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**2015**



ISBN 978-615-5577-07-9

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This factsheet is based on research conducted between 2013 and 2015 within a European project on access to justice for children with mental disabilities, which took place in ten EU Member States. Full information can be found on the project website: [www.mdac.org/accessing-justice-children](http://www.mdac.org/accessing-justice-children).

April 2015

Population:	10,538,275 <sup>1</sup>
People under the age of 18:	1,872,697 <sup>2</sup>
Children with disabilities:	No data available <sup>3</sup>
Children with disabilities in institutions:	No data available
Date of CRC ratification:	1 January 1993
Date of CRPD ratification:	28 September 2009

## Legal framework inadequately addresses the needs of children with mental disabilities

There is a specialised system to respond to young offenders under the age of 18 in the Czech Republic. The system was set up by the Juvenile Justice Act,<sup>4</sup> effective since 1 January 2004. However, there are no specific provisions either for children with disabilities in general or for children with mental disabilities in particular. The provision of procedural and age-appropriate accommodations are not foreseen.

There are no specialised family law courts. This fact is strongly criticised by the Association of Family Law and Guardianship Judges. The requirement of specialisation of family law judges is not respected in practice even though this is required by a ministerial decree.<sup>5</sup>

One major problem is the lack of a coordinating authority among bodies dealing with matters affecting children with mental disabilities. For example, education is within the competence of the Ministry of Education; placement in social care homes within that of the Ministry of Labour and Social Affairs; placement in homes for children up to 3 years old is under the Ministry of Health; and participation in judicial and administrative proceedings comes under the mandate of the Ministry of Justice. While the government Committee on the Rights of the Child has some coordinating authority, its status is merely advisory without real power. This situation results in the lack of a comprehensive strategy.

1 On 31 December 2014. Data available on the webpage of the Czech Statistical Office at <https://www.czso.cz/documents/10180/20555901/1300641507.pdf/e478633c-0e68-4590-99cc-e1d9da2ff980?version=1.3> (last accessed 27 April 2015).

2 In 2014. Data published on the webpage of the Czech Statistical Office at <https://www.czso.cz/documents/10180/20555901/1300641507.pdf/e478633c-0e68-4590-99cc-e1d9da2ff980?version=1.3> (last accessed 27 April 2015).

3 The study of the EP Directorate-General for Internal Policies, Policy Department C: Citizens' rights and constitutional affairs, Civil liberties, justice and home affairs states that "Despite the obligation under the CRPD to collect appropriate information concerning persons with disabilities, there is no comprehensive statistical data on children with disabilities in the Czech Republic.". See Jiří Kopal, Country Report on the Czech Republic for the Study on Member States' Policies for Children with Mental Disabilities (Brussels: European Parliament, Directorate-General for Internal Policies, Policy Department C: Citizens' rights and constitutional affairs, Civil liberties, justice and home affairs, 2013), available at [http://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/474418/IPOL-LIBE\\_ET%282013%29474418\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/474418/IPOL-LIBE_ET%282013%29474418_EN.pdf) (last accessed 29 April 2015), p. 33.

4 Juvenile Justice Act, No. 218/2003 Coll.,

5 Information obtained through interview with a family law judge. The Decree referred to is Decree of the Ministry of Justice no. 37/1992 Coll., on rules of procedure for district and regional courts, § 2(2)(b)(1).

# Child participation

In practice, children are deprived of the right to effectively participate in all matters affecting them as required by Article 12 of the UN Convention on the Rights of the Child (CRC). Concluding Observations of the CRC Committee from 2011 stated that the traditional perception of the child as an object rather than subject of rights was widespread in the Czech Republic. In matters such as custody or/and withdrawal from existing family environments, the views of the child are not taken into account.<sup>6</sup> Promotion of the right of the child to have his/her views ascertained in all matters affecting him/her is one of the goals set by the “National strategy of protection of the rights of the child – right to childhood”. Nevertheless, the steps undertaken to achieve this goal have not been very effective. In addition, there is a lack of suitable training for professionals dealing with children.

