and sexual abuse, perpetrator and his relation to victim. Characters and descriptions of abuse were not respectful nevertheless.

**Psychical cruelty** belongs to the most difficultly identifiable violence committed on child. We often encounter the problem of parents bullying caused frequently by inadequate ambitions towards a child. Divorces represent also serious topic, which is always a traumatizing experience for a child. High divorce rate in the Czech Republic implies high rate of children who are not a potential but fact victims of psychical cruelty (see chapter III, p. 11).

**Case study:** *Father had kidnapped his seven-year-old daughter for the third time whereas she has been placed into her mother's custody. He was hiding with his daughter in cottages and cellars for four months, he isolated her from the rest of the family, she did not go to school. For the whole time he manipulated and forced her against her mother so when the girl saw her afterwards she got hysterical attack and refused to come back. That is why she was placed into a child home based on preliminary ruling. Expert within the framework of legal proceeding assessed CAN syndrome of psychically abused child, caused by father. Nevertheless judge has conditionally stopped father's prosecution due to kidnap with explanation of the long-term conflict between parents. Guardian court decided that the girl would stay in institutional care because in case she had been taken into mother's care another kidnap would have threatened.*

## **B. The System Maltreatment within Investigation of Abuse**

Connected with investigation and help to child with CAN syndrome, ***additional system secondary victimization and maltreatment takes place under pretence of child's protection in the Czech Republic.***

In case of sexual abuse the ***child is being exposed to repetitive investigations and examination in presence of many other persons***; there are minimally two investigators present during the interrogation, the child curator, psychologist and advocate of a suspicious, newly judge<sup>8</sup>. Although it is stated in (Par. 102 of the Code of Criminal Procedure) that in subsequent proceeding any child younger than 15 years should be investigated only in necessary case, we often come across repetitive interrogations (child is in terms of criminal procedure forced to make a statement three times—before the accusation, during investigation in criminal procedure in front of psychologist, who evaluates his reliability and at last in front of a judge at the main trial.)<sup>9</sup>.

In the case suspicion of child abuse by family member the child is often being ***placed into child home*** to prevent repetitive abuse. It enables to split up from the aggressor on one hand but also from other members of the family, from whom child might expect support. This situation could be solved in a way that a state authority (e.g. Public Prosecutor) makes a preliminary ruling when potential aggressor would be prevented from coming closer to the child and his environment for limited time (a “protective order”), but there is no support for this possibility in legal regulation. Even in these cases placement in residential care could be prevented provided that network of crisis asylum houses existed where the child alone or with parents could find a temporary shelter.

***There is absolutely insufficient law protection of a child as aggrieved party in a legal proceeding***, especially the right to legal aid. In most cases social/legal protection authority is appointed as a child's curator whose social workers have only little knowledge of law in general, let alone criminal law, and ability to appear in front of a court. Against the accused represented by professional advocate there is a social worker with lack of knowledge of law of procedure who does

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<sup>8</sup> Since Jan. 1st, 2002, a judge has to be present to unrepeatable pleading—in this case it is interrogation of person younger 15 years about facts reliving of which could have negative influence on their mental and moral development, which is being made before the official beginning of a criminal proceeding

<sup>9</sup> In the Czech Republic there are only 2 fully echoed investigation rooms with non-transparent mirror and record technique enabling interrogation of a child in presence of only one person, whereas others may ask questions and record can be used further. Room has been established by non-governmental organization—the Child Crisis Centre in Prague and Spondea Brno.

not have enough time to investigate the documentation, almost never protests against repetitive investigations, does not submit any complaint against withdrawal of prosecution. In better case a probationer is appointed as the curator who has legal education but only minimal experience and often is obliged to the judge who makes the decision. It would be reasonable for a social/legal protection authority to have a possibility to hire advocates in more complicated cases when child's curator has been appointed within the framework of legal proceeding and to use this possibility.

***High demands on profession for persons coming into contact with abused and neglected children*** including personal problems incorporation are often not met in practical life. In spite of certain educational ***programmes inadequate behaviour of Police, judges and other professionals and their incomprehension for basic aspects of victim behaviour and perpetrators of abuse and neglect prevails***; e.g. Police, judges, social workers keep on mentioning that child may cause that "father will be put into prison" and they consider child's statement as not respectful only because the child loves his parents in spite of all circumstances.

***Case study:*** *Even though Mrs Bártíková had bad memories of her husband, she supported contact between her son and father after their divorce. When her twelve-year-old son confided to her that his father had tried to abuse him, she did not believe him until new girlfriend of Mr Bártík looked her up with serious suspect that Mr Bártík had tried to sexually abuse her daughter. She confirmed strange behaviour of Mrs Bártíková son during visits (he did not want to wash himself; he slept in several dress levels etc). Mrs Bártíková visited a social worker. In spite the boy was forced to witness the whole matter ten times (in front of social worker, psychologist, psychiatrist, investigator, judge in custodian proceeding who makes resolutions on forbidding of contact, court expert etc.), the judge asked him to make a statement during the main session—in front of public, father, his attorney, probationer, prosecutor. Mother protested against this, because the boy was in psychiatry care at that time. Although statement of court expert confirmed that statements of the boy had been reliable the judge acquitted the father of accusation because mother seemed to her being over protective and Mr Bártík did not show to be homosexual paedophile according to experts. She sentenced father for abuse of his girlfriend daughter nevertheless, taking into account expert statement that had stated alcoholism and unreservedness in case of father.*

### **We recommend:**

***The Committee could recommend that the Government:***

- ***arrange the way of criminal proceeding so that it is managed with respect to the best interests of the child;***
- ***reconsider the current practice of the criminal proceedings to ensure a real protection of injured child immaterial rights;***
- ***consider establishment of a "protective order" (to forbid suspect of getting closer to victim and her residence for a limited time of investigation or after sentence);***
- ***support establishment of pre-gradual and whole-life education of professionals in field of abused and neglected children and increasing of personal qualification for work with these children (including burn-out syndrome);***
- ***regional authorities have mapped risks and needs of their region and initiate assessment of adequate services for endangered child identification, diagnostics, therapy, consequent rehabilitation, securing work with the whole family intended to keep the family for the child. In this respect it is necessary to assess a system of multidisciplinary teams;***
- ***and take steps to increasing of consciousness about the issue of neglected and abused children in a society, e.g. seminar for politicians and state officers, work with media.***

## **C. Physical Punishments and Bullying**

**Art. 3, 19, 28**

**Physical punishments** can become cruelty in certain circumstances, they only increase emergency to aggression and mean also stress with all possible consequences on child's health. ***In the***

***Czech Republic still prevails meaning of pedagogues and parents that physical punishments are a common pedagogical method.*** According to a research study by Pink Line (in 1994) 94% of children with obligatory school attendance (and almost 100% of children in institutions) had experience with physical punishment by their parents, in 2000 this rate decreased for still alarming 84%. In the same period number of pedagogues accepting usage of physical punishments remains the same—50%, nevertheless number of pupils being punished this way has increased significantly.

**Bullying** is a phenomenon that starts to follow children since their under-school age<sup>10</sup>. According to researches made in different types of schools it is being estimated that on average around one third of pupils of elementary schools and high schools<sup>11</sup> are being bullied. Mapping of bullying is very difficult but especially lighter forms and initial stages affect a large part of school population.

***The lack of preparation of pedagogues—who cannot identify bullying themselves, let alone work with children on managing the problem in its natural environment—remains a problem*** (many pedagogues e.g. do not perceive the so-called 1. degree—ostracisation—as bullying but as a form of leisure and communication at school).

Directors of schools are responsible for activities within the framework of prevention of bullying and aggression. In case of bullying identification psychotherapeutic work with collective<sup>12</sup> is necessary. Mainly directors refuse bullying in their schools; they perceive it as a problem of their honour, together with school administrators they do not want to admit bullying at school due to fear that pupils would leave the school. They often prevent from consequent psychotherapeutic work with children at school.

Even provided that the Czech School Inspection or other state authority finds out bullying at a school and responsible persons do not do anything about it, the Inspection does not have any competence to impose particular measures, e.g. to enable or assure psychotherapeutic care.

**We recommend:**

***The Committee could recommend that the Government:***

- ***support activities and campaigns against physical punishments and bullying;***
- ***guarantee a possibility to oblige directors of particular schools by curative measures to prevention of bullying and recovery of bullying classes.***

**D. Guarantee of the Right Not to Be Exposed to Cruel, Inhuman or Humiliating Treatment in Space of Institutional Care**<sup>13</sup>

Research managed by the governmental Council for Human Rights in 2000 found out that **disciplinary punishment in some institutes can be considered as inhuman or even cruel** They include prohibition to visit their families, isolation in rooms comparable with solitary confinement, prohibition to receive more food, wear special cloths, to be ostracize by other when child has to knee

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<sup>10</sup> Bullying is any behaviour whose aim is to hurt an individual, endanger or stop or frighten other pupil, or group of pupils. It is deliberate and repetitive violence committed by individual or group towards individual or group of pupils who are not able to defend themselves due to different reasons. It includes both physical attacks in form of biting or extortion, burglaries, damaging of other person's possessions, and verbal attacks in form of verbal insults, slanders, threatening or humiliation, ignoring and overseeing. It can also have a form of sexual harassment. Revealing of bullying can be sometimes very difficult, because fear creates usually environment of "solidarity" of aggressors of handicapped.

<sup>11</sup> Source: Pink Line 2001; smaller incidence is admitted in "The Prevention Strategy of social pathological phenomena in cases of children and youth in competence of Ministry of Education section for period of 2001-2004" when it is being estimated that 20% average of pupils of elementary and high schools are being bullied.

<sup>12</sup> Leaving of bullied child des not solve the situation, because the aggressor chooses another victim

<sup>13</sup> This chapter comes from basis above all the Environmental Law Service and the Counselling Centre for Citizenship

in front of everybody in room, confiscation of personal possession, throwing all personal possession on the floor and physical punishments. The research came to conclusion that *in some institutions there are 9% of children exposed to verbal insults from the staff and 18% of children revealed that they had become an object of physical violence by institute staff.*

In the governmental report (in art. 119) it is admitted to serious **lacks in guarantees of professional staff in** Child homes, diagnostics and educational reformative institutes and institutes of social care<sup>14</sup>. Till the new Act on Institutional Care<sup>15</sup> came into effect in 2002, keepers did not have to go through psychological examination and did not have to submit extracts from the Penal Register. Even currently there is no obligation for additional education, no system of professional and psychological trainings is guaranteed focused on work with problem youth, stress managing etc. This fact increases the risk of violence and humiliating of children in institutional care. Regarding the fact that current residential care closes children behind walls of institutions (only scarcely it enables contact with environment, children attend special schools at institutes), a possibility of examination of such cases and its redress decreases.

