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TRANSITION
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SOCIALLY AT-RISK CHILD: PERSONAL PURVIEW OF THE CZECH ACT ON THE SOCIAL-LEGAL PROTECTION OF CHILDREN

Basic and generally valid principles

The exercise of social-legal protection of children by administrative authorities, in particular by administrative authorities of the first degree (municipal and city authorities of municipalities with extended scope of competence), is a highly sensitive area. They regularly intervene in the most intimate sphere of life of parents and children. It constitutes an infringement of householders' rights (article 12 of the Charter of Fundamental Rights and Basic Freedoms) and the right to personal data protection (article 10 paragraph 3 of the Charter), in particular an infringement of the right to a private and family life (article 7 paragraph 1, article 10 paragraph 2 and article 32 of the Charter), and in some cases it results in an infringement of the personal liberty of a minor (article 8 of the Charter).

This is also associated with certain constitutional principles, such as the principle that the limits of basic rights and freedoms (including those mentioned above) may be regulated under the conditions designated by the Charter only by a law (article 4 paragraph 2 of the Charter), or that the legal restriction of fundamental rights and freedoms must apply the same for all cases which comply with the designated conditions (paragraph 3 of the same article). And in particular the principle that state power can be applied only in the cases and within the bounds designated by the law and in a manner designated by the law (article 2 paragraph 2 of the Charter). So it comes as no surprise that the social-legal protection of children is coming increasingly under the scrutiny of the media and public, which is increasingly sensitive and also critical with regard to official interventions in family relations.

Sometimes because an intervention came too late (and the child was not given sufficient protection by public authority, in particular in cases of child abuse). But far more frequently an excessive intervention not commensurate with the circumstances of a given case is the subject of criticism. At the same time this means that there could have been an unwarranted infringement of the aforementioned fundamental human rights (and as a rule also the rights of the child in the sense of the Convention on the Rights of the Child). We describe such a case as being an unlawful intervention and also incorrect official procedure.

In relation to the personal purview of social protection regulations in the section of social-legal protection of children, or definition of conditions for implementation of social-legal protection measures, sometimes the English term "gatekeeping" is used (or figuratively: threshold control. cf. frequent term low-threshold and *vice versa*). Originally the term was used in journalism (for an evaluation of what was printworthy), then in medicine for the "filtration process" of indication of specialised (and thus expensive) professional care and finally in the social area (in the most general terms we can say that it means an evaluation of an adverse social situation or difficult social situation of a client and the extent of its seriousness and intervention corresponding thereto). The provision of section 9a of Act No 359/1999 Coll., concerning social-legal protection of children (hereafter ZSPOD)[1)] defines gatekeeping as follows in paragraphs 1 and 2: Should a situation arise that

threatens the proper upbringing and positive development of a child that the parents or other persons responsible for the child's upbringing cannot or are incapable of resolving themselves, it is necessary to adopt the necessary measures of social-legal protection according to part three for the protection of the child and provision of help to parents or other persons responsible for the upbringing of the child. These are measures ranging from consultation assistance, preventative activity, often associated with supervision (either expressly declared by an administrative decision, or provisionally only in practice, as part of investigation-evaluation of the situation of the child and its family), all the way up to the initiation of judicial measures (via proposal authorisations, most generally for restriction of parental responsibility). And so gatekeeping can also be seen as the active duty of a social-legal protection authority to strive to resolve an adverse or difficult situation for a child in a manner that constitutes the least possible burden, which also includes the impossibility of using substitute family care or even institutional care until all the possibilities for ensuring that a child can remain (at least relatively) safely in the original family have been exhausted. Naturally a separate part are measures for ensuring immediate assistance – urgent care (either in practice or on the basis of proposal authorisation for preliminary regulation of conditions – preliminary court ruling)

The aforementioned paragraph 2 sums up… Social-legal protection measures must be selected in such a way that they link up with each other and influence each other. During the exercise and implementation of measures, precedence is given to those which ensure the proper upbringing and positive development of the child in its family environment, and if this is not possible in a substitute family environment. This is an expert act, and so this regulation also mentions *lex artis*: During its application social work methods and procedures corresponding to current scientific findings are used. The chosen range of interventions in basic rights and privacy corresponds with the level of risk to the child. So the extent of use of authorisations to collect personal data, carry out unannounced on-the-spot investigations etc. must naturally correspond with the "seriousness of the case", otherwise it would be excessive because according to section 6 paragraph 2 first sentence of the administrative code it applies that the administrative body must proceed in such a way that no one incurs needless costs and the affected persons are burdened to the least possible extent.

Basic delineation of conditions for activity of body of social-legal protection of children in terms of specific person

Social-legal protection of children does not focus on all children but is activated only in cases designated by the law, i.e., if an adverse social situation [cf. section 3b of the social services act] or a difficult social situation is discovered. The ZSPOD views both as a situation threatening the proper upbringing and positive development of the child, and it must also apply that the parents or other persons responsible for the upbringing of the child cannot resolve or are incapable of resolving it themselves. If they are capable of resolving it, there is no reason for any intervention of a body for social-legal protection of children without the consent of clients, unless the competence would come directly from the law (as is the case only for public guardianship, participation in misdemeanour or criminal proceedings and during supervision of not-own care and the exercise of certain punitive sanctions).

