15 January 2023

**Submission: rights of the child**

At the outset it should be noted that the Public Defender of Rights (hereinafter referred to as the „Defender“) of the Czech Republic is not a national human rights institution (NHRI) and thus does not cover the mandate of an NHRI. The Czech Republic has not established an NHRI yet.

The Defender can therefore comment on the questions only within the scope of his mandate, which is mainly the competence to investigate the procedure and decision making of state authorities (administrative bodies) in the exercise of public administration. Furthermore, the Defender exercises also a mandate of an equality body focusing on non-discrimination and a mandate of a national preventive mechanism under the Optional Protocol to the United Nations Convention against Torture. In addition, he also monitors the protection of rights under the UN Convention on the Rights of Persons with Disabilities.

**1. What social protection systems are in place for children in your country? Please provide examples of specific laws and regulations, measures, policies, and programmes directed at ensuring children’s access to inclusive social protection and how these respect the rights of the child.**

In the Czech Republic, there is a network of social and legal protection bodies for children (Czech abbreviation OSPOD), which are located at each municipal authority. These bodies provide both counselling and preventive assistance to families with children and focus on the protection of children who are assessed as being at risk and who need to be provided with a higher level of protection. These bodies also represent children in courts and other proceedings in the role of so-called collision guardians. In this role, their task is to defend the interests of the child and help fulfil their participation rights. Their activities are defined by Act No 359/1999 Coll., on social and legal protection of children, as amended.

This Act also regulates crisis assistance for children who cannot remain in the family. This is provided either by foster parents on a temporary basis or by so-called institutions for children in need of immediate assistance. Children who cannot stay with their families for a long time are then placed in suitable foster care by the regional authorities.

In addition, there is a network of educational institutions, which are children's homes, children's homes with school and educational institutions. Their activities are regulated by Act No 109/2002 Coll., on the performance of institutional education or protective education in school establishments and on preventive educational care in school establishments.

Children with disabilities whose care cannot be provided by their parents can then be cared for in homes for persons with disabilities, which are social service facilities whose activities are regulated by Act No 108/2006 Coll. on Social Services, as amended. The Act on Social Services also defines services for families with children, e.g. social activation services, early care, shelters, etc. In matters of childcare, the guardianship courts have decision-making power.

**2. What are the main gaps and challenges to children’s enjoyment of social protection in law, policy, and practice in your country and the impacts on children’s rights? Please provide any relevant statistical or disaggregated data based on age, gender, disability, ethnicity, religion, sexual orientation and gender identity, migration status, or other categories. Please consider the specific situation of marginalized children and those in vulnerable situations in your response.**

**Children's Ombudsman**

Perhaps the most pressing institutional deficit is the absence of a dedicated national human rights institution dedicated to the protection and promotion of children's rights (the Children's Ombudsman). The Defender's work also deals with children's rights. They permeate almost all of its work. However, its statutory remit does not allow it to address them systematically and in all important areas of life. The Government is currently working intensively on a bill to establish this institution and the Ombudsman is also involved in this work.

**Foster care and deinstitutionalisation**

The main challenge in the care of children at risk is to ensure that there are sufficient suitable foster parents so that children who cannot remain with their families do not have to be in institutions for institutional care. A major problem is the lack of foster carers willing to take in sibling groups, children with disabilities, ethnic minority children or otherwise vulnerable children (see section 5 for more detail). The issue of foster carers is closely linked to the need to deinstitutionalise care for vulnerable children (see section 3). There is a long-standing deficit in the transformation of institutional and protective education facilities to better meet the needs of children and life in a natural environment. It is still not possible to achieve a significant shift in this area, which would also require new legislation.

**The need to unify the system of care for children at risk**

The need for unification of care for children at risk and the related problems, as pointed out by previous Ombudsmen, still persists. The transformation of collective (institutional) care for children at risk cannot be considered satisfactory either. The Ministry of Education, Youth and Sports has not yet presented a new concept of institutional and protective education or the necessary draft amendments to the Act on the Execution of Institutional or Protective Education, even though the Act is significantly outdated and in many respects does not meet the needs of children.