In case somebody (e.g. parents) announces suspicion of violence on child committed by the staff, **there is no methodical regulation how to proceed in these situations**. (e.g. transfer of the child into diagnostic institution for the period of investigation or standing of duty). Directors of institutes solve this by confrontation when child, with expectation of subsequent stay with the aggressor under one roof, denies everything rather, naturally.

The new Act on Institutional Care has operated in detailed way the **possibility of placement into a separated room in order to calm an aggressive child**. The child can spend here maximally 48 hours a month, he has right to take his possessions here for leisure time, educational activity has to be enabled to him, equipment of rooms is assessed, after attachment medical examination is being prescribed.

Law does *not operate regular control of imposition* of these regulations in individual facilities (e.g. obligation to announce every placement of a child into separated room to authorised prosecutor or Czech School Inspection till five work days, obligation to announce to Ministry all cases of placement of children into single rooms in particular facility for previous year) totally which could prevent from overusing of this institute in individual facilities. *Enactment of child's right or right of authority of social/ legal protection of a child, parents or legal representative to submit application for review* director's decision about placement of the child into the separated room in particular case, *is also lacking*.

**We recommend:**

*The Committee could recommend that the Government:*

- *implement prohibition of usage of these regulations as awards or punishments: prohibition of leaving home, forbid of visits of close persons, kneeling and other physical punishments, isolation, confiscation of personal possessions, cleaning up after previous throwing out of child's possessions;*
- *focus on qualification of professional staff, future employees should undergo psychological tests, workers should undergo therapeutic trainings (e.g. against burn-out syndrome ) and psychological examination even during employment;*
- *make measures to prevent and control physical punishments, verbal humiliation and insult of children by staff;*
- *create a methodology for shaping a standard concerning institutes' internal rules.*

## **2. Privacy Protection**

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<sup>14</sup> Need of proper choice of staff has been mentioned by Committee for prevention of torture and inhuman and humiliating treatment or punishment in report from July 15th, 1997

<sup>15</sup> Act Nr. 109/2002, on Institutional or Protective care in school facilities and on preventive educational care in school facilities

**In child's and reformative institutes there is often as a punishment or an educational measure prohibition of contact between child and parents used<sup>16</sup>.** A child has the right to keep contact with both parents in case it is split up from them (Art. 9). Restriction of contact is possible only in case when parents would endanger the child's best interests, as punishment it must be considered as inadequate and cruel measure that deepens emotional deprivation of a child in the institution.

We often come across not respecting the right to privacy and interventions into this right over necessary limit in practice—especially in case of children *in institutional care*. In case we pass general lack of privacy, a problem remains with wanton *interventions into children correspondence*. According to research made by the Council for Human Rights in 2000, in some institutions correspondence of children is in up 10% submitted to censorship. According to research 20% children stated that personal possessions controls are made without their presence, 20% children cannot chose their clothes, 45% children may not go out individually.

**We recommend:**

*The Committee could recommend that the Government support respect of the child's right to privacy also in case of children in institutional care so that children are present within control of their possessions and delivered correspondence and legal conditions for sending, receiving and censorship are arranged.*

### **III. Family Background and Alternative Care**

#### **1. Separation from Parents**

##### **Children from Divorced Families<sup>17</sup>**

In the Czech Republic around 30,000 children experience a divorce or separation of their parents. **Adjudication of environment takes place in a standard way when children are paced into their mother's custody in the majority of cases and their contact with father is adjusted only for one or two weekends a month.** This practice brings for the majority of children radical restriction or complete interruption of contacts with fathers.

##### **Court Adjudication of Family environment after Divorce<sup>18</sup>**

<i>Child placed into custody of</i>	<b>1996</b>	<b>1997</b>	<b>1998</b>
<i>mother</i>	46,092	44,813	47,084
<i>father</i>	4,084	4,043	3,994
<i>other person</i>	1,344	1,459	1,456

**Affected rights of these children**—especially the right to know their parents and the right to be cared for by parents (Art. 7), the right to keep family relations (Art. 8), the right to maintain personal relations and direct contact with both parents (Art. 9), the right to the protection against unauthorized interference with his or her privacy (Art. 16) and the right to health protection (Art. 24) **are not respected and guaranteed sufficiently** by means of divorce system (courts and other state

<sup>16</sup> New Act on Institutional care has formulated for the last moment possibility to forbid visits with exception of close persons, persons responsible for education and employees of social law protection authorities fortunately. Director of institute is nevertheless authorized to forbid stay of a child at close persons and persons responsible for education. Although time limit is assessed minimally for 30 days in 3 months, in reality 30 days it is possible to divide into weekends, so that child does not have to visit its parents for the whole year.

<sup>17</sup> This chapter is based on materials of civic association Justice to children.

<sup>18</sup> Statistic annual of the Czech Republic

authorities). In practice the parent, whom the child has been committed to, prevents the contact with the other parent whereas the “rejected” parent can hardly invoke a remedy.

*Courts* in case of breach of stated rights do not begin proceedings based on official authority and in proceedings started by proposal of entitled participants do not make any official decision which would guarantee rights of children and their parents and their enforcement, e.g. interlocutory order on contact adjustment of a child and parent, enforcement of a judgment. It lasts months or years in many cases before fines are assessed or a child is taken away from a parent who rejects to decision enforcement.

*Social/ legal protection authorities* do not use legal means to guarantee stated rights or demand their court protection. It concerns especially authorisation of district authorities to make decisions about reformative measures<sup>19</sup> and give proposals to courts for beginning of adequate proceedings.

*Authorities active in penal proceedings* besides exceptions tolerate crimes of obstructions of official regulation<sup>20</sup> in case mother of under-aged child is a perpetrator who is preventing a contact with father for a long time.

**“Rejected parent syndrome”** caused in many cases by agitation by one parent against the other, is one of most serious social pathological phenomena connected with the break-up of families. Although the Czech state is obliged by the Convention to make all needed measures to protect children’s rights against any physical or mental violence (Art. 19), stated phenomenon is not reflected sufficiently let alone solved.

***Case study:*** *In penal proceeding of Municipal Court for Prague Vladana S. has been accused of obstruction of adjusted contact of under-aged daughter with father. Court has first stopped the proceeding conditionally and has put restraints to accused—in form of reduced of adjusted contact of father and the girl (!), the Prosecutor did not lodge any appeal. Based on a complaint for law breaking judgment the decision was cancelled by the Supreme Court. After a new “consideration” of the matter of which the aggrieved party has not been informed at all, the accused has been fully acquitted of guilt; the public prosecutor has not lodge any appeal again.*

**We recommend:**

***The Committee could ask the Government a question how the right of a child separated from one parent for care of both parents is guaranteed as well as the right to keep family bindings and regular personal contact with both parents especially with the father.***

***The Committee could recommend that government:***

- ***assert a change of attitude in case of affected state authorities towards the right of a child separated from one parent for care of both parents, the right to keep family boundaries and regular personal contact with both parents, especially father;***
- ***make steps to ensure fast and efficient enforcement of the rights of a child separated from one parent for care of both parents, the right to keep family boundaries and regular personal contact with both parents, especially father,*** e.g. by means of strengthening of court curator departments, assessing a deadline for decision making on proposal for a judgement enforcement;
- ***parents who prevent contact of a child with other relatives without any particular reason, were pursued properly;***
- ***and enact a more exact definition of a child cruelty into the Act on Social/Legal Protection of Children.***

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<sup>19</sup> E.g. admonition of parents or other persons who break proper education according to § 43 of Family Act

<sup>20</sup> a Crimes of Obstruction of an official resolution according to §171 section 3 of the Criminal Code

## **2. Illegal Transfers of Children and Transfers without Return**

Art. 11

In 1997 the Czech Republic ratified the Hague Convention on the Civil Aspects of International Child Abduction. The central authority for fulfilment of tasks arising from the Hague Convention is the Authority for International Legal Protection of Children in Brno.

The number of children kidnapped or transferred by one of the parents abroad is increasing. The current system in the Czech Republic does not enable fast and efficient come back of these children to a parent to whom child has been placed into custody by a court or enforcement of the right to direct contact with both parents (Art. 9 of the CRC). 90% judgments are being given after more than six months. In case there is a serious suspect that parent is intending to move abroad with the child and restrict contact with the other parent, there is no mechanism in the Czech Republic how to prevent from the departure of the child abroad.

### **Transfers of Children Abroad—Applications for Adjustment of Contact and Returns Registered by the Authority for International Legal Protection of Children**

	Applications for Contact Adjustment		Applications for Return	
	New Cases	From Previous Year	New Cases	From Previous Year
<b>1998</b>	2	-	1	
<b>1999</b>	4	2	5	1
<b>2000</b>	5	5	3	2
<b>2001</b>	1	8	8	4

#### **We recommend:**

*The Committee could recommend that the Government:*

- enact measures to more efficient enforcement of rights of a child transferred abroad;
- enact measures to prevent kidnaps or taking children abroad in case of endangering of their right to be cared for by a person appointed in accordance with law and to contact with both parents, e.g. information system based on given decisions on the border crossings points and airports or prohibition to cross the border without an approval of the second parent.

## **3. Children Who Have Been Deprived of Their Family Environment**<sup>21</sup>

Art. 3, 5, 18, 20, 21, 25

The system of care for children who cannot live in their own family is very splintered in the Czech Republic, it comes under several ministries<sup>22</sup> and competence of districts and municipalities. Currently it lacks *unifying authority* and clearly formulated conception of development in this field.

System of alternative family care which respects needs of children to grow at least in relatively natural family environment is not sufficiently appreciated and supported, although it was possible to perceive certain improvement.

<sup>21</sup> This chapter comes from the special *Report of civic association DOM* on current system of alternative care for children and youth without family background in the Czech Republic, 2002.