The expression adverse social situation, including legal references, has already been mentioned. This is a core term of social service provision and in its way it also of aid in material distress or unemployment. The provision of social assistance in all the areas mentioned is fundamentally (albeit with many exceptions) provided with the "informed consent" of the client. So social-legal protection of children must also be ensured by bodies social protection even if the client (parent or child) does not view its adverse social situation as a problem, a worker of the authority views it as a problem, and this conflict then creates a "difficult" situation from the subjective view of the client. It is necessary to distinguish between these situations. In this article for such a distinction use is made of the term difficult social situation corresponding with an objective threat that represents an obstacle to the child's social inclusion, although this is not a term used in legal regulations. Here

the social worker, not the client, has an impression of the necessary "change". In medical language we could say that the client (thus far) lacks "insight" into their difficult social situation. One fundamental yet very difficult task of the social worker is then to build up this insight in the client (or to try to do so), and to shift from resolving their difficult social situation exclusively through enforcement measures of social protection and supervision to a means of resolving the adverse social situation by the provision of social assistance with "informed consent" of the client.

The first and general level of the activity of social-legal protection of children can be defined as "basic consultation/assistance". The provision of section 2 paragraph 1 of the social services act No 108/2006 Coll. designates that each person has a right to free provision of basic social consultation about the possibilities for solution of an adverse social situation or its prevention. This social work principle at first sight does not appear to relate to the social-legal protection of children, but this is not the case. Although the ZSPOD formulates it in other words, but identically in terms of content: The child has the right to request from bodies of social-legal protection... help in the protection of its life (in the case of "protection of life" naturally "basic consultation" is insufficient, and as a rule it will be necessary to provide "immediate assistance") and of its other rights; these bodies... are obliged to provide the child with corresponding assistance (section 8 paragraph 1), and the parent or other person responsible for the upbringing of the child has the right during the exercise of their rights and duties to ask for the assistance of a body of social-legal protection...; in the scope of their competence these bodies... are obliged to provide this assistance (section 9).

To this end the law, in a somewhat unstructured manner (and paradoxically only in relation to parents or other carers) defines the scope of such basic consultation (assistance): The authority... helps parents during the resolution of upbringing or other problems associated with care for a child, it provides or arranges for parents consultation during the upbringing and education of a child and during care for a disabled child [section 11 paragraph 1 a), b)], it provides or arranges for parents at their request consultation during the assertion of rights of the child according to separate legal regulations [section 10 paragraph 1f)], and provides assistance during the assertion of the right of a child to maintenance and during the enforcement of maintenance duty towards a child, including assistance when submitting a petition to a court; in this it works in particular with bodies of assistance for material distress, statutory persons, criminal investigation and prosecution authorities and courts [section 11 paragraph 1e)].

One condition is thus a request of an authorised person (child or parent) for assistance (i.e., provision of basic consultation/assistance). Consequently this assistance cannot be imposed. So although the ZSPOD does not expressly contain such a regulation, the rule given in section 93a of the social services act clearly applies analogously: Employees of the municipality… as social workers… are, on the basis of the consent of a person in an adverse social situation or at risk of social exclusion or are in such a state, authorised in connection with the performance of duties… to enter a dwelling in which such a person lives, this being with the aim of performing social work activities. Thus: "on the basis of the consent of the person". For this reason this activity does not have the character of administrative police, the social work activities are provided upon request (and with informed consent) of a person and are quite clearly very "low threshold", it is not always essential to evaluate the "adverse social situation" in great detail here (it is usually sufficient for there to be a request of an interested person for assistance and implicit declaration about the fact that they are incapable of resolving an adverse social situation themselves or if such a circumstance is evident).

So each child and each parent has a right to social assistance in the corresponding scope if they ask for it and it is also assumed that they are in an adverse social situation. Records about the provision of (only) this social assistance are not kept (and cannot be kept) in the file documentation – "youth protection file", but according to the general rules of the file code of the given authority because there is no legal authorisation for the keeping of a "signal and detection file Om" (cf. hereunder).

The ZSPOD then naturally regulates other, specific conditions for the activity of an administrative body in terms of specific persons. These are not derived from the request and consent of impacted persons, but in contrast within the bounds of the law it is possible to overcome any disagreement of the interested persons using force – enforcement. These forms of activity can be characterised not as social assistance (in the form of the aforementioned basic consultation/assistance during resolution of an adverse social situation.), but as social protection and supervision during the resolution of a difficult social situation in which the clients either lack "insight", or where they do have it but in view of the seriousness of circumstances the law requires procedure via social protection and supervision, i.e. to grant a child special protection in compliance with article 32 paragraph 1 second sentence of the Charter (special protection of children and young people is guaranteed). In the ZSPOD the conditions of social protection and supervision are listed, and they also represent the more detailed definition of personal purview of this regulation. And this is the area associated with possible interventions in basic rights and the privacy of the impacted persons. And so it is only from this point that the administrative-police authorisations given in section 52 can be applied, i.e., the employees in bodies of social-legal protection are authorised, in connection with the performance of tasks according to this act, to visit a child and the family in which they live, in the dwelling (even without the consent of the parents or child, in contrast with section 93a of the social services act) and to discover at the place of the child's dwelling, at school or in school facilities, in facility of healthcare provider, in employment or other environment where the child is how the parents or other persons responsible for the upbringing of the child are caring for the child and what the child's behaviour is, and they are authorised (only if essential) to take photographs and make audiovisual recordings of the child and the environment in which they are. This is also related to the duty of the parents (section 53 paragraph 2) to cooperate with bodies of social-legal protection of children during the protection of the interests and rights of the child, to come to a personal meeting at the request of the relevant body of social-legal protection of children, to submit certificates and other documents and to provide essential information if it is necessary for the exercise of social-legal protection and to allow… the visit of an employee of a body for social-legal protection in the dwelling or other environment in which the child lives if it is essential to protect the life or health of a child or for the protection of their rights.