The new Civil Code explicitly sets forth a rebuttable presumption that a child who is 12 years of age or older is capable of understanding information, formulating his/her views and communicating them.<sup>7</sup> The Explanatory Memorandum to the new Civil Code explicitly emphasises that a child who is 12 or older must always be heard in person.<sup>8</sup> Yet, the law does not regulate mechanisms and methods to be used to ascertain the child’s view. The process of ascertaining the child’s views in administrative proceedings is quite similar to that applied in civil proceedings. Views of the child may be ascertained either by interview of the child or via a representative or Social and Legal Protection Authority.<sup>9</sup>

A report of the Public Defender of Rights points out that the views of children are not usually respected when being placed into institutional care, and this was confirmed by a judge who was interviewed as part of the research. There are serious doubts about the practical application of the court’s obligation to ascertain the child’s views when reviewing whether continuation of institutional care remains reasonable. Even though this obligation has been part of Czech legislation since 1 June 2006, children with mental disabilities living in a children’s home who were interviewed for the present project said that they had never even seen a judge or talked to one.<sup>10</sup> This was confirmed by a lawyer of the Ombudsperson’s Office.

Children’s views, especially if they have a mental disability,<sup>11</sup> are not respected in connection to education issues either, although the Education Act provides for a right of the child – depending on their age maturity<sup>12</sup> – to express their views in all matters relating to their education.

It is worth noting that, under Czech law, ascertaining of the views of the child is not considered as providing evidence.<sup>13</sup> There are no legal limitations on capacity to provide evidence. Indeed, even children with mental disabilities have the right to provide evidence. But there are no specific provisions regulating the issue. In theory, the child may provide evidence primarily via interview. A family law judge who was interviewed for this research said they would not even think about the possibility of hearing the child as a matter of evidence. This legal option is rarely (if ever) applied in practice.



6 Committee on the Rights of the Child, Concluding Observations Czech Republic, 4 August 2011, CRC//C/CZE/CO/3-4, para. 34, available at: [http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7\\_yhsrpiCE%2f0jVxzg5%2bV\\_8i7pht4H4a4pAWs|L3pa%2fZCeSaVBbp1g7\\_ZZAaHTD\\_Q9m|G8V|ti46tzmjcvP%\\_2fVoFNzfm%2f1WV\\_G%2bKM%2fced2V99W\\_uXlcPh](http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7_yhsrpiCE%2f0jVxzg5%2bV_8i7pht4H4a4pAWs|L3pa%2fZCeSaVBbp1g7_ZZAaHTD_Q9m|G8V|ti46tzmjcvP%_2fVoFNzfm%2f1WV_G%2bKM%2fced2V99W_uXlcPh) (last accessed 18 April 2015).

7 Civil Code, Act No. 89/2012 Coll., section 867(2).

8 Explanatory Memorandum to the Civil Code, Act No. 89/2012 Coll.

9 Administrative Procedure Code, Act No. 500/2004 Coll.

10 Information obtained through a focus group involving children with mental disabilities in institutional upbringing held at a children’s home.

11 See Jan Šiška and Camille Latimier, *Práva dětí pro všechny: hodnocení dodržování. Úmluvy OSN o právech dítěte u dětí s mentálním postižením – Národní zpráva České republiky* [Children’s right for all: Evaluation of implementation of the UN Convention on the Rights of the Child with respect to children with mental disabilities – the National report of the Czech Republic] (October 2011), available at: [http://svp-vzacnaonemocneni.cz/portal/wp-content/uploads/3-Zprava\\_prava\\_MR\\_deti\\_CZ.pdf](http://svp-vzacnaonemocneni.cz/portal/wp-content/uploads/3-Zprava_prava_MR_deti_CZ.pdf) (last accessed 2 November 2013).