<sup>22</sup> the Ministry of Education, the Ministry of Labour and Social affairs and the Ministry of Health

The main way of care for children who cannot stay in their own families is the institutional care that cannot meet the demands of the CRC principally and currently it does not fulfil them in a way it could. *Professional researches prove that residential care does guarantee neither quality life and child development nor his integration into society.*

<i>Placement of children into alternative care in 2000<sup>23</sup></i>	
into institutional care	2,003
custody of other persons than parents	1,026
custody of future adopters	512
custody of future foster parents	339
unplaced children	103
placed into protective care	81

Our nation lacks a network of preventively oriented services that would prevent from taking the child away from natural family, or aiding his or her homecoming. The conceptions of the Ministry of Education and the Ministry of Labour and Social Affairs also lack programmes for family support.

*Prevention of institutional care is a matter of non-governmental organisations<sup>24</sup>. The state works here rather repressively, not preventively. In practice children are often taken away into institutional care without an adequate help to his or her family*, which could have been prevented in time and efficiently<sup>25</sup>. Neglected are especially cases when reformative measures are imposed but it is not completed by feasible social service that would react on causes of the family situation and reinforce responsibility for changes in all their members. For many families supervision regulation means that “nothing is going on” and their repetitive social failure is a logical consequence of absence of cooperation between control, supervision and help.

Out of overall number of children who have been accepted during 2000 into baby and child institutions there were 59.7% placed due to social reasons, 21.0% due to health reasons, abused children represented 3.0% of children in institutions<sup>26</sup>.

**Bad social situation of parents—not neglect or cruelty—is the most frequent reason of placement of the child into institutional care**. Especially in this field there is the highest potential of prevention of the taking the child away from the family, provided that families with social problems would have received adequate help.

Baby institutions are besides small exceptions not equipped for a possibility of mother’s presence in the institution. Children placed into baby institutions with mothers represent only 5%<sup>27</sup>.

<sup>23</sup> Statistics of the Ministry of Labour and Social Affairs

<sup>24</sup> A typical non-governmental organisation providing help aimed to keep the child in a family represents the civic association Strep. Its work aims to enable parents to gain social abilities for care for their child, or prevent from taking a newborn away from mother in birth hospital. Mothers (parents), who can involve into their programme on their own decision or on a recommendation of a social worker, have less abilities, not only for children care, in consequence of growing up in a dysfunctional family or in a child institution. Currently there is no concept programme for them for accommodation of opportunities. Out of 120 families in difficult situation who have been helped by Strep, only 3% of children ended in institutions.

<sup>25</sup> According to research in Prague birth clinics in 1999-2000 weekly average 1.3 children were taken away from the birth clinic into baby institution, without mother has been provided by social services enabling her care for her baby.

<sup>26</sup> Data come from the Report on current state of alternative care of the civic association Dom. The project Monitoring of baby institutions in Czech Republic came to similar conclusion—researched realized by Czech Helsinki Committee in 1999. According to research of the governmental Council for Human Rights, in 2000 20% children suffered from CAN syndrome, 5.7% children have been sexually abused in institutional care.

<sup>27</sup> Source: Monitoring of baby institutions in the Czech Republic—a research realized in 1999 in cooperation with the Czech Helsinki Committee and the Tereza Maxová Foundation.

Due to the impossibility of being together with mother the high trauma of children due to the separation is being increased.

**Handicapped children represented 18.7% of children placed in 2000 into residential care.** Lack of supporting facilities for families with handicapped children (e.g. daily clinics), their geographical or financial inaccessibility highly decrease the possibility for seriously handicapped children to stay in long-term care of parents. Currently a parent of a handicapped child is so restricted in his possibility to work that usually a care for the handicapped child together with other children is financially unacceptable. An application for placement to an institution might be a sign of not lack of interest for the child but inability to give an adequate care and insufficient assistance of the state. Early care services do not exist.

Totally there were 1,920 **children discharged from residential care in 2000, out of which only 45.4% into own family, 25.6% into adoption, 16.1%** into other children house, or a social care institution, 8.4% into other form of alternative family care and 4.5% elsewhere.

**Too high number of children is being placed into institutional facility based on an interlocutory judgment<sup>28</sup>** that should represent a very special measure. This preliminary order is being given by court on a proposal of the district authority within 24 hrs. Parents get to know about it first after its enforcement. In 2001 courts gave approximately 2,000 such rulings. The problem remains that an interlocutory judgment once given is only very hard to be changed and children stay in institutions several months or years based on this ruling before court give the judgment on the merits. Based on the preliminary decision the child changes minimally two institutes (diagnostic and other facilities) even in case that proposal for institutional up-bringing is finally rejected.

#### **Children Placed in Facilities, by Types of Resolutions Based on which Placement Occurs<sup>29</sup>**

Interlocutory Judgment	Judgment on Merits	Prolonged Institutional Care	Protective Care Assessed	Parents' Application	Child's Application
19.50%	70.40%	1.60%	0.80%	5.50%	2.20%

**Case study:** *seven-year-old Lenka was kidnapped by her father. In January 2001 when Police found her after four months in father's cellar, she has been placed into a child institution, based on an interlocutory judgment. Court delivered in the first instance a judgment by which institutional care has been ordered with explanation that in case that Lenka would stay at her mothers there is a high probability of another kidnap. Mother lodged an appeal and at the first oral session in August 2002 the appellate jurisdiction gave the final verdict by which Lenka has been kept at her mother's care. Based on the preliminary decision Lenka spent 20 months in child institution.*

*Two young parents decided to live in a village in an alternative style in time with nature. Mother delivered at home. Parents named their daughter by an unusual name and that is why register refused to provide her with birth documents. Because doctor assessed after the first examination that the girl is absolutely healthy and no problems occurred, mother did not visit the doctor any more. Due to their conviction parents did not want to let the girl vaccinated. Social worker came to visit the mother for the first time when the girl was nine months old, mother promised redress. Another visit took place after a week with Police and they took the girl away from breast-feeding mother. The interlocutory judgment has been grounded for the fact that the child has no birth document, so she does not exist in the sense of law and that the mother does not visit doctors regularly. Mother could stay in the baby institution with her child first after two days only based on a good will of the baby institution director who stated that the child is healthy and has a strong emotional binding with her mother. Both were forced to spend more than three weeks in the institution before the preliminary decision has been cancelled after intervention of ombudsman and media.*

<sup>28</sup> § 76 of the Civil Procedure Code

<sup>29</sup> Research of Council for human rights, 2000

### We recommend

***The Committee could ask the Government a question what conception to ensure demands of the best interest of children deprived of their family exists in the Czech Republic.***

***The Committee could recommend that the Government:***

***- with respect to the best interest of children deprived of their family such forms of care were created and supported that approach to all rights of the child and demands on quality of natural life in a family;***

***- before taking the child away an adequate help to his or her family is always provided and effort for placement in broader family is made; whereas providing of this help and potential failure is being analysed by courts before judgment;***

***- that institutional guarantee of preventive and pro family oriented services has been assessed which would prevent easy way to institutional care, e.g. support of sufficient number of asylum facilities for parents with children so that children would not have to be placed into residential care due to bad social situation of their parents, network of accessible and quality facilities providing help to families with seriously handicapped children (e.g. daily clinics);***

***- re-evaluate the current conception of alternative family care based on prevalence of institutional care;***

***- guarantee preference of care in alternative families to institutional care—support development of quality professional foster care or respite families, including register of “host families” in which children could stay temporarily until their original family consolidation;***

***- make steps to simplify administrative and clearing competences in the field of care for children deprived of family background.***

## **A. Institutional Care**

***Practice of the current institutional care system does not enable fulfilment of all children’ needs necessary for their harmonic development.*** Until 2002, the issue of institutional care was not covered by law. The new Act on Residential Care<sup>30</sup> has improved situation only in certain details, ***in fact conception assessable to socialistic era has been kept.***

**The current system of care of children placed in child and reformatory institutes does not enable fulfilment of demands of the Art. 29**, according to which education shall be directed to the development of the child’s personality, talents and mental and physical abilities to the fullest potential and shall prepare the child for responsible life in a society. Offer and character of institutional facilities do not provide adequate care based on modern approaches and science basis.

***Currently, large state institutions are being preferred and support of smaller non-governmental and private facilities (family type child homes for example) is insufficient.*** Facilities of residential care have an excessively large capacity (30-60 children on the average). Unnaturally large and homogeneous collectives are created there and individual approach to children is hard to be asserted. Buildings of institutions are too large and their dispositions do not enable to create intimacy and privacy.

***Collective approach is typical for institutional care in the Czech Republic.*** Individual work with a child, let alone with his family and planning of care are not common. No “key worker”—no personal guide for a child—exists. Number of workers regarding number of children seems to be sufficient in absolute number but it is obvious after closer analysis that regarding the fact that workers change in shifts at the child, one schoolmaster takes care of 10 to 12 children in particular moment.

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<sup>30</sup> Act No. 109/2002 on institutional care or protective education in school facilities and on preventive educational care in school facilities

Internal regulations of institutions are being made rather according to needs of workers and competent authorities than according to development needs of children. Mainly they do not enable children to participate in all activities which belong to common life such as washing, shopping, cooking etc. Abilities necessary for survival in a society sometimes do not develop so to say.

Current system is inefficient, that is showed also in the moment when children leave into normal life after they have come of age. ***Children who have absolved the Czech institutional care are not able to assert themselves in a society positively***. Some of them are not able to care for themselves after they have left facility and they end in another institution—social care institution, mental hospitals or prisons. ***Having left the institution approximately 90% of these children are not able to keep a job more than several weeks during the first year. Situation is partly solved by halfway houses, which are for the most part run by non-governmental organisations.***

In the current system of institutional care there is no standard structure that would enable to hear opinions directly from children living in institutions and react on it. Children are not encouraged to be able to express their needs and wishes responsibly and influence their fates. ***Possibility of choice of occupation is especially in institutional care minimal*** such as the motivation to education. Additional education is rather based on decision of the director than on the child wish.

Numbers of children placed in institutional care prove that natural potential of families to solve their own situation<sup>31</sup> is not supported sufficiently and isolation of children from their families is definitely not optimal solution of problems, as stated above. ***In the majority of cases institutional care there is no work with families at the same time. Less than 50% of children come back to their own families***<sup>32</sup>.

Institutions are often dislocated out of town agglomerations—that decreases possibility to involve children into common life of the society. Placement of baby and child institutions in abandoned localities practically disables work with families and threatens keeping the contact of a family with the child<sup>33</sup>.

***In many institutions length and number of visits depends on directors' regulations of the institution or on visiting hours.*** Provided that director makes a regulation e.g. that parent can visit his child only once a fortnight there is no way how to lodge an appeal against this decision. Director of the institution makes decisions on restrictions of parental rights, not the court.