From the last given addendum about the "necessity for protection of life or health or protection of their rights" we clearly see that section 52 and 53 paragraph 2 cannot be applied to all participants during the provision of simple "social assistance", but in the context of "protection and supervision". The "necessity" repeatedly emphasised by the law for interventions in privacy are associated with the rule that the administrative body uses its authorization only for those purposes for which they were granted to it by the law or on the basis of the law and in the scope which it was entrusted to it (section 2 paragraph 2 of the administrative code) and in particular with the aforementioned principle that the administrative body will proceed in such a way that nobody incurs needless costs and the affected persons are burdened to the least possible extent (section 6 paragraph 2 of the administrative code). Also only in social protection and control is it possible to open an extensive "signalling and detecting file", i.e., file documentation of youth protection (file No "Om"), and so only then is it possible to submit various proposals to the court leading to a restriction of parental responsibility according to section 14 paragraph 1.

The securing of immediate assistance – urgent care in the sense of sections 15 and 16 of ZSPOD and section 924 of the Civil Code (in connection with section 452 et seq. of the special court proceedings act) is, in the context of social protection and supervision a "securing resource" of a provisional nature, and so it has a specific regime. It is regulated separately outside the proposal authorisations to the court arising from section 14 paragraph 1, and interventions necessarily come immediately because a child's life could be at risk. The procedure here is comparable with the procedure according to section 92a) of the social services act. If the court grants a motion for a "fast-track" preliminary measure, it is obviously always right to record the child in the basic records

and open a youth protection file.

Legal reasons for exercise of social-legal protection of a child without the consent of impacted persons (reasons for "exercise of social protection and supervision")

The taxonomy of the law shows that the exercise of social-legal protection of a child without the consent of the child, legal guardian or other responsible persons may only be performed if:

1) the body for social-legal protection of children is appointed as the child's guardian or custodian or the child's custody is derived directly from the law, including statutory representation [section 1 paragraph 1b), section 17 and section 54b); section 929 of the Civil Code], or

2) it involves a child who is the subject of social-legal protection for a reason other than guardianship or custody, i.e., it is a so-called at-(qualified)risk child [section 1 paragraph 1a), c), and/or d), section 6, section 13 paragraph 1b), section 19 paragraph 4, section 29 paragraph 1, section 31 paragraph 1, section 33 and section 34 and section 54a)].

Only in these cases is it possible to enter children in the records and open a file on them – youth protection file documentation, because since 1.4.2000 section 54 has stated without any material change that a body of social-legal protection of children keeps records of the children either given in section 6 (i.e., at-risk children if the risk persists) or for whom a guardian or custodian has been appointed (if guardianship or custody persists), and no others.

According to section 55 paragraph 1 it keeps file documentation arising from section 55 paragraph 2 in connection with section 52 and section 53 paragraph 1 and 2b) only about children included in the records according to section 54, and about no others. It cannot collect data about other children and their families in the extent foreseen in section 55 paragraph 2 and 4, or even sensitive personal data, without their consent – in any case the constitutional principle is mentioned above that it can apply state power only in cases and within the bounds designated by law and in a manner designated by law.[2)]

Neither will we be interested in a fundamental part of the first group of cases of social protection and supervision, i.e., the exercise of collective guardianship, because in the case of care, in particular guardianship ad litem, these are generally not socially at-risk children. But here it should be emphasised that the scope of possible use of authorisation for interventions in the fundamental rights of affected persons during the exercise of social protection and supervision in the context of public custody and in particular guardianship are derived from the content of representation of the child. It will be at its most limited in the case of administrative guardianship, because the ruling on his/her appointment gives the guardian *ad litem* authorisation only in the given proceedings, not outside of them (i.e. the right to participate in proceedings, to propose evidence, to submit remedies, to view a file kept as part of the proceedings).

It is possible to give a case: if the administrative authority is appointed as a guardian by a court in proceedings for the approval of the agreement of parents on an increase in maintenance, there is no reason for it to automatically perform an unannounced investigation of them, to take photographs there or collect much unrelated personal or even sensitive data about the child and their parents.

In the case of substantive-law guardianship, the "police" competences of the body of social-legal protection of children can be used only for those purposes which apply directly and

immediately to the subject of guardianship. Only in the case of public custody where the public custodian has a status comparable to the parent is it also possible to consider the use of "police" competences in full.

But we are also interested in a second group of cases defined in section 54, i.e., only adverse (or objectively difficult) social situations as a result of which the child is qualified as at risk in the sense of section 6. Naturally the reasons for social protection and supervision may overlap in an individual case (with collective guardianship and custody as well).

Child who is the subject of social-legal protection – socially at-risk child

The *actus reus* of section 6 can be classified according to many criteria. "Means of discovery of threat" and "source of threat" can be described as the two main criteria, i.e., whether the "threat" to the child comes from outside (child whose parents do not exercise parental responsibility correctly; child as victim of crime etc.) or whether it arises from the disturbed will of the child themselves (child as culprit of criminal offences or misdemeanours). From the aspect of "means of discovery of threat" one can distinguish when body of social-legal of children ascertains the extent of threat to the child and itself declares it (for example, it will evaluate whether a child placed in an institution by a parent is threatened by this non-parental care or not) or it is given on the basis of a decision or other act of other body (the court entrusts the child to substitute care, a criminal investigation and prosecution authority initiates proceedings against a juvenile etc.) or whether it involves an objective fact (under-age asylum seeker unaccompanied by parent or other relative).