12 Education Act, Act No. 561/2004 Coll., section 21(1) (e).

13 Jaroslav Bureš and Ljubomír Drápal et al., *Občanský soudní řád. Komentář* [Criminal Procedure Code. Commentary] (C. H. Beck, 2009), p. 650.

# Reasonable and procedural accommodations

Under Czech law, the right to reasonable accommodation has been stipulated only in the Anti-Discrimination Act,<sup>14</sup> and only in the areas of access employment, career progression or other promotion, employment counselling and training and in respect of services offered to the public.<sup>15</sup> There are no legal provisions requiring the police, public prosecutor, criminal court or juvenile court to alter their standard methods for children with mental disabilities. However, the new Act on Victims of Criminal Offences does facilitate the use of certain specific measures for “particularly vulnerable victims”, which includes children in general and people with disabilities.<sup>16</sup>

Even though instructions by the Police President stipulate that a child should be heard in a special interview room if it is

appropriate in light of the child’s cognitive capacity,<sup>17</sup> this does not really apply in practice.<sup>18</sup> Interrogation of a child suspect usually takes place at police stations, in standard interrogation rooms or in the offices of policemen. There are very few child-friendly interrogation rooms – only 38 in 2012, that is, 2-3 per region.<sup>19</sup>

In the Czech Republic, technology to facilitate access to the courts is not easily available. Only six courts have video-conferencing equipment (the regional courts in České Budějovice, Hradec Králové and Plzeň, the high court in Olomouc and the district court in Teplice). Apart from the courts, video-conferencing equipment is also available at the Supreme Public Prosecutor’s Office in Brno.<sup>20</sup>



# No adequate procedures or safeguards for child offenders with mental disabilities

below the age of criminal responsibility (below 15 years of age) are held responsible for “unlawful acts”. In fact, “unlawful acts” only differ from criminal offences in the age of the perpetrator. The proceedings are paternalistic and take place in two stages:

1. Standard criminal proceedings before the police and the Public Prosecutor’s Office according to the Criminal Procedure Code. In this stage of the proceedings, the child is not provided with any standard procedural safeguards: children are interviewed by the police without a lawyer or their parents, including during interrogation, fingerprinting, blood sampling, DNA extraction, etc.

14 Anti-Discrimination Act, Act No. 198/2009 Coll.

15 Ibid, section 3(2).

16 Act no. 45/2013 Coll., effective since 1 August 2013, provides at § 20 for measures such as that interviews should be conducted in a particularly sensitive way, the victim should be heard only once during the proceedings and only by a specifically trained person, and all possible measures should be taken to avoid visual contact with the accused person if the victim so wishes.

17 Binding instruction of the Police President No. 167/2010 on activities in the field of youth, Article 7(8)(a). The binding instruction has been obtained through the researcher’s colleague who is a member of the Government’s Committee on the Rights of the Child before which it was presented. When the researcher asked for the instruction via an official application for information, the application was rejected arguing that the instruction contained secret information.

18 Information confirmed through interview with Public Prosecutor of the District Public Prosecutor’s Office.

19 See Ministerstvo vnitra, “Projekt speciálních výslechových místností pro dětské oběti” [Ministry of Interior, “Project on special rooms for interviewing child victims”], *Prevence kriminality v České republice*, 4 April 2013, available at: <http://www.prevencekriminality.cz/projekty/overene-projekty-upr/specialni-vyslechove-mistnosti/projekt-specialnich-vyslechovych-mistnosti-pro-detske-obeti-54cs.html> (last accessed 27 April 2015).

20 European Commission, “Information on national facilities”, *europa.eu*, 26 August 2013, available at: [https://e-justice.europa.eu/content\\_information\\_on\\_national\\_facilities-151-cs.do](https://e-justice.europa.eu/content_information_on_national_facilities-151-cs.do) (last accessed 2 November 2013).