***Time of stay in institutional and protecting care prolongs inadequately and mutual relations with families are being disturbed further.*** More than 50% of children stay in institution for more than two years.

#### **Length of stay in institutional care facilities<sup>34</sup>**

More than 5 years	4-5 years	4-2 years	Up to 2 years	Up to 1 year	Up to 6 months	Up to 3 months	Up to 1 month
23.40%	8.50%	21.80%	15.90%	13.20%	7.50%	5.50%	4.20%

**The current system of relatively restrictive oriented facilities of institutional care does not enable keeping the continuity of education (Art. 20 3 of the CRC).** This leads to rather frequent transfers of children. If a child enters the institution care system after his birth already, he or she spends the first year of his life in a baby institution; additional two years are spent in child institution for children up to three years. If it is impossible to assure alternative family care, the child is in age of three years rearranged into other child facility. During school attendance the child is due to special needs in education being rearranged into further facilities—e.g. residential facility with special schools. In the process of further education children are often placed into professional apprentice

<sup>31</sup> Annually around 2 000 children are placed into institutional care (long-term average)

<sup>32</sup> Source: the Signal Report on state of family of the Republic Committee for children, youth and family

<sup>33</sup> Many parents are prevented from visiting their children by objective reasons—they cannot go and come back in one day, because the does not enable it.

<sup>34</sup> Research: the governmental Council for Human Rights, 2000

training centres with dormitories. Possible failure in the training centre leads to placement into an re-educational institution where the apprentice training centre is placed directly in the building. *Children are forced to get used to new regime, schoolmasters and mates, they cannot create more stabile social bindings, it stresses their psychics and often deepens deprivation coming from the life in institutional care itself.*

#### **Institutional Care in the Czech Republic in 2000<sup>35</sup>**

	Number of Facilities	Boys	Girls
child diagnostic institution	8	170	88
diagnostic institution for youth	4	117	94
child reformativ institute	15	353	125
reformativ institute for youth	20	823	191
institute with reformativ—healing regime		66	8
reformativ institute for under-aged mothers	3	0	38
child home of residential type	82	1823	1420
child home of family type	45	710	671
total	xxxxx	4062	2635

**Case study:** *Vojta has lived with his mother and older brother. Father was in jail and was not in contact with the family. Mother was an alcoholic; she was interested in Vojta but did not manage practical life herself. Brother got married after reaching full age and left the family. Vojta had problems at school, he suffered LBD, hyperactivity, he neglected school, he left to visit his brother without allowance. Department for child and family care placed him into a diagnostic institution based on preliminary judgment. Diagnostic institution placed him due to his light brain dysfunction and behaviour problems into reformativ institute. Due to unknown causes Vojta has been rearranged into two other educational institutes within two years, in the last one he came of age. Due to transfers he did not get any acquaintance. In the age of 18 he had nowhere to go.*

*Within the framework of institutional care system diagnostic institutions have dominant role—almost each child has to go through their diagnostics, based on which diagnostic institution chooses a feasible type of facility. **Here children are exposed to voluntary and obligatory placement that does not contribute to any of both groups. There is a very strict regime here, there are bars in windows, bars between individual departments,** sleeping rooms are for more children, and privacy of a child is not respected. **In diagnostic institutions children stay longer than necessary and than it is regulated by law<sup>36</sup>.** Reasons of prolonged stay is for example fullness of additional facilities, needs to make new examinations, or problematic cooperation with courts in order to change preliminary decisions.*

*Problems in behaviour lead often to repetitive diagnostics and rearranging of the child into reformativ educational institutes. Up to 30% out of the overall number of children in institutional care in 2000 live in reformativ institutes. In educational institutes they meet only problematic peers, children living in institutions for their whole life, problematic youth from families and juvenile delinquents. Educational institutes are separated for boys and girls—in a sensitive period of sexual ripe and need of models for partner behaviour children grow only in sex homogeneous environment.*

In the system of care for children without family backgrounds in the Czech Republic **also child mental hospitals and child psychiatric departments** operate. In latest years income of children without psychiatric diagnose grows nevertheless with typical family history in child mental hospitals, e.g. in hospital in Branky in Moravia 70% of children have institutional care ordered, similar as in case of other mental hospitals. It remains a question how far this occurs due to growing incidence of

<sup>35</sup> Source: Ministry of Education, statistics on information pages—Internet

<sup>36</sup> Till 2001 order Nr. 64/1981 currently deadline of maximal 8 weeks for stay in a diagnostic institute is regulated by the law Nr. 109/2002 on Institutional care

dysfunctional families and lower tolerance of facilities working with children or it might result from mentioned demerits of institutional care, see above. Especially older children are being placed into mental hospitals because their behaviour seems to be unbearable for facilities of collective education. Some children spend months in these hospitals, sometimes even several years of their lives<sup>37</sup>.

In case of children without psychiatric diagnose, they do not need highly professional medical care but targeted therapeutic work, more intense human contact, bigger attention, individual care, which they lack in terms of current alternative family care system and departments of mental hospitals cannot provide this either. Placement of the child without diagnose into mental hospital is definitely not in the best interest of a child and it disputes to Art. 3 par. 1 of the CRC.

### **The Right to a Periodical Review of the Treatment**

#### **Art. 25**

The Act on Social/ Legal Protection of Children<sup>38</sup> assesses to a district authority's obligation to visit a child placed in institutional or protective care at least once a period of six months. It should be reviewed whether reasons for stay of the child in a facility still exist. This demand is often not fulfilled in practice nevertheless. These visits tend to be only formal. Social workers do not have any contact with natural family of the child and this identification lies often in only asking the child how many times his parents visited him or her out of which they can hardly assess whether reasons for the stay still exist. In practice we come across the fact that workers come to see a child who have been taken away by them. Such a child doesn't have positive experience with them or has never seen them. It is hard to assume that the child would confide to them with belief.

Length of evaluation deadline in treatment of child and his development once six months is necessary to consider for too long.

**Right not to be exposed to any cruel, inhuman, or humiliating treatment in facilities of institutional care, see page 9.**

#### **We recommend:**

*The Committee could recommend that the Government:*

- *assure in terms of institutional care bigger respect to guarantee of elementary psychic needs of the child;*
- *support an institutional care reform which would guarantee more individual approach to children;*
- *support an institutional care reform which would provide more natural social conditions to children; e.g. preference of smaller child facilities of family type, common living and education of girls and boys, decrease percentage of children who visit schools in the facility of residential care in the interest of integration;*
- *place a greater emphasis on work with children in terms of residential care aimed for strengthening their personal competences to integration into common life;*
- *ensure an effective help to children leaving facilities after coming of age (bigger cooperation of workers in facilities, social/legal protection authorities, municipalities, labour offices);*
- *focus on one of the most important tasks—the restoration of family so that children could come back there as soon as possible after residential care;*
- *guarantee that children are not placed far from close persons except cases of endangering feasible development of the child;*
- *guarantee that brothers and sisters are not split up into different facilities;*
- *guarantee more frequent and founded control of conditions of placement a child into institutional care;*

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<sup>37</sup> Source: the Report of civic association DOM on current state of alternative educational care for children and youth without family background in the Czech Republic, January 2002

<sup>38</sup> § 2 of the Act Nr. 359/99 on Social/ Legal Protection of Children

- *and in terms of institutional care also demand of continuity is fully respected, i.e. a child is not exposed to arbitrary transfers from particular facility types.*

## **B. Alternative Family Care**

**Alternative family care system** which respects better needs of a child to grow up at least in relatively natural family background is not sufficiently appreciated and supported in the Czech Republic, although it is stated in the Family Act<sup>39</sup> that alternative family care is preferred to institutional care.

**Current procedure of placement a child into alternative family is unbearably long and stressed** by large amounts of red tape. Mediation of alternative family care is in competence of municipal authorities. There still is no functional state register of children feasible for foster care or adoption. Procedure of committing a child into foster care with approval of parents (e.g. seriously ill) is not operated at all.

**We still perceive lack of supporting services for future and current adoptive parents and fosters** which would help them to prepare for demanding role and manage legal, psychological and other problems.

**Several types of alternative families simply do not exist** (professional, respite, therapeutic, host), and these are types that would better react on needs of children under support of original family.

Children traumatised by inadequate and endangering family environment are passed further to institutional care where trauma is being deepened whereas in professional foster care with qualified fosters it could be minimized. Moreover children are being taken away from their families often for shorter time until the situation in primary family gets repaired, this bridging time could assure also professional families and child would be prevented from trauma caused by institution environment.

The Institutional Care Act with effect from July 2002 stated possibility of placement of children instead of institution into “**contract families**”. *Way by which contract families are being stated in this law can seriously damage children’s rights guaranteed by the CRC and Constitution of the Czech Republic.* The Act enables that directors of diagnostic institutions made decisions themselves that child would be placed in custody of whatever family based on some contract. There is no legal remedy applicable against this decision. According to the Charter of Basic Rights and Fundamental Freedom court should make decisions in such a matter but in fact it cannot even review the decision of diagnostic institution. The regulation of contract families gets into conflict with Art. 4 of the Constitution of The Czech Republic that provides protection of basic rights into jurisdiction of a court and can easily get into dispute with Art. 16 of the CRC that assesses protection of child against facing to arbitrary and unlawful interference with his or her privacy and family.

Current law regulation of contract families is completely insufficient- it is not stated how rights and obligations of a child, contract parents, own parents are going to be asserted, how contract families will be checked, no minimal criteria for education and psychological preparation of professional parents are being assessed. Attitudes of the majority of fosters come closer to attitudes of adopters, and so they do not support contacts of children and biological parents which may seriously endanger interest of come back of the child into original family.

***Case study:*** *Barborka was born to mother with schizophrenia. Mother had been repetitively hospitalised. After the birth Barborka was placed into baby institution based on preliminary judgment. A court expert recommended to place the child into the custody of her mother with statement that mother would manage care for the child with support. Mother was taking care for Barborka very well, but due to her diagnose she was very anxious, which led to general exhaustion and additional schizophrenic attack. During hospitalisation of mother Barborka was on voluntary stay in a baby institution, voluntary stay has changed*

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<sup>39</sup> § 46 Par. 2 Act Nr. 94/1963, On family

into institutional care after a time. Mother wanted Barborka to be transferred into residential facility during each hospitalisation of mother, she would have given an approval to foster care with her attendance. In the baby institution mother visited her child regularly. When she came into institution after 14 days break due to flu, Barborka was not there and mother was rejected of details with explanation regarding the fact that child was in foster care and has six weeks adaptation period. Mother contacted an NGO with ask for help but during six weeks adaptation period mother's state of health deteriorated so much that she was hospitalised again and the whole situation evoked her suicide.