"External threat" is clearly the most frequent and visible case and is defined in several letters of section 6 – in letters a), b), e), f) and g).

According to letter a), which is a default and in its way universal, catch-all regulation, the following are at risk:

1. Full orphans whose social-legal protection thus essentially consists of the exercise of custody and/or supervision or the accompanying of custody or foster care (from the aspect of social protection and supervision full orphans have the same status as the children of parents whose parental responsibility has been suspended or who have been stripped of it).

2. Also children whose parents do not perform the duties arising from parental responsibility; general civil law does not contain the expression "to not perform the duties arising from parental responsibility, and no offence provision is formulated using this expression either. According to section 858 of the Civil Code, parental responsibility includes the duties... of parents consisting of care for the child, which in particular covers care for their health, physical, emotional, intellectual and moral development, protection of the child, maintaining personal contact with the child, ensuring the child's upbringing and education, determining the place of their residence, their representation and administration of their assets. It is evident that "non-performance of these duties" is a very broad category, and from this aspect evidently every child at some moment of their life could be described as at risk, which is clearly quite unacceptable. For this reason we must turn to an interpretation. First, the "material element" given at the end of section 6 applies – if these facts persist for such a time or in such an intensity that they adversely affect the development of children or they are or could be the cause for the adverse development of children.

But the administrative body must naturally give a proper and convincing justification of these facts. But of course even this "material element" may appear excessively flexible. Misdemeanour provisions may help us arrive at an interpretation – a misdemeanour is committed by a person who, as a person responsible for a child, leaves the child without appropriate supervision corresponding to their age, mental maturity or state of health, and thus exposes the child to danger or

serious harm to health or as a result of which the child causes harm to the health of another person or more than insignificant damage to the property of another [section 59 paragraph 1g)], or a person who uses excessive punishments or restrictions against a child [letter h) of cited provision], or who regularly abuses (not "abuses" just once) a minor for physical labour not commensurate with their age and degree of physical and intellectual development [letter j) of cited provision]. So only such more serious situations in combination with the aforementioned "material element" can constitute a reason to declare a child to be at risk and can at the same time be a reason for the child's inclusion in basic records [section 54a)], for implementation of supervision, i.e., for performing an on-site investigation (section 52), requiring cooperation of parents (section 53 paragraph 2) and for collection (without the consent of data subjects) of the personal data of children and their parents, data about the upbringing conditions of these children, records of the results of investigations within the family and records of discussions with parents or other persons, including required reports (section 55 paragraph 2, section 53 paragraph 1). This *actus reus* evidently also includes cases of so-called court supervision or the imposition of restrictions preventing harmful influences according to section 925 paragraph 1b) and c) of the Civil Code, or according to section 13 paragraph 1b) and c), or judicial imposition of duty to use professional consultation assistance according to letter d) of the cited provision because parental responsibility is not restricted by any of these provisions in the strict sense of the expression (because they do not require the concurrent appointment of a guardian, cf. section 878 paragraph 3 of the Civil Code). Non-performance of duties in the area of ensuring of education will be mentioned in the next part in Family Letters due to its specific features.

3. Children whose parents do not execute, or who abuse, the rights arising from parental responsibility; this case is more serious than the aforementioned mere "non-performance of duties". This is because the specified wording, if it involves the non-execution of parental responsibilities, is also contained by the Civil Code in section 870 and non-execution constitutes a reason for a judicial restriction of parental responsibility. So for a body of social-legal protection of children this is a typical preliminary question (section 57 administrative code) which, although we can draw a preliminary conclusion about it, in practice means that in the context of social work there will be an attempt to resolve the problem (and to delete the child as soon as possible from the youth protection records), but if this is not successful (for example, not even after two or three months), there is no choice but to ask the court to restrict parental responsibility according to section 14 paragraph 1b) and appoint a guardian (only exceptionally, in particularly serious cases in the form of foster care). It is obvious that in a case where the court rejects a proposal and does not restrict parental responsibility, the "preliminary question" is thereby settled, and if circumstances do not subsequently change, social protection and supervision thus ends (unless at least supervision is designated), and the child must be deleted from the basic records (the body of social-legal protection of children cannot proceed in conflict with the court ruling). This does not, however, rule out new proceedings, but only if the conditions of the hypothesis of section 909 Civil Code are met: if the conditions change, the court changes the ruling concerning the execution of duties and rights arising from parental responsibility even without a proposal; naturally the change of conditions must be proven.

Abuse of rights arising from parental responsibility constitutes a similar situation because this constitutes the *actus reus* for depriving them of parental responsibility according to section 871 Civil Code, the second reason of which is neglect of execution of parental responsibility in a serious manner (which also contains the element of non-performance of parental responsibility). And here it also applies that if the court does not accede to the petition for the stripping of parental responsibility, and neither does it restrict it, social protection and supervision must necessarily end with this (unless at least supervision is designated). One specific case of non-execution of parental responsibility is the suspension of parental responsibility, which occurs either for reasons of law (section 868 paragraph 1 Civil Code), or based on a court ruling (section 868 paragraph 2 and section 869 Civil Code). Such a situation is always necessitated by the aforementioned custody of a child, and as soon as it ends, naturally social protection and supervision also ends.