2. Procedure before a juvenile court according to the Juvenile Justice Act and the Civil Procedure Code. At this stage, children are provided with mandatory legal assistance. Children may be deprived of their liberty in an educational facility or in a psychiatric hospital. In the latter case, they may be detained indefinitely, and the Juvenile Justice Act only requires the juvenile court to review annually whether the continued detention remains “justified”.

Although the Juvenile Justice Act purports to be built upon principles of restorative justice, the Czech juvenile justice system as it operates in practice cannot be really characterised as restorative. A few restorative techniques, especially mediation, may apply to juveniles, there are, however, no

restorative techniques available for children under the age of 15. Therefore, cases involving children younger than 15 years of age have to be dealt with by the juvenile court, even if they concern petty offences.

#### **Lack of legal aid**

There is no system for providing legal aid to children in the Czech Republic, nor is there any functioning system of legal aid in general.<sup>21</sup> It is not clear whether a child – who lacks procedural capacity according to Czech law – could apply for legal aid as, in practice, the child is usually represented by his/her parents/guardian/guardian *ad litem*.

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## Lack of training of professionals

The Juvenile Justice Act (No. 218/2003 Coll.) requires that children alleged to, accused of and recognised as having infringed criminal law are dealt with by policemen, public prosecutors and judges with appropriate specialisation. However, this requirement is not well implemented in practice since appropriate training programmes are limited. Furthermore, there is no provision on the supervision of these professionals. The Act on Victims of Criminal Offences, effective since 1 August 2013, requires that interviews with a

child victim must be carried out by a specialised policeman, public prosecutor or judge, except in cases of emergency when the specialised person is not available.<sup>22</sup> However, again, there are no legal provisions on regular supervision of these professionals. Further, as a result of personnel changes within the police and cost-cutting measures, the number of policemen specialised in dealing with children has decreased.

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## Inadequate access to information on rights

Except for children living in institutional care, there are no specific legal provisions guaranteeing that a child is informed about his/her right to contact bodies and authorities providing support to children in making a complaint or challenging rights violations. With respect to children placed in institutional or protective settings, the law sets forth the obligation of the staff of the facility to inform them about their rights and obligations.<sup>23</sup> According to interviews held with the staff of

a home for children with mental disabilities, a lawyer of the Ombudsperson’s Office and a Public Prosecutor, children are very well informed of their rights. However, children with mental disabilities living in the mentioned who were interviewed were not able to tell the researcher who they would contact if they felt they were mistreated at the facility. They only mentioned solutions such as escape, hiding themselves, etc.

21 Veřejná ochránkyně práv, *Souhrnná zpráva o činnosti veřejného ochránce práv za rok 2012* [Public Defender of Rights, Summary Report on Activities of Public Defender of Rights 2012] (Kancelář veřejného ochránce práv, 2013), available at: [http://www.ochrance.cz/fileadmin/user\\_upload/zpravy\\_pro\\_poslaneckou\\_snemovnu/Souhrnna\\_zprava\\_VOP\\_2012-web.pdf](http://www.ochrance.cz/fileadmin/user_upload/zpravy_pro_poslaneckou_snemovnu/Souhrnna_zprava_VOP_2012-web.pdf) (last accessed 2 November 2013), p.16.

22 Victims of Criminal Offences Act, No. 45/2013 Coll., section 20(2).

23 Act on Institutional and Protective Upbringing and on Preventive Education In Educational Care Centres, No. 109/2002 Coll., section 20(1) (g).

# Lack of appropriate monitoring

Every child who has been placed in institutional care on a basis of a court decision has to be visited every three months by an employee of the Social and Legal Protection Authority who monitors if the development of children's mental and physical skills and whether reasons for the child's stay in the Residential Facility still exist.<sup>24</sup> Nevertheless, according to ex-residents of institutional care for children, these visits are only formal and have no real impact.<sup>25</sup> Furthermore, the Public Defender of

Rights emphasises in his report from 2012 that the term of three months is not always respected in practice.<sup>26</sup>

Children who have been placed in social care homes by way of a contract between their parents and the social service provider fall outside the monitoring mandate of the Social and Legal Protection Authority. This represents a particularly concerning protection gap which should be closed as a priority.