### **a. Foster Care**

The aim of foster care is to provide alternative family background to children who cannot long term grow up in their biological family or cannot be adopted for different reasons. Fosters are provided by foster contributions. Foster care can be performed in the Czech Republic in special facilities for foster care that are being established for this purpose and administrated by municipal authorities, municipalities or non-profit subjects. In 1999 there were 71 special facilities for foster care administration in the Czech Republic. In 2000 only 339 children have been placed into foster care.

#### ***Number of Children Living in Foster Care in The Czech Republic in 1990-1999<sup>40</sup>***

Year	1990	1991	1992	1993	1994	1995	1996	1998	1999
Number of children living in foster care	5340	5348	5249	5297	5460	5557	5780	5935	6029

*Attitudes of fosters are similar to ones of adopters—they expect stable relation if possible not disturbed by natural family of the child, they often demand removal of parents rights.*

**In The Czech Republic there is a lack of quality fosters. No system for the necessary preparation and support of foster families exists.** These services are being provided by means of non-governmental organisations. No education and support in crisis is being organised for them. **Children are often given back to residential care.**

### **b. Adoption**

*Number of adopted children is growing*—out of original 11% of all children released from institutional care it was more than 21% in last years.

#### ***Number of Adopted Children in the Czech Republic in 1990—1998***

Year	1990	1991	1992	1993	1994	1995	1996	1997	1998
Number of adopted children	499	530	460	463	543	628	575	499	566

*Condition of legal release* is a restricting pattern for higher rates of children coming to adoption—approval of legal representatives of a child is necessary or qualified unconcern of parents for deadline stated by law (two months after birth, other six months), or removal of parental rights.

#### ***Reasons for Legal Release in 1993-2000<sup>41</sup>***

Year	1993	1994	1995	1996	1997	1998	1999	2000
unconcern of parents	224	231	254	206	218	147	117	153
approval of parent with adoption	147	192	192	238	229	271	343	270
removal of parental rights	21	15	8	5	8	13	32	34

<sup>40</sup> Signal report on state of family, Republic committee for children, family and youth 2001

<sup>41</sup> Signal report on state of family, Republic committee for children, family and youth 2001

The table shows a transfer from prevalence of legal release due to unconcern to prevalence of legal release with parent approval. 1998 is a break year when a novel of the Family Act came into effect according to which unconcern has to be confirmed by court. Often complaints for delays of court are balanced by improved work of social workers so that total number of legally free and adopted children does not decrease.

**Amendment to the Family Act from 1998 has prolonged stay of newborn in institutions.** Law assesses that approval to adoption can be given by parent first six weeks after birth. E.g. in child institution in Aš, which provides secret accommodation to pregnant women in need who do not want to take care for expected children, the stay of new born has become three times that long although, the facility aims to administrate all matters of adoption in the shortest possible time.

**Length of stay in a baby institution since a release of a newborn from the birth clinic into placement in alternative family care in Child home in Aš**

Year	1997	1998	1999	2000	2001	2002
Number of days	25	66	65	119	63	88

Since June 2001—based on the Convention on Protection of Children and Cooperation in International Adoption—**international adoptions** take place. **Number of children who are adopted into foreign countries is very small although there are many** legal free children in the Czech Republic who are impossible to be placed. One of the main reasons is insufficient operation of the Authority for International Law Child Protection.

**Children born in the Czech Republic with foreign nationality** (above all Slovak children) **remain an issue**. These children, although they are legally free, must wait for the processing of Czech citizenship, which lasts several months.<sup>42</sup> There are no legal obstructions for the child to be registered in international adoption in The Czech Republic with foreign nationality. Children even legally free stay several months longer in baby institutions due to formal reasons.

**Complicated and long process of adoption in terms of the Czech Republic and into abroad is many times circumvented** This is often mediated by lawyers connected with hospitals or gynaecologists and maybe also procurers who tip feasible mothers willing to give the child into adoption anyway. This problem exists mainly for prostitutes and socially and economically weak mothers. Practically “adoptive” father approves fictive paternity and biological mother gives approval for money. There is no regulation in Czech criminal law that would prosecute e.g. unapproved mediation of adoptions, fictive paternity identification in order to break laws on adoption or abetment to such activity.

**This practice seriously endangers interests of children because it opens space for traffic in children. Even this does not occur for money this procedure endangers children because they are not provided any guarantee** as in case of adoption operating in accordance with law (e.g. no professional evaluation of psychological, medical and social conditions of adoption applicants).

**We recommend:**

**The Committee could ask a question what steps the Government has undertaken to support quality alternative family care.**

**The Committee could ask a question how the Czech Republic resists regulation breaking on alternative family care that opens way to traffic in children.**

**The Committee could recommend that the Government:**

- **monitor children eligible to alternative family care is assured and controlled, e.g. functional register of children is established and families feasible for alternative family care;**
- **consider establishment of more types of professional foster families who could better react on needs of children under support of original family;**

<sup>42</sup> Counselling centre for citizenship

- *during preparation of conception of professional families, the protection of children's rights is guaranteed, protection of biological and foster families is guaranteed;*
- *sufficient supporting services for future and current adoptive parents and fosters are guaranteed;*
- *demand whole service education and training of self-development for fosters, supervision and regular programmes of support is assessed;*
- *make steps for simplification of administrative and fastening procedure of placement children into alternative family care;*
- *and assess guarantees preventing circumvention of law on alternative family care which opens way to traffic in children.*

#### **4. Domestic Violence as a Problem Concerning Children**

Domestic violence includes different forms of aggression (psychical, physical, sexual, and economical) that takes places among members of one family. ***Typical pattern of domestic violence in the Czech Republic is assistance of children.*** In 90% of cases children are minimally direct witnesses of violent incidents between parents or they are confronted with consequences of mother's torture indirectly—they register atmosphere of terror, mother's psychical state, fear, physical injuries, or they perceive that she refuses or falsifies events that occur. Children become secondary victims of their mothers' cruelty and they overtake model of their primary family as a generally valid norm.

In case a child is exposed to environment stressed by violence it is in his interest without any doubt that he she should be the fastest as possible taken away from the aggressors reach—so that he could be with his mother in safety again. Assertion of this thesis is in practice of the Czech Republic very complicated and many times unmanageable. **The system is focused mainly on protection of perpetrator not the victim.** It is respected anxiously fulfilment of all legal rights of perpetrator who is affected minimally in the majority of cases.

Women often stay in relation with the violator because of fear of health or life of their children. They are also afraid that they will lose their children in case they try to resist and leave; woman is often endangered by placement of children into child institutions or diagnostic facilities provided that she does not guarantee of suitable conditions for them. **Housing situation of victim is not being taken into account by the Czech law at all.** Alternative flats that could be provided to women in this situation by municipal authority are not available, there is emergency lack of asylum facilities in the Czech Republic. Asylum houses with secret address do not practically exist in The Czech Republic. Due to these reasons many of Czech women are forced to live with the aggressor even after divorce.

***The law does not provide any possibilities guaranteeing that the aggressor is prevented from living in common flat with the victim.*** In the Czech Republic there is no institute of a protective order, or a preliminary order based on which the court regulates to the one who makes common living unbearable by physical attack or similar behaviour to leave the flat and its surroundings. According to the Czech law the perpetrator of domestic violence wins in these situations if he is in advantage of property or rental law to a flat or house where he stays together with victims. Protection of proprietorship dominates to protection of health, life, personal freedom of mother and children. That is how reality looks like nowadays—perpetrator stays while victim is forced to seek temporary shelter.

**Case study:** *Husband of Mrs Nováková has regularly tortured her and her two daughters for 10 years. She tried to solve her situation in an active way, she repeatedly made an announcement on Police. Police intervened first in the moment when husband burned equipment of the flat. First in this moment he has been taken into prison, accused of and consequently sentenced for crime of insobriety to imprisonment for three years suspended for three years. Mr. N. is an alcoholic in the serious stage and he announced in front of the court that he would continue in his activity. Although when he was released from the prison, nobody informed Mrs N. —she was forced to escape from the flat without taking any possessions at least. She was forced to hide at her grandmother with both daughters in very tiny rooms (one room sleeping on the floor on deck-chairs) She was not accepted into asylum house for mothers with explanation that she bears advantage of rent towards particular flat. It concerns the flat which is temporarily being inhabited by her*

*husband, the flat is demolished, its equipment sold, he pays neither rent nor other payments for connected services. If Mrs N. does not want to drop the flat she is forced even in this disaster situation to pay these payments.*

**In practice, we often find that professionals and institutions have insufficient information on domestic violence.** Mistakes of social workers and courts take place when information is being provided consciously or based on carelessness to violent perpetrator which should be in interest of safety, health and life of the woman and her child kept in secret.

**Contact of victim of domestic violence with policemen and further authorities active in criminal process also tends to be complicated.** Secondary victimization is being committed by Police currently. Insensitive and trivializing approach of police is common even in case under-aged children call for help—they tend to be frequent announcers. There is also human factor failure here—policemen are influenced by attitude that it is a private problem that should be solved between partners; absence of quality special education of police in the given set of issues is also a mistake.

Police is obliged based on the Police Act to guarantee safety of victims (mother and children) and prosecute a perpetrator. But domestic violence is still perceived as private matter—in case that police intervenes they try to console family “row” and after their departure victim is kept alone with the perpetrator. Whereas police has the right to detain the aggressor for the period of 24 hours—during this time victim of domestic violence could have a chance to solve most urgent problems, get out of reach of the aggressor without obstacles together with children and find a temporary shelter.

Even at current legal state police could contribute to victim safety considerably—communicate with victim in a specific way, document the incident, prosecute the perpetrator. Policemen should during contact with case of domestic violence when an under-aged child is present, put up to the authority of social/legal protection of the child, at the same time they should overhand contact for specialized facilities for victims of domestic violence or asylum houses.