The only exception, and at the same time a repayment of the long-standing debt of the Czech Republic in the field of deinstitutionalisation, can be considered the legislative enshrinement of the prohibition of placing children under the age of three in collective institutions from 2025 onwards (with the exception of children whose health condition requires the provision of health care in the form of inpatient care – see section 3).

**The problem of access to paedopsychiatric care**

The situation in the field of psychiatry and paedopsychiatry in particular in the Czech Republic has long been unsatisfactory. This is reflected in all forms of care provision – outpatient, community and inpatient. The focus of paedopsychiatric care in the Czech Republic still lies in the system of acute inpatient or follow-up care provided in psychiatric hospitals (in psychiatric wards of hospitals). The capacity of inpatient care is insufficient.

The availability of care provided in paedopsychiatric outpatient clinics is unsatisfactory or even trivial in the vast majority of regions. Appointment times are disproportionately long, lasting for months (and extending). Outpatient paedopsychiatrists have a high number of paediatric patients under their care, for whom they do not have the necessary time – for communication, for social-psychiatric interventions, for psychotherapy. The system therefore encourages late diagnosis and hidden, undetected psychiatric morbidity. The essence of care in paedopsychiatric outpatient clinics then lies in psychopharmacology.

**Corporal punishment of children**

The Czech Republic still has a debt in the area of the prohibition of physical punishment of children under Article 19 of the Convention on the Rights of the Child. Under the current legal situation, any physical punishment is prohibited in an institutional setting. However, an explicit prohibition of corporal punishment in all situations is still lacking. The long-standing position of the Czech government has been that such a regulation is sufficient, as it "certainly cannot be interpreted to mean that corporal punishment of children is permitted in the Czech Republic and is considered a reasonable and permissible (tolerable) means of discipline both within and outside the family". It refers to the fact that only reasonable means of discipline can be used even within the family, and that disproportionate educational measures can be punished as an offence.

Nevertheless, the international community has repeatedly called on the Czech Republic to live up to its commitment to protect children's rights by also introducing an explicit prohibition of corporal punishment in the law. The steps taken so far have not even been sufficient to bring the issue of appropriate educational approaches and the right of children to grow up without the threat of physical punishment into the public debate. Moreover, no concrete steps have been taken towards a legislative prohibition of such behaviour.

**Availability of services for children at risk and their families**

We also know from practice (from investigations carried out in individual cases) that there are not enough specialised services for families with children at risk, or that these services are inaccessible to them (located only in larger towns) or do not have the capacity to provide sufficiently intensive support to both children and their families. Waiting times of even several months before the start of cooperation and very long intervals in the provision of services do not correspond to the requirements for intensive work and rehabilitation of these families, which would have the necessary and desired results – i.e. to prevent the removal of children from the family or the early return of children back to the family.

**Adoption of the Social Housing Act**

Although municipalities are supposed to create conditions for meeting the need for housing, municipal housing is often unaffordable or municipal housing for families with multiple children is too small. Therefore, the Defender has repeatedly pointed out in the past that the adoption of the Social Housing Act is needed to address housing needs. However, social housing is not yet regulated by law in the Czech Republic. The previous government abandoned the original intention of a law on social housing and instead implemented subsidies for the acquisition, construction and reconstruction of social housing through the Ministry of Regional Development.

**3. What are the good practices initiated by the Government to ensure that social protection benefits the rights of children in your country?**

**Deinstitutionalization of care for children under three years of age**

The recent steps taken by the Government to deinstitutionalise care for young children can be commended. Among others, the Ombudsman recommended that young children under the age of three should no longer be placed in children's homes (so-called children's centres) in the Czech Republic, pointing to the international obligations of the Czech Republic under Article 17 of the European Social Charter and Article 7 of the Convention on the Rights of Persons with Disabilities, as well as to the criticism of the Czech Republic by the relevant international institutions for not complying with these obligations (decisions of the European Committee on Social Rights, recommendations of the UN Committee on the Rights of Persons with Disabilities).

The Defender therefore proposed that children's homes for children up to the age of three (so-called children's centres) be abolished and that the Civil Code sets an age limit before which it would not be possible to place a child in institutional care. The Chamber of Deputies responded to these shortcomings by amending the Health Services Act and the Act on Social and Legal Protection of Children. As of 1 January 2022, the rules for placing children in children's homes have been changed. It is now excluded that children under the age of three can be placed in a children's home for social reasons. With effect from 1 January 2025, there will also be a change in the Act on Social Protection of Children, which sets a lower limit of three years of age for the possible temporary placement of a child in an institution.