"External threat" concerns children in not-own individual (family) care. Here it is necessary to distinguish: First and foremost one must state that it is wholly incorrectly stated in the superfluous section 6b) that a child entrusted to the upbringing of another person responsible for the upbringing of the child is an at-risk child if this person does not perform the duties arising from the entrusting of the child into their upbringing. This is because it is not necessary for the foster carer not to perform their duties for the declaration of the child as an at-risk child. Such a fact is not ascertained at all because it always involves an orphan or child in the case of whom the parental responsibility is impacted by the suspension, stripping or restriction at least in the area of personal care, i.e., it comes fully under the *actus reus* given in section 6a). At the same time, pursuant to section 19 paragraph 4 the body of social-legal protection monitors the development of (all) children entrusted to the care of another person responsible for the upbringing of a child, regardless of whether the foster carer carries out its duties or not.

If a child is entrusted to not-own family care on the basis of an agreement with a legal representative ("agreement", section 881 Civil Code), there is a notification duty (section 10a paragraph 2) and verification is dealt with by separate section 16a; but this need not involve an at-risk child at all. Moreover, in the case of close relatives (grandparents, siblings, aunts, uncles) the notification duty according to section 10a paragraph 2 is inappropriate and is in essence not accepted by the relevant group of persons (and in these cases it is not performed or enforced, and quite rightly so). And anyway, abroad, where there is also a system of notification or permission in the case of contractual not-own (foster/custody) care, close relatives are generally expressly exempted from such notification duties or from the permission system.

"External threat" also concerns children in institutional care. Here it is once again necessary to distinguish. If the child has been entrusted to the care of any institution by a court, the situation is the same as for family care on the basis of a court ruling ("foster care"), and the child is considered to be at risk without further ado simply because the parental responsibility of the parents of these children is restricted by the courts (in the area of care), or its exercise has been suspended, or the parents simply aren't there, and so the supervision of the body for social-legal protection of children applies to all these children (section 29 paragraph 1). In contrast, children entrusted to the care of an institution on the basis of an agreement between the legal representative and institution need not always be at-risk children. Pursuant to letter f) as a rule children repeatedly sent to an institution or for a period longer than 6 months are generally considered to be at risk. A child sent to an institution allowing long-term residence (stay longer than 6 months) must be announced to the body of social-legal protection of children at the latest after the conclusion of an agreement for the provision of service for indefinite period or period longer than 6 months, otherwise at the latest after the expiry of those six months (section 10a paragraph 2, or section 10 paragraph 4). In contrast if it involves crisis assistance of an asylum institution for children (facility for children requiring immediate help), the acceptance of a child must be reported immediately (section 10 paragraph 4 third sentence), as it must when a child is left in a maternity hospital or institution for newborns (section 10a paragraph 1).

In the end "External threat" also applies to children as victims according to letter e), i.e., children against whom a crime has been committed threatening the life, health, liberty or their human dignity, moral development or assets, or there is the suspicion of commission of such an act; naturally this is associated with the status of a child as the injured party in criminal proceedings (it may also involve the recording of the child in the basic records as a result of public guardianship of the child, where of course the "material element" of threat is not examined). With the end of criminal proceedings (and public guardianship) the reasons for social protection and supervision of a child by the body of social-legal protection of children generally end, and the child is deleted from the basic youth protection records. But if it involves criminal offences such as abuse of an entrusted person etc. there may be a reason to continue recording the child as at risk. A criminal offence threatening "moral development" may be associated with non-performance of duties arising from parental responsibility in the area of ensuring education (cf. hereafter). But the child need not be a direct victim of a crime

and may merely be a witness to one. This also applies to domestic violence, which is covered by letter g), where it mentions children who are threatened by violence between parents or other persons responsible for the upbringing of the child or violence between other natural persons.

The status of the child as a victim is also associated with cases of abuse mistreatment and child neglect, which, although not given expressly by section 6, the law considers to be an especially "adverse (or difficult) social situation" of the child in many other places, and naturally it is associated with the non-execution or neglect of performance of parental responsibility, which according to section 858 Civil Code also includes the protection of the child [because it could also involve a threat to the child in the sense of section 6a)]. Physical or mental abuse of a child is primarily the reason for taking a child into asylum residential institution for acute crisis assistance [section 13a paragraph 2c) and section 42 paragraph 1]. Protection of abused and neglected children is a significant part of the work of the commission for social-legal protection [section 38 paragraph 2b)].

Last but not least the ZSPOD uses this expression in connection with breaches of the non-disclosure duty according to other legal regulations (such as medical confidentiality etc.) – non-disclosure duty cannot be asserted if information should be imparted about a suspicion of child abuse or neglect [section 53 paragraph 1 and f.]. The explanatory memorandum for this provision explains which situations this means: if there appear evident signs that there is a breach of the rights of the child in the grosses manner (amendment No 271/2001 Coll.). In particular, "neglect of care for child" can overlap in lexical terms with "non-performance of duties arising from parental responsibility". But we saw in section 6a), and it applies all the more here, that such "non-performance" or "neglect" must be serious (see "damage to rights of child in the grossest manner").