**Case study:** *Mother of two under-aged daughters (4 and 7 years), problems with aggressive behaviour of her husband began in bigger scope after the birth of the second daughter. Husband started to cause conflicts for every small thing, he beat Mrs F. every day, kicked her, beat her head against the wall, threatened her by knife. Several times situation occurred that Mrs F. lost consciousness and had to stay lying on the floor where she was found by her daughters. When she regained consciousness once, her daughters were on her side and cried that mother was dead. Regarding the unbearable situation Mrs F. was forced to escape the flat. Experienced stress left serious traces on psychics of all victims. Younger daughter vomited often, the older one cried, refused to eat and suffered enuresis. Both were very afraid of the father, their state demanded long-term care of child psychiatrist. After one of the visits of father younger daughter stopped talking at all. According to statement of psychologist contact was not feasible in this situation at all, later only in presence of psychologist. Mrs F. has been exposed to enormous pressure of social workers, forcing her to meet her husband in order to make agreement on contact with children. Husband tries to misuse his right to meet his daughters to constant extortion upon his wife.*

**There is no special act for protection of domestic violence victims<sup>43</sup>.** All initiative and burden of proof lies on victim in case he /she decides to assert his protection and her rights through civil court process. Reality in the field of justice is such that terms in which an action comes to be tried count on months, often even for years whereas it is not needed to stress that for both victims of domestic violence and their children is life important for help to come immediately.

A proposal for an interlocutory order usually comes to turn within one to seven days. In this point of view institute of preliminary judgments could contribute to protection of victims of domestic violence—court can assess to a participant to place the child into custody of the second parent, not to dispose of certain things or rights, to do something or on the contrary to prevent from doing something

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<sup>43</sup> As for example in Austria (the Act for Protection against Domestic Violence) or in Germany (the Act on Civil Protection against Violent Crimes and Restriction of Personal Freedom)

(violent behaviour). In spite of this preliminary decisions are little used in practice; reasons we can see in insufficient consciousness with possibilities provided or in prevailing routine in legal proceedings when will to evaluate untraditional ways of solution is not present.

**We recommend:**

*The Committee could ask a question what steps the Government has made and intends to make for security and support for victims of domestic violence and their children.*

*The Committee could recommend that the Government:*

- *make measures to guarantee necessary legal and social help for a victim of a crime in case of domestic violence;* e.g. support establishment of asylum houses with secret address, support activity of providing legal and social counselling to victims of domestic violence including psychotherapeutic facilities,
- *consider establishment of a “protective order”—*which would prohibit access to victims or to common flat in reasoned cases;
- *support education of professionals (policemen, social workers, judges) in problems of domestic violence;*
- *consider establishing of specialized departments for domestic violence where policemen with adequate education would work;*
- *oblige Police to inform Departments for Family and Child Welfare in every case of domestic violence where under-aged children are present;*
- *assess restriction of disposition law of aggrieved in his interest* (provide or not provide, or take back approval with criminal prosecution of close relatives), which should *apply to deliberate violent crimes*—it restricts extortion and pressure by perpetrator who is being investigated on liberty;
- *consider obligatory arrest prosecution of perpetrator who committed violent crime on a person with whom he lives in a common place;*
- *oblige to inform the aggrieved about a release of perpetrator from the prison;*
- *and ensure that investigation of aggrieved does not take place in presence of the aggressor.*

## **IV. Special Protective Measures**

### **1. Children in Emergency Situations**<sup>44</sup>

**Art. 22, 2**

A. Specific group of asylum seekers represent **under-aged applicants who stay without attendance of parents or other legal representatives.** In accordance with the Convention under-aged are considered as all persons coming into asylum proceeding younger than 18 years. Position of such applicants in asylum procedure is specific (guardian is appointed to them for stay and for asylum procedure). *Although a special care is provided to under-aged asylum seekers without attendance of legal representatives, in some cases it is still insufficient—especially in the field of accommodation.*

Originally under-aged seekers had special facility that has been appropriate only for them. It was a special building within the framework of one centre for adult asylum seekers. Currently this is regulated only for youth (aged 15-18).

*Under-aged asylum seekers aged 0-15 years are based on court decision placed into child homes or more often into diagnostic institutions. Neither child home nor diagnostic institution are intended for care of under-aged foreigners moreover with the need of special care—it does not comply in the way of care, profession nor language skills of the staff.*

Neither in Child home, nor in diagnostic institution there is possibility to take into account special needs of children coming from ethnic, religious, culture and language origin. Obligation to school attendance is not respected here either, especially because school attendance in belonging facilities,

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<sup>44</sup> This chapter comes from information Counselling Centre for Refugees of the Czech Helsinki Committee

which are being attendant by children from diagnostic institutions and Child homes is managed only in Czech language without language preparation in advance.

Placement into diagnostic institution is impossible to be perceived as assurance of special protection and help. Even in spite of all effort of personnel it is impossible to speak about mental and social development of children, especially because nobody works with them both due to language barriers and time reasons. Neither orders nor the Act on Institutional Care specifies different conditions under which comprehensive examination of children with language barrier coming from different socio cultural backgrounds. Diagnostic institutions are not prepared for such examinations; they do have neither specialized workers nor relevant equipment. Under these circumstances obligatory eight- week stay of such children in a facility means lost time, because it is impossible to make any comprehensive examination conclusion of which have predictable value.

### **B. Children Placed in Detention Centres for Foreigners**

According to the Aliens Act it is possible to interim *foreigners in order to administrative expulsion up to 180 days*<sup>45</sup>. Detained foreigners are placed in facilities operated by the Police of the Czech Republic and their regime is similar to jail.

The Act on Aliens assesses responsibility for breaking of the Act since the age limit of 15 years. It implies the option to detain youth in the age of 15-18 years in detention facilities up to 180 days. This cannot be considered as a measure of last resort and for the shortest appropriate period of time in meaning of Art. 37.

In detention facilities children younger than 15 years appear—based on the Aliens Act (§151) Police is authorized to place foreigner into facility to which a detained foreigner has alimentary obligation or which is in his custody.

In case of placement of under-aged foreigners either without attendance of legal representatives or in their attendance in detention facilities children are exposed to an environment that in no respect meets demands of the Convention. It is impossible to speak about environment where a standard of living adequate for the child physical, mental, spiritual, moral and social development is secured (in respect of Art. 27). It is impossible to consider any education in such a facility according to demands of Art. 29. Facilities for foreigners cannot offer physical and psychological recovery and social reintegration of a child (Art. 39), usually in case of placement of child without attendance no needed respect is taken into account for continuity maintenance in child's education and for his ethnic, religious, cultural and language origin. Children are not allowed obligatory school attendance (Art. 28), apart from total absence of leisure time activities. (Art. 31). In detention facilities for foreigners no access to information and materials from different national and international sources is assured (Art. 17).

*Workers of non-governmental organisations providing legal and psycho-social aid do not have any access to the detention centres without explicit invitation of a particular person detained.* Regarded to the lack of knowledge of the culture and language barriers it is improbable that a child placed here would apply for such a visit.

Currently new concept of way of care for under-aged child asylum seekers is being prepared—change concerns creating of special stay facility where special care to asylum seekers younger than 15 years should be provided. In spite of number of comments of NGOs no special change for children 15-18 years old is taken into account. Children who will stay illegal in CR area will be placed further into interim facility for foreigners regarding their future psychosocial development completely insufficient.

### **We recommend:**

*The Committee could ask a question how demands of the CRC are being respected in case of children asylum seekers who live in the area of the Czech Republic without attendance of legal*

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<sup>45</sup> § 124 and following of Act No. 326/1999 of Coll., on the Stay of Aliens on the Territory of the Czech Republic (hereinafter "the Aliens Act")

*representatives and in case of foreigners younger than 18 years living in detention facilities for foreigners.*

*The Committee could recommend that the Government:*

- guarantee a special care to under-aged asylum seekers including children in the age of 0-18 with respect to their special needs;*
- guarantee fulfilment of the CRC demands also in cases of children in detention facilities for foreigners so that especially in case of long-term stay it is enabled education, leisure-time activities and other impulses for their healthy physical, mental as well as social development;*
- enable easy access of mentioned children to legal and psychosocial aid provided by non-governmental organisations.*

## **2. Sexual Abuse and Commercial Sexual Exploitation of Children**

**Art. 34, 35**

The issue of sexual abuse of children especially commercial sexual exploitation (CSEC) has been tabooed for 40 last years, in latest 10 years it appears. The state, by accepting the National Plan against Commercial Exploitation of Children, became one of the countries that are trying to work on the problem of CSEC, but society as a whole is not prepared for managing the problem.

### **A. Sexual Abuse**

**Sexual abuse of children<sup>46</sup> itself represents relatively frequent phenomenon in the Czech Republic that is little announced** and hardly controllable.

In 2000 only Departments for Child Welfare made 154 motions to institute criminal proceedings<sup>47</sup>. An Epidemiology retrospective study of sexual abuse was undertaken by the Pink Line, which collected statistics on sexual abuse in childhood, taking as definition for sexual abuse the definition of the Health Committee of the Council of Europe, which includes also the no-contact form of abuse (such as confrontation to exhibitionist behaviours); Such study recognized that each third girl or woman and every fourth to fifth man were or had been confronted to sexual abuse<sup>48</sup>; two thirds of them were confronted with contact sexual abuse, approximately half of the contact sexual abuse included intercourse. In cases of sexual abuse committed on girls the perpetrator in half of cases was a man from the family, in one third of cases somebody known (e.g. teacher) and from one fourth it was a strange person. On the contrary in case of boys half of perpetrator is a strange person. The study has described growing tendency of commercial sexual abuse of boys.

Although problem comes to light it does not mean automatically that the crime is announced to Police. Officially it is announced up to every 6<sup>th</sup> to 10<sup>th</sup> case<sup>49</sup>. Usually the child confides to somebody under pressure of circumstances (friend, mother). Then around three quarters of children reject their victimization when confronted to strong reaction. Especially in “proper” families the world “ends” and the child is responsible for family disaster.

**Above all, no**

**sophisticated address system of comprehensive protection and help to victims of sexual abuse and CSEC exists.** Victims are provided a guarantee neither of law nor psychosocial help, system of help and social rehabilitation is insufficient and incomplete. (See chapter II, page 7).

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<sup>46</sup> This chapter comes from materials of the Pink Line, E. Vanícková, M.D.

<sup>47</sup> Statistic annual in the field of labour and Social Matters, 2000

<sup>48</sup> E. Vanícková, M.D., 1995, Pink Line

<sup>49</sup> L. Círtková, 2001

There are not enough of founded and correctly **motivated professionals** (child psychologists, doctors, social workers, special pedagogues, lawyers and other professionals) **and specific educational activities** that would help remove this lack.

We can consider *the low preparedness and capability of professionals to detect and identify sexual abuse of children* an important problem. The fact that sexual abuse is a problem of at first sight decent, functional and career successful parents represents often also for professionals a fact with which they hardly cope with. Although it concerns above all children who have obligatory school attendance and school should estimate properly when a child has problems, it is not usual in practice unfortunately—mainly due to lack of information, partly also because teachers are afraid of obligatory motion of child abuse and cruelty and consequent police procedure. **The obligation to report is not fulfilled** especially by medical staff.

**We lack sufficient organisation and support of prevention programmes, enlightenment and media programmes.** Public is not sufficiently informed about this group of issues, even potential victims do not have enough information. Meanings on child sexual abuse in the society highly influence behaviour of parents, teachers and other individuals who come across cases of abused children—in our conditions *pressure on victim still prevails*. In the Czech Republic myths ? not only in case of laic public that children lie often about abuse, that incest does not exist, and if a child is abused, it concerns unknown person etc.<sup>50</sup>

Share on such a high percentage of victims of child sexual abuse has also sex taboo, insufficient sexual education<sup>51</sup> and insufficient training of safe behaviour.

**In the Czech Republic no system of paedophile aggressors and other sexual deviants' treatment is elaborated** No system of protective treatment at the same time with execution of a sentence of imprisonment and consequent obligatory ambulant treatment after release exists.

**The problem of secondary victimization or injury of a child within investigation** proceedings and insufficient protection of his or her rights see chapter II., A, page 7.

**We recommend:**

*The Committee could ask the Government a question what actions have been taken or are intended to be to real rights protection of sexually abused children and their rehabilitation and integration.*

***The Committee could recommend that the Government:***

*- consider that only one body should occupy with the issue of child rights protection so that competence and responsibilities are not separated in vain and are not over handed from section to another;*

*- encourage regional authorities to monitor risks and needs of their region and initiate service assessment (from low-access facilities to centres of early detection and identification of endangered children, diagnostics, therapy, consequent rehabilitation, reinsuring work with the whole family aimed to keep it for the child). In this context it is necessary to assess the system of work of multidisciplinary teams;*

*- pay considerable attention to the system of therapy of sexual abuse victims as prevention of commercial sexual exploitations of children but also prevention from other mental and psychosomatic disorders;*

*- make steps to increase the consciousness on the problems of sexually abused children in society, e.g. by means of seminars for politicians and the police, work with media,...;*

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<sup>50</sup> Halfarová, M.D.,1997, the Crisis Centre of Safety Line

<sup>51</sup> According to the research of the Pink Line children stated the most important information source on sexual matters in 68% respondents as friends, 21% parents and 11% partner.

- *assert increase of legal consciousness and responsibility for not fulfilling obligation to report at every citizen;*
- *assert removal of formal attitude towards sexual education at school, guarantee of needed information on sexuality and gaining social abilities;*
- *and ensure more careful supervision of perpetrators of sexual crimes on children, guarantee of protective treatment.*

## **B. Commercial Sexual Exploitation of Children (CSEC)**<sup>52</sup>

In last years in the Czech Republic number of prostituting persons has increased, among whom there are considerable number of girls and boys younger than 18. **There is almost no relevant information about these persons nevertheless.** Criminal statistic of the Police of the Czech Republic and overviews of the Ministry of Labour and Social Affairs operate special data on commercial sexual abused victims, nevertheless methodology of collection of these data is inconsistent and statistics are misleading.

The Czech Republic representatives present the problem of CSEC as marginal. It is true that the number of perpetrators sentenced for crimes connected with commercial sexual abuse is low (since 1992 only around 10 perpetrators were sentenced ), although the Criminal Code provides statements based on which it is possible to recourse all forms of the CSEC<sup>53</sup> in a way they have been assessed by Stockholm congress<sup>54</sup>. In practice, the punishment of perpetrators remains, however, a problem, in light of the fact that the process of acquiring proof is difficult due to the characteristics of this type of crime (a high degree of conspiracy among its organizers; secrecy on the part of the injured parties, who fear revenge by its organized perpetrators; in some cases, castigation by those around them; customers' unwillingness to testify).

The problem of the CSEC in the Czech Republic is in the fact that the authorities focus their action above all on criminal sanctions. **System of help to victims of crime and their social rehabilitation is on high theoretical level, nevertheless its implementation in practice is insufficient,** see above, page 7.<sup>55</sup>

*Repressive approach of state authorities complicates effective and long-term help to victims of the CSEC.* For illustration the most famous place of community of prostituting youth was the Central railway station in Prague. Because of repressive intervention of the Police of the Czech Republic and the Municipal Police (“when the problem is not visible, it does not exist”) young prostitutes have been distracted so that community has been fragmented throughout the whole area of frequented parts of

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<sup>52</sup> Materials for this chapter have been taken above all from the report on Šance Project, 2000 (study from terrain work with youth living on the street and earning for their living by means of homosexual prostitution mainly) and from National Plan of Combat against Commercial Sexual Exploitation of Children of Ministry of the Interior, 2000

<sup>53</sup> We come from the definition of the commercial sexual exploitation, as stated by the Stockholm Congress in 1996 . Basic forms of CSEC are considered to be: 1. trafficking children with purpose of sexual exploitation, 2. child prostitution, 3. child pornography

<sup>54</sup> Since half of 2002 it is possible to penalize trafficking with not only women but also men or boys and not only from abroad but also from the Czech Republic abroad

<sup>55</sup> Certain rights are legally guaranteed in general to victims of crimes in case they suffered a material damage (i.e. property damage) or in limited amount in case of health damage—e.g. right to representation at legal proceeding in case of socially weakness according to §51 of the Criminal Procedure Code or right to limited financial help from state according to the Act on financial help to victims). Victims whom immaterial damage has been caused who represent considerable part of victims of sexual abuse, are not entitled for this help.

Prague. This made monitoring the problem much more difficult, and it made street-work impossible within monitoring, prevention and help to these children. Community itself lost its background inner mechanisms of clearing and control.

*Some non-governmental organisations provide certain data on the CSEC in the Czech Republic.* According to project ‘Šance’ which works with youth and under-aged homosexual prostitutes in Prague, this problem concerns around 550-600 children a year, out of which 75% boys and 25% girls. Number of prostitutes increases while their age decreases. The average age of clients is 17 years old. In summer period it decreases under age of 15. Some children come back to their institutes for the winter or they come back to their families. More than 75%<sup>56</sup> of boys making their living through prostitution are in fact heterosexual, but offering their bodies to men is the way they survive on the street.

#### Age Structure of Clients of the Šance Project in 2000

	girls	boys
7-8 years	2	3
9-10 years	4	5
11-12 years	3	8
13-14 years	30	40
15-18 years	94	111

Most frequent victims of the CSEC are children escaping from Child home or reformative institutes, children without completed school attendance, children faced to conflict in family, children from incomplete families, with experience of sexual abuse or cruelty in family. It results into fact that **efficient approach to elimination of the CSEC and risks resulting out of this demands solution of broader social problems**—especially fractured and socially deprived families at or below the poverty line, the issue of alternative family care, the prostitution problem taken comprehensively, etc.

#### Causes of Butterfly Sex Clients of Šance project in %

Lost of background—institutional care	70.00%
broken family	50.00%
sexual abuse	40.00%
different sexual orientation	13.00%
hate towards parents	7.00%
alcoholism of parents	6.00%

**Not every child is caught by the state social net, and many who are caught later slip out.**<sup>57</sup> It concerns especially children who escape from institutional care facilities or children of other nationality<sup>58</sup> who are not registered here. These children often end on the street, they earn for living by many different ways esp. small thefts and prostitution. Almost 90% of clients of the Šance project are children without a family to rely on, and are practically homeless. This fact decreases the possibility of re-socialization. It is very difficult to solve the situation of these children because in the case street-worker finds an under-aged client and does not report it, he gets into conflict with the law. If he report it, the state does not have other possibility than to place these children into institutional care out of which they had escaped.

<sup>56</sup> Source: Research of the Šance project

<sup>57</sup> The majority of clients of the Šance project have no health insurance, and so they have to obtain medical treatment in a practically illegal way.

<sup>58</sup> Nationality structure of clients of Šance project in 2000: 80% Czech including 42% Roma, 14% Slovaks and further Ukrainians, Romanians and Hungarians.

*Many of prostituting children are addicted to gambling, alcohol or drugs* whereas addiction to narcotics is induced in them deliberately; each second client of the Šance project is dependent on drugs for different reasons<sup>59</sup>.

*In certain percentage of cases their family offers children to homosexual prostitution* and earned money become welcome bonus, in some cases the only income of those families. An alarming case was a nine-year-old boy who did not meet his parents at home and could spend whole summer on the street—he became famous child prostitute and earned a lot of money. When a street-worker of the Šance project contacted his father, he considered it as an inadequate intervention into his privacy.

**Case study:** *When parents were getting divorced, Honza was placed into the custody of his father. He brought a new friend after a while who did not like Honza and wanted to have only her own children. Honza's father was solving a dilemma after a short time. Either his new girlfriend or his son. He said to Honza: "Go and see your mother and do not come back here." Honza went to see his mother but she did not let him in and said: "Look, you would only cost me money, go and see your brother and sister." Since then Honza is on the street. He was 15, now he is 20 and is dying of AIDS.*<sup>60</sup>

**Only a very small number of non-governmental organisations works with children on the street. The society does not appreciate the work of people working with risk groups and that is why such organisations hardly get support of the state** (in case the state supported their work, it would have to admit that this problem exists) and of commercial firms (companies do not want to connect their name with this problem, in case they contribute, it remains anonymous).

In 2000 the **National Plan to Combat the Commercial Sexual Exploitation of Children** as a new measure has been approved by the Government. Fulfilment of this program in practice limps considerably. Regarding above stated it is necessary to mention that **the Government of the Czech Republic has not fulfilled demands of the Report of the Special UN Correspondent** for child trafficking, child prostitution and pornography from 1997 which included following recommendations for the Czech Republic:

- Complete and adjust legislation so that it includes not repressive but rehabilitation approach to children prostituting including children in 15-18 years old.
- Work out special situation in Prague make measures to decreasing of number of potential clients interested in boyish prostitution
- Strengthen cooperation between state authorities and non-state organizations within children rights protection against the CSEC
- Input an effective control and monitoring mechanisms on borders of Northern Bohemia and Germany, as well as Slovak borders against potential trafficking children from the East.
- Achieve substantial restriction of approach of children towards pornography materials.

**We recommend:**

*The Committee could ask question on how the National plan to fight against Commercial Sexual Abuse is being fulfilled and how the Czech Republic gets over recommendations of the special correspondent of UN for trafficking children, child prostitution and child pornography from 1997.*

*The Committee could recommend that the Government:*

- *focus rather on the help to victims of CSEC than on their repression including children in the age of 15-18* (saturation of elementary biological, psychical, emotional and spiritual need of the CSEC victims);
- *support work of NGOs providing help to CSEC victims and strengthen cooperation of state authorities and non- governmental organisations within child protection against CSEC);*

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<sup>59</sup> In many original families endangered by commercial sexual abuse are e.g. drugs perceived as problem, whereas prostitution not.

<sup>60</sup> Source: project Šance

- *make measures to decreasing of number of potential clients and persons interested in boy homosexual prostitution;*
- *work out special situation in Prague and assess effective control and monitoring mechanisms on Northern Bohemia and Germany borders ;*
- *take measures to prevent CSEC—it is necessary to inform children about the problems and risks of the CSEC, help to balance their identity , develop social abilities of children;*
- *influence positively the climate in the society, schools and families by correcting the hierarchy of values assessment with stress on meaning and role of media in citizens education;*
- *Restrict accessibility of pornography especially child pornography (e.g. operate codex for providers of internet centres, operate rules for work with internet in schools).*

### **3. Children Belonging to Minority Groups**

**Art. 30**

#### **Roma**<sup>61</sup>

The current system of education in the Czech Republic result in most Roma (“gypsies”) leaving schools without completed elementary education or receiving lower quality education at special schools. Special schools are officially defined as established for children “with intellectual deficiencies”<sup>62</sup>. Regardless of this, more than half of special school attendants are Roma children and from two to three thirds of Roma children are placed in special schools.<sup>63</sup> The official diagnostic tests evaluating educational ability and intelligence have not been modified in order to prevent cultural ethnocentrism: so far no special tests exist that would respect the different cultural background of Roma children. Additionally, the state does not provide any effective (and even procedural) remedies for parents who wish the official decision to place their child into a special school to be reviewed by an independent body or to have their child tested by independent specialist.

In a number of cases, the parents give their consent because Roma children feel more comfortable in special schools where the teachers have experience with education of Roma children and children are spared the verbal or physical, racist attacks they would face in normal schools.

The Governmental Report describes in a rather detailed way the measures taken in favour of the **integration of the Roma community** - within the framework of chapter on non-discrimination the Government describe projects of Roma pedagogic assistants in schools. According to the research “Specific needs of bilingual children and efficient preparation for school attendance”<sup>64</sup> *Roma pedagogic assistants brings the following advantages:* assistants become a positive model for Roma children who lack positive models from adults, the use of Roma language increases understanding in classes, Roma pedagogic assistants improve better communication with school in families, they enable to educate smaller groups of children, they bring less behaviour problems in classes. The research stated that successful operation is dependent on direct and active support of assistants by school directors what is not always available. Sufficient education and training of team cooperation within assistants and teachers is still absent.

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<sup>61</sup> This chapter comes from materials of generally beneficiary association New school and the Counselling Centre for Citizenship/Civil and Human Rights

<sup>62</sup> §31 Law No. 29/1984 of the Collection of Laws on the System of Elementary Schools, High Schools and Higher Vocational Schools (the School Law), Article 31 para 1

<sup>63</sup> European Roma Rights Centre: A Special Remedy, Country Reports Series, No. 8., 1999, p. 2

<sup>64</sup> made by New school, g.b.a., presented at Conference Open Society Institute- Budapest and Save the Children Fund—London, 2001

In Child homes in the Czech Republic there is a high percentage of Roma children. The *share of Roma children of the overall number of children accepted into child homes was 26%* whereas in almost one half of cases (46.9%), children were placed into institutions for infants for welfare reasons<sup>65</sup>.

After several years spent in institutional care these children lack the consciousness of their own identity and of their belonging to a particular group. For the whole time of their stay in institutional care, children often do not meet any adult Roma who could represent a positive example and identification model. Roma children in children's homes do not identify themselves with Roma communities, but majority society does not attribute them to these communities according to the skin colour . It often evokes identity crisis in youth, which often ends by identification with of one of marginal, often social-pathological groups, e.g gangs.

**We recommend:**

***The Committee could ask a question on the way the Czech Republic evaluates steps made to integration of Roma children.***

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<sup>65</sup> data come from report of currents state of alternative family care of c.a. DOM, 2000, Monitoring of baby institutions, implemented by Czech Helsinki Committee in 1999, came to similar conclusions as well.

## **The Organisations That Cooperated In The Preparation Of This Report:**

**League of Human Rights (Environmental law service) – Center for legal protection of children**  
INO 65341490/288- 65341490, address: Kostnická 1324, Tábor 390 01, [www.i-eps.cz](http://www.i-eps.cz), e-mail: [eps.tabor@ecn.cz](mailto:eps.tabor@ecn.cz), contact person: Radka Jelínková

*Activities description:* Environmental Law Service is an Association of young lawyers working on so called Public Interest Law. In 2000 they started with a project of legal protection of children. They provide legal aid in particular cases to families with endangered children and legal help to non-governmental organizations working on protection of children rights.

**League of Human Rights (Environmental Law Service) – Counseling Center for Women in Emergency**

INO 65341490/288- 65341490, address: Bratislavská 31, 602 00 Brno, e-mail: [zenavtisni@hotmail.com](mailto:zenavtisni@hotmail.com), [eps.brno@ecn.cz](mailto:eps.brno@ecn.cz), <http://www.i-eps.cz/>, contact person: Martina Žáková

*Activities description:* In 1999 they started with project Counseling Center for Women in Emergency - the aim of this project is to provide to victims of home violence complex long-term legal and psycho-social help. They participate on establishment of Regional coordination center that would coordinate cooperation of involved organizations.

### **Project Šance**

INO: 65995767, address: Ve Smečkách 28, Praha 1, 110 00, [www.sance.info](http://www.sance.info), email: [info@sance.info](mailto:info@sance.info), contact person: László Sumegh

*Activities description:* Prevention of business with commercially sexually abused children and children living in the street, field work with child prostitutes, often dependent on drugs

### **Pink line – Czech association for protection of children at 3th Medical Faculty**

Contact address: Ruská 87, Praha 10, 101 00, e-mail: [eva.vanickova@lf3.cuni.cz](mailto:eva.vanickova@lf3.cuni.cz), contact person: Eva Vaníčková, M.D.

*Activities description:* telephone crisis line for children and youth for all children from the Czech Republic, complex programmes for children and youth from Prague 10.

### **Association Justice for Children**

ICO: 65992075, address: Bítovská 9/1227, Praha 4, 140 00, e-mail: [srvts@volny.cz](mailto:srvts@volny.cz), contact person: Luboš Patera

*Activities description:* Social-law counseling concerning right to contact of a child with both parents, association for protection of children rights, parents and grandparents

### **DOM**

INO: 66005167, address: Braunerova 22, Praha 8, 180 00, e-mail: [dom.os@worldonline.cz](mailto:dom.os@worldonline.cz), contact person: Ing. Michaela Svobodová

*Activities description:* DOM (House of open possibilities) is a half-way house for young children from 17 to 24, leaving residential care of dysfunctional family. DOM offers living and help with start into independent living. DOM is also guarantee of Promena project which aims change of alternative educational care system in the Czech Republic.

### **Counselling Center for Refugees of the Czech Helsinki Committee**

INO: 00539708, address: Senovážná 2, 110 00 Praha 1, email: [refug@helcom.cz](mailto:refug@helcom.cz), [www.uprchlici-ecn.cz/](http://www.uprchlici-ecn.cz/), contact person: Bela Hejná

*Activities description:* free legal and psycho-social counseling to asylum seekers in the Czech Republic and foreigners living in the area of the Czech republic.

**Union of Catholic Women**

Address: Thákurova 3, Praha 6, 160 00, e-mail: [ukz@volny.cz](mailto:ukz@volny.cz), contact person: JUDr. Marie Boháčová  
*Activities description:* Unifies women of catholic religion from Bohemia and Moravia, solves questions of women position and family in a society and in church. It also organizes seminars, round tables and conferences. It monitors family policy of the state in long-term point of view.

**STREP – Center Of Children And Family Assistance**

INO: 63 111 918, adresa: Senovážná 2, Praha 1, 110 00, email: [strep@centrum.cz](mailto:strep@centrum.cz), [www.mcssp.cz/strep](http://www.mcssp.cz/strep), contact person: Vera Bechynová  
*Activities description:* implementation of children and family assistance projects – alternatives of out-of home placements, early intervention, volunteer programmes, education and information programmes, pursuit of legislation alterations

**Counselling Centre for Citizenship/Civil and Human Rights**

INO: 70100691, address: Senovážné nám, 24, Praha 1, 116 47, [www.poradna-prava.cz](http://www.poradna-prava.cz), contact person: Alena Svobodová  
*Activities description:* counseling in matters of nationality, help in discrimination problems, protection against discrimination, support of gypsy families, who have children in residential care or are endangered by residential care, analysis of valid legal regulations in particular fields with respect to their accordance with international obligations of the Czech Republic in filed of human rights

**New School, GBA**

INO:25 76 88 67, address: Veletržní 24, Praha 7, 170 00, e-mail: [novaskola@novaskola.org](mailto:novaskola@novaskola.org), [www.novaskola.org](http://www.novaskola.org),  
*Activities description:* NGOs whose aim is to participate on establishment of civil society by means of support of alternative educational forms of children and adults to multiculturalism, tolerance, and human rights, special attention is given to educational programs support for Gypsy minority in the Czech Republic.

**Center of Alternative Family Care**

Address: Jelení 91, 118 00 Praha 1, e-mail: [nrp@volny.cz](mailto:nrp@volny.cz), [www.rodina.cz/srnp](http://www.rodina.cz/srnp), contact person: Veduna Bubleová.  
*Activities description:* help to abandoned children with special health and social needs to find a new alternative family, effort for general development of alternative family care, counseling for applicants fro alternative family care, research and education of the public activities, international cooperation