Although the Defender considers the changes in the legislation adopted in 2021 to be fundamental and sees them as a positive step towards deinstitutionalisation of care for young children, he does not consider the problem to be completely closed. Institutional education of children with disabilities will continue to be possible without any age limit, which the Ombudsman sees as a possible contradiction with the Czech Republic's obligations under the Convention on the Rights of Persons with Disabilities.

**Increase in foster carers' remuneration**

The Defender also recommended and commended the adoption of new legislation that led to an increase in the remuneration of foster parents. With effect from 1 January 2022, the remuneration of temporary and long-term foster parents was increased. The remuneration is linked to the amount of the minimum wage and is graduated according to the number of children entrusted to care and the degree of dependence of the entrusted child.

However, the MPs' proposals also reduced the remuneration of kinship and other non-intermediate foster carers. The Ombudsman does not consider it appropriate to reduce the remuneration of non-custodial foster parents and has therefore again addressed the Ministry of Labour and Social Affairs on this issue.

**Child Rights Impact Assessment**

New legislation has been enacted to introduce CRIA or Child Rights Impact Assessment, which is a process to assess the potential impact on children before legislation, policy and/or administrative decisions are made; the impact can be direct/indirect, short/long term, positive/negative/neutral (the evaluation of the impact on children after the adoption of a decision is called Child Rights Impact Evaluation - CRIE).

**Working group on children of imprisoned parents**

A specialised Working Group on Children of Incarcerated Parents was established in order to address the major challenges associated with the children’s situation.

**4. Are there examples of how measures and responses to alleviate poverty through social protection systems in emergency situations or, for example, in response to the COVID-19 pandemic, have positively affected children’s rights, particularly to social security?**

During the COVID-19 pandemic, the state introduced some special benefits to improve the social situation of families with children. Parents of children under 10 years of age who had to stay at home with their children during the school closure during COVID-19 were paid an increased nursing benefit. In addition, in the area of material hardship benefits, it introduced a special COVID-19 emergency assistance benefit to provide an exceptional contribution to people who, as a result of the COVID-19 pandemic, did not have sufficient resources to meet basic living needs and housing expenses. This benefit had more favourable rules for income and asset assessment compared to the general conditions outside the pandemic. In addition, families with children were able to draw all benefits from the welfare system. However, we do not have specific statistical data on the impact of these benefits on poverty alleviation.

**5. Can you provide information on any programs or activities your organization has implemented regarding inclusive social protection and the rights of the child?**

**Systemic and legislative recommendations**

The Defender has long drawn attention to the shortcomings of the Czech Republic in the area of care for children at risk, which we list in section 2. In addition to the legislative recommendations summarized under section 3, the Defender is trying to contribute to the drafting of a bill to establish the institution of a children's ombudsman.

**Ombudsman and children**

The Defender has a website for children, which we redesigned last year. We wanted the children's website to be responsive, i.e. to be optimised for mobile phones or tablets, which children use most often. This also makes them more accessible to children with disabilities.

Immediately after the outbreak of the war in Ukraine, we published information leaflets in Ukrainian and Czech, designed specifically for children. In these leaflets, we answered the most common questions that worried children fleeing the war. We published the Convention on the Rights of the Child in a text that children can understand. Its clarity and simplicity make it a unique publication of its kind. Children have also been involved in testing its readability.

The Defender organised the first ever conference for children. School teams participated in the conference and won a creative competition on "How the Ombudsman helps children". Four hundred pupils from 33 primary schools and multi-year grammar schools from all over the Czech Republic took part in the competition. During the conference, the young participants discussed with the Ombudsman and his former deputy and, using drama education methods, addressed topics such as children's participation in public life, where to find help to solve various problems and what they thought a children's ombudsman should do. Eighteen-year-old Ema moderated the conference and twelve-year-old Nina and fifteen-year-old Anna also participated in their preparations. We also involve children through participation groups.

During 2022, we ran a series of field trips for school groups, therefore we introduced our work to many children. We are also actively involved with university students – either in teaching professional subjects at law faculties or by cooperating with interns.