It is thus evident that such "neglect" cannot consist of the fact that, for example, a child does not have a snack at school or has not done its homework, is not completely neat and tidy, or has not had all of its vaccinations or is not registered at a GP etc. Naturally these and other similar facts cannot be sufficient to "constitute the *actus reus* given in section 6", "misdemeanours" in the area of public health insurance (not undergoing check-ups) or protection of public health (not ensuring vaccination) are also the subject of "protection" ensured by other administrative bodies, and it is not possible to deal with them at all through social-legal protection and supervision of children. (The subsidiarity principle will be described in the last part of this contribution.). Naturally this does not rule out the provision of social assistance (i.e., preventative activity and consultation on the basis of the consent of the clients).

According to the International Classification of Diseases used in the Czech Republic the "Torment, Abuse, neglect" of a child is not a medical diagnosis (it uses only abused child). But the term has been in use for a long time. In its section 178, the amendment of the general civil code from 1914 used the expression tormented, abandoned or neglected child in connection with institutional care. Child Abuse and Neglect – is the expression used in American clinical practice, and it was also defined by the medical committee of the Council of Europe. The Czech Ministry of Health also uses this expression, for example in its "Methodological instruction ZD 07/2008 – Procedure of primary care doctors in case of suspicion of syndrome of tormented, abused and neglected child (syn. CAN)".

In the introduction of its definition it is stated that it involves a set of adverse traits in various areas of the medical condition and development of the child and its status in society, primarily in the family. They are the result primarily of intentional harm to the child caused most often by its closest caregivers, mainly parents. Any non-accidental, preventable, conscious (or sometimes also unconscious) behaviour of a parent, caregiver or other person towards the child which harms the physical, mental or social state and development of the child or causes their death is considered to be abuse and neglect.

From the expression "or causes death" it is evident that this really does not involve school snacks or how often they do the washing at home, or that old media favourite – remedial measures such as a "slap on the backside" or "stern admonishment". However, there is clearly a legitimate debate to be had about their effectiveness or the appropriateness from the psychological aspect.

But this debate should be carried on in expert magazines and at meetings at maternity centres, not as a one-way official "monologue" by social protection and supervision bodies.

The expression "torment, abuse, neglect" is viewed in a similarly restrictive way by the ZSPOD, as is evident from the cited explanatory memorandum for amendment No 271/2001 Coll.: The rights of the child are damaged in the grossest way.

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1) If nothing else is given in the further text for the annotation, it means the ZSPOD.
2) In the past these rules were not adhered to at all. Article 2 paragraph 1a) of former instruction of the Ministry of Labour and Social Affairs ref. No 21-12242/2000 designated that a "municipal authority of a municipality with extended scope of powers includes children in basic records on the basis of a notification according to section 7 paragraph 2 of the Act" (according to which everyone is authorised to warn a body of social-legal protection of a breach of duties or abuse of rights arising from parental responsibility...). Naturally the denunciation did not need to be truthful or in the context of verification it did not need to be seen as justified or serious, so the conclusion of the investigation was that it did not involve a child given in section 6. But in spite of this the child was "included" only on the basis of a denunciation in conflict with the law or on the basis of a mere "instruction" in the basic records, i.e., file documentation was opened for its, once again in conflict with the law. And what's worse, according to article 26 of the same Instruction it was supposed to apply, once again in conflict with the law, that the child is removed from the records for just one of two reasons – when they reach adulthood or die. So children where not even the basic conditions of section 54 of the act for such a procedure was met found themselves in the records and having a file kept on them (without they or their legal representatives learning of it at all) until they reached adulthood, often for many years. Fortunately the mentioned unlawful, and probably unconstitutional, "instruction" regulation has not applied since 1. 1. 2014.

"Child who is a threat to himself" [section 6c)]

Letter c) appears somewhat problematic in the context of section 6, in particular by virtue of its breadth and indefiniteness. This is mainly because it mixes "apples and oranges", and this *actus reus* should be regulated more as the default provision for social guardianship for children and youth (section 31-section 34). According to letter c) children are considered at risk if they lead an indolent or immoral life consisting mainly of the fact that they do not go to school, do not work and do not have a sufficient livelihood, they drink alcohol or use habit-forming substances, they are at risk of dependency, they live by prostitution, have committed a crime or, only in the case of a child below the age of 15, they have committed an act that would otherwise be a criminal offence, they regularly or systematically commit misdemeanours or otherwise threaten civic coexistence.

The problem comes at the very start of the provision, because one cannot talk exactly of an "indolent or immoral life". These are the words of the criminal code, and the *actus reus* of "threatening the upbringing of a child", where naturally the culprit is not a child as a protected subject, but a third party; from this aspect this *actus reus* of section 6c) is superfluous because it would at the same time always involve a child as a victim of a crime, i.e., in the sense of letter e), which was discussed in the first part of this article. (And if for this reason no one is prosecuted and convicted for the crime of threatening the upbringing of a child according to section 201 criminal code, one cannot speak of a threat to the child according to this letter at all. This means that the child should be deleted from the basic records of youth protection if they had been included in them.) It is interesting that in this context the expression "leading an indolent or immoral life" appeared – in the

Stalinist criminal code No 86/1950 Coll., i.e., at the same time when the associated "working duty[4]" was introduced and also the associated crime of parasitism introduced in 1957 ("he who makes a living in an immoral way and avoids honest work" – later amended "and lives off someone")[5], abolished as a typical totalitarian provision immediately after the end of the dictatorship in 1990.

That stated implies the following amongst other things: not going to school is relevant only up to the school-leaving age because after this no study or learning duty is designated. But for this age (15 plus) no working duty is designated either (article 9 paragraph 1 Charter of Fundamental Rights and Basic Freedoms: No one may be subjected to forced labour or services.). And so the *actus reus* "I do not work, even though I do not have a sufficient source of income" is wholly irrelevant, it is inapplicable because this is an aforementioned relic of the total concept of general working duty and associated crime of parasitism, i.e., a concept which simply has not belonged to our society for a quarter of a century. This means that no screening should be carried out, or social activation technique, offer of basic consultation etc. Such social work is conditional on the agreement of the client, as described in the first part. For this reason a youth cannot "just like that" be recorded in the basic records of youth protection, nor can a youth protection file be kept on them, without the consent of relevant persons an on-site investigation cannot be carried out nor can information be collected etc., and it is certainly not possible to propose that the child be taken from the family.

So from letter c) the relevant factors are firstly the dependence of the child or youth (substance and non-substance), but of course if the material element of seriousness of threat is met (the circumstances persist for such a time or in such an intensity that they have a negative impact on the development of children...). So a one-off excess ("drunken youth at a disco") definitely does not constitute this *actus reus*. This is wholly evident from the fact that "dependency" is a very serious circumstance, because not even repeated or regular use of psychoactive substances will always be considered "dependency"[6].

Naturally making money from prostitution is exceptionally serious if a crime is also committed here, in particular if it involves a child under the age of 15 (there is also a victim of a sexual offence). And also if it involves a situation where dependency is abused, such as blackmailing of child etc. or "pimping" of a child, which is especially reprehensible if done by persons responsible for the child, and naturally always in the case of youth victims (i.e., even a child over the age of 15). In such a case immediate assistance will generally be required. But in the absence of these circumstances, the application of social protection/supervision is problematic because consensual sexual intercourse is rightly considered a private matter from the age of 15, and even if it is for payment, from the aspect of the law it is the same situation as if a person over the age of 18 engaged in prostitution. This situation is only problematic from the aspect of tax law. Naturally this does not mean that social work should be abandoned – of course here it is also possible to offer intervention in the form of social assistance (cf. in first part), but a youth cannot be recorded in the basic records of "youth protection" for this reason alone but may only be under social protection and supervision for this.

So the essence of letter c) are only those children who have committed a crime or otherwise criminal act, repeatedly or consistently commit misdemeanours or otherwise threaten public order. The residual clause "otherwise threaten public order" is evidently meant to cover the shortcoming that misdemeanour law in the case of youths under the age of 15 does not have the category of "act which would otherwise be a misdemeanour". The provision of section 49 misdemeanour act No 200/1990 Coll.7) regulates offences against public order. So the wording can only be correctly interpreted as follows: if a child under the age of 15 repeatedly or systematically commits acts which would otherwise be a public order misdemeanour[8] (and no other misdemeanour), they may be considered at risk according to section 6. But this naturally conflicts with the clear wording of the misdemeanour act [section 66 paragraph 1b) of Act No 200/1990 Coll.9)]: The administrative body will set aside the matter without commencing proceedings if the person suspected of committing the

misdemeanour had not reached the age of 15 at the time of the commission of the misdemeanour, and this is the end of the matter. In terms of the notion the exercise of social protection/supervision is also the exercise of supervision, and in this context it is naturally of the nature of a penalty although this is precluded (even the Civil Code speaks of "penalty" provisions here; cf. title before section 924).

And so it is highly problematic to include a child under the age of 15 in the basic records of youth protection only due to the "commission" of acts which would otherwise be misdemeanours but which are not. This is the difference with otherwise criminal acts, where, due to their greater social harm a certain level of repression, including exercise of social protection and supervision, including administrative supervision, is permissible even for children under the age of 15, who are not criminally responsible. Just as there is a discussion about reducing the age of criminal responsibility (to 14 or younger), such a discussion is clearly legitimate in the case of misdemeanour responsibility too.[10)]. But there does not currently exist misdemeanour responsibility of persons younger than 15, nor is there any other way of dealing with the acts of these children that would otherwise be a misdemeanour. And so it is not possible to apply other "sanctions" either in the form of exercise of social protection and supervision (so also "supervision") from the part of a body of social-legal protection of children, not even in the case of the "repeated or consistent commission" of such acts. These acts are left to be resolved by "home admonishment". So in this context any consideration of ordering institutional care is wholly out of the question (it is not even possible to "imprison" an adult for committing mere misdemeanours, nor is it possible to impose on a youth a sanction in the form of "protective" care in an institution, and it is even less possible to put a person younger than 15 in detention for such minor reasons).

So if, for example, a "threat to public order" occurred which did not have the elements of an otherwise criminal act in the context of provision of services (education) at primary school, the school would itself have to deal with such behaviour of a child younger than 15 through an evaluation of behaviour (by awarding a lower mark) or disciplinary measures. Section 1 paragraph 2 ZSPOD clearly designates the following: Separate legal regulations also regulating the protection of rights and legitimate interests of the child remain unaffected. So in the case described there is no competence of a body of social-legal protection of children, and this body must not deal with or get involved in this situation in any way. In section 31 paragraph 1 the schools act defines disciplinary measures as follows: disciplinary measures are the conditional expulsion of a pupil or student from a school or school facility, expulsion of a pupil or student from a school or school facility, and other disciplinary measures not having legal consequences for the pupil or student.

The Ministry of Education, Youth and Sport defines these "other" measures in decree No. 48/2005 Coll., these are reprimand of form teacher, rebuke of form teacher and rebuke of head teacher.

Out of all the "non-judicial" school measures one can mention Methodological instruction № MŠMT-22294/2013-1, for dealing with bullying in schools and school facilities, which establishes so-called remedial measures, which are the aforementioned upbringing measures and lower marks for behaviour, but also assignment to other class, working or behaviour group and recommendation by school head to parents to have the child placed voluntarily in residential department of educational care centre. But the last of the "remedial measures" proposed by the methodology is highly problematic (one can even say that it is out of the question as it is illegal) – the school head submits a proposal to the body for social-legal protection of children to start work with the child or start proceedings on the ordering of a preliminary measure or institutional care with subsequent placement in a diagnostic institution. This would be relevant only if it involved a crime committed by a youth or act that would otherwise be a crime committed by a child younger than 15, which of course is not out of the question in the case of bullying of fellow pupils or even teachers. But in such a case the announcement of these unlawful acts of children or youths must be made to a criminal investigation and prosecution authority, not a body of social-legal protection of children. If it does not involve a

crime (committed by the youth) or act that would otherwise be a crime, sanctions in the form of "ordering of institutional care" are naturally out of the question. If it involves acts punishable by a court, the "ordering of institutional care" is out of the question again, but in proceedings in the matter of a youth (or child under the age of 15) youth custody may be imposed on the youth or other securing measures may be taken (observation of mental condition in residential care facility), and not only on a youth but on a child under the age of 15, and there may be a main hearing to decide on the imposition of protective care (during which there will occur the required "subsequent placement in a diagnostic institution") or protective treatment.

Outside of (criminal) proceedings in the matter of youth it is not possible to impose upon a child (or youth) securing measures or sanctions consisting of a restriction of personal liberty as a result of undesirable activity or "danger of behaviour", i.e., measures of a detention nature (such as institutional care). The only exception is detention in a medical facility. In this there is only one possible detention reason which is decided outside of criminal proceedings: if the patient threatens in a direct and serious manner himself or herself or his or her surroundings and expresses signs of mental disorder or suffers from this disorder or is under the influence of a habit-forming substance if the threat to the patient or his or her surroundings cannot otherwise be averted.

An adult's liberty cannot be restricted in any detention institution (medical, social, school or prison service facility) just because they "do not behave appropriately". It should be mentioned that the General Commentary of the UN Committee for the Rights of the Child No 10 calls upon states not to apply status offences to minors in order to ensure that a child cannot be punished to a greater extent than an adult, and it requires that children below the age of criminal responsibility be treated as fairly as criminally responsible children. There is a simple test of reasonableness here: in the context of the child's behaviour being dealt with, could an adult be punished by impairment of liberty (incarceration, protective detention, protective institutional treatment)? If they could not, naturally it is not possible to punish a minor either, and certainly not a "child" (i.e., minor younger than 15 or 14).

If it were possible to penalise a minor for similar behaviour, one must bear in mind that in the case of a minor the application of possibility to impose a restriction of liberty must also be more restrictive than in the case of an adult because a minor enjoys a greater level of protection compared to an adult. But the aforementioned schools methodological instruction encourages the exact opposite – it indicates the possibility of detention of a child (restriction of liberty) in cases where it would evidently be out of the question for an adult, which conflicts with all basic legal principles of the entire concept for protection of children and youth in Czech law.

In this context article 37b) of the Convention on the Rights of the Child states that the states which are a party to the convention will ensure that no child is deprived of their liberty unlawfully or arbitrarily. The arrest, detention or incarceration of a child is performed in compliance with the law and used only as an extreme measure for the shortest necessary period. So the well-known principle applies here that detention as an extreme measure means that children should be deprived of their personal liberty only in limited cases, and measures carried out without imprisonment should be used in reaction to the behaviour and conditions of a child[11)].

It is in no way stated, and it certainly also applies to areas other than disturbed relations in school, that society should not be protected from the dangerous behaviour of certain individuals, even if they are minors. But for this it is necessary to use all the tools which serve this end specifically and not to "abuse" other legal institutes, i.e., the institutes of family law and civil regulation of "care of court for minor". This is also implied by the finding of the Constitutional Court III. ÚS 916/13 dated 17. 2. 2015. If the youth court does not find conditions for restricting the personal liberty of a child (for example, by imposing securing detention, protective treatment, protective care in a diagnostic institution, children's home with school or care institution), or a civil court does not find conditions for the detention of a child in a medical facility, it is not possible to "substitute" the absence of these

conditions for example with institutional care according to section 971 Civil Code, which serves a wholly different purpose.

As the Constitutional Court stated in its finding Pl. ÚS 31/96, in contrast with protective measures, institutional care is a family law institute… So institutional care cannot be seen as a form of sanction or duty imposed on a child… So institutional care must be viewed as an extreme case of solution to the not duly ensured upbringing of a child, as intended by the Convention on the Rights of the Child. In this context one also has to mention the ruling of the Grand Senate of the European Court for Human Rights in the case of Blokhin vs. Russia (No 47152/06 dated 23. 3. 2016), in which the court dealt with the nature of proceedings in the matter of an illegal act of a child without criminal responsibility. It came to the conclusion that in the sense of article 6 of the Treaty these were criminal proceedings, although in domestic terms they were civil proceedings (paragraph 196 of the decision), and children should thus be ensured corresponding procedural guarantees, primarily legal assistance during the submission of explanations to the police and adversarial nature of proceedings