# Inadequate complaints mechanisms

A child placed in an educational facility has the right to submit complaints to the director of the facility or to State authorities such as the Social and Legal Protection Authority, the Public Prosecutor's Office or the Public Defender of Rights. Complaints addressed to a body operating outside the facility have to be registered by the staff of the facility and sent, at the latest, the day following the day the child files it.<sup>27</sup> In practice, few children with mental disabilities are informed of their right to complain, and complaints mechanisms are generally formal and inaccessible.



24 Act on Social and Legal Protection Authority, No. 359/1999 Coll., section 29(2).

25 See the summaries of lectures by Gracián Svačina and Miloš Nguen at the Seminar on Care for Vulnerable Children and Their Families organised by the Office of the Public Defender of Rights on 5 April 2012, available at: [http://www.ochrance.cz/fileadmin/user\\_upload/Publikace/Pece\\_o\\_ohrozene\\_deti.pdf](http://www.ochrance.cz/fileadmin/user_upload/Publikace/Pece_o_ohrozene_deti.pdf) (last accessed 2 November 2012).

26 Veřejná ochránkyně práv, Zpráva ze systematických návštěv školských zařízení pro výkon ústavní výchovy a ochranné výchovy' [Public Defender of Rights, Report of systemic visits to educational facilities for institutional and protective upbringing] (Kancelář veřejného ochránce práv, 2012), section 55, available at: [http://www.ochrance.cz/fileadmin/user\\_upload/ochrana\\_osob/2012/2012\\_skolska-zarizeni.pdf](http://www.ochrance.cz/fileadmin/user_upload/ochrana_osob/2012/2012_skolska-zarizeni.pdf) (last accessed 2 November 2013).

27 Act on Institutional and protective upbringing and preventive education in educational care centres, No. 109/2002 Coll., section 20(1)(i).



# Lack of disaggregated data

Data compiled by various ministries are not sufficiently disaggregated for all areas covered by the Convention, particularly regarding children with disabilities, children from ethnic minorities and children in vulnerable and disadvantaged situations. The CRC Committee states that the availability of data concerning children with disabilities is limited in quantity as well as in quality.<sup>28</sup> It has recommended that the Czech Republic strengthen and centralise the mechanism for integrating and analysing disaggregated data on a systematic basis in respect of all children, with special emphasis on children in situations of vulnerability, including children with disabilities.<sup>29</sup> It also recommends the establishment of mechanisms for the collection of comprehensive and disaggregated data on children with disabilities and the provision of human, technical and financial resources necessary for using such data to guide the government's policy and programming on inclusive education.<sup>30</sup>

With respect to children with mental disabilities, the lack of data is significant, especially as regards their institutionalisation. The Ministry of Education provides data, but only on the number of children with mental disabilities living in residential educational settings. Children with mental disabilities, however, may also be institutionalised in social care homes, children's homes for those up to 3 years of age, and in psychiatric hospitals as well. Without available data, it is impossible to analyse trends, which is necessary to combat discrimination against these children and to develop appropriate supporting mechanisms.<sup>31</sup>



28 Committee on the Rights of the Child, Concluding Observations: Czech Republic, 4 August 2011, CRC//C/CZE/CO/3-4, para. 51(e).

29 Ibid, para. 21(a).

30 Ibid, para. 52(e).

31 See Jan Šiška and Camille Latimier, *Práva dětí pro všechny: hodnocení dodržování Úmluvy OSN o právech dítěte u dětí s mentálním postižením - Národní zpráva České republiky* [Children's right for all: Evaluation of implementation of the UN Convention on the Rights of the Child with respect to children with mental disabilities - the National report of the Czech Republic] (October 2011).