**Education**

We regularly hold thematic seminars, both for the staff of social and legal protection bodies for children (OSPOD) and for non-profit organisations, as well as for judges of other professions, on various topics (contacts between children in foster care and their parents, the role of the OSPODs in resolving parental conflicts in child care, unaccompanied foreign children, etc.).

**Research**

***The Defender recommends the creation of a unified database for searching foster and adoptive parents and methodologies***

We conducted a systemic inquiry on our own initiative focused on the procedure of regional authorities and OSPODs in searching general foster and adoptive parents for children who are in foster care for a temporary period. It was confirmed that the practice is very fragmented in each region.

We have also found that greater focus should be placed on identifying applicants who will be willing and able to accept particularly vulnerable children (children of minority groups, sibling groups, children with disabilities, etc.). We noted that there is a need for a single, national database of applicants for foster care and adoption (accessible to county authorities). The Ministry of Labour and Social Affairs is already implementing steps in line with the proposed recommendations, through its methodological work, through regular inspections at regional offices and also in the framework of the forthcoming amendment. The Ministry is also working on the preparation of a national database of applicants for foster care and adoption.

***Contacts between children and their parents in custody***

We have launched another systemic inquiry on our own initiative concerning the implementation of contacts between children and their parents in custody, in the first phase of which we approached all social and legal protection authorities in municipalities with extended jurisdiction with a questionnaire survey. Subsequently, we plan to discuss the matter with the General Directorate of the Prison Service with the aim of adopting a uniform methodology that would lead to both the creation of the most appropriate material conditions and significant organisational facilitation of contacts between children and their parents in custody.

**Unaccompanied children**

In the context of the war in Ukraine, as well as other migration waves, we are intensively dealing with the situation of unaccompanied children arriving in the Czech Republic.

As part of a systemic inquiry on our own initiative, we have identified shortcomings and inconsistencies in the procedure of authorities across the Czech Republic in dealing with the situation of unaccompanied children. In some regions, the OSPODs do not have facilities for children in need of assistance that would be willing to accept unaccompanied children, thus the OSPODs do not have an adequate crisis solution for situations where they have to provide the child with urgent care. Furthermore, the OSPODs and the courts also face a lack of capacity. Only one school facility in the Czech Republic with a capacity of 30 children, the Radlická facility in Prague, focuses on unaccompanied children and then distributes children within the network of school facilities. However, these also have limited capacities.

Some OSPODs duly comply with their obligation to provide unaccompanied foreign children with emergency care. However, a number of OSPODs, for reasons of overcrowding or due to lack of knowledge or insufficient and inappropriate guidance from the methodological bodies, resign to this obligation for children who are over 15 years of age if they inform them that they are not interested in an assistance from the OSPOD, and de facto "leave them to their fate". Nevertheless, these children are thus exposed to a serious risk of trafficking. The Defender draws the attention of both the OSPODs and, above all, the methodological body, the Ministry of Labour and Social Affairs, to these shortcomings. It has also carried out training for judges and several training sessions for NGO staff on the subject.

**Conditions of OSPOD workers**

We have drawn the attention of the Ministry of Labour and Social Affairs to the problems faced by child welfare authorities across the country. These are mainly overloading of existing social workers due to understaffing of the offices. While the duties of OSPODs are increasing, their management faces high staff turnover and lack of interest from new applicants for selection procedures. The Ombudsman therefore addressed his findings to the Minister of Labour and Social Affairs and notified him that the plight of OSPODs was having a negative impact on vulnerable children in particular.

**Roma children**

As part of the monitoring activity of the Defender operating as an *equality body*, the Defender is monitoring the number of Roma pupils being educated in programs with reduced requirements, furthermore the number of Roma pupils participating in preschool education, as well as the number of schools with a higher representation of Roma pupils in the period 2020–2023. In the area of equal treatment, the Ombudsman also monitors the situation of equal remuneration for women and men.

**6. How can States deliver more effectively to ensure the effective implementation of universal social protection for children, including through international cooperation?**

We consider sharing and cooperation between children's ombudsmen, NHRIs or similar national institutions as appropriate platforms for international cooperation in this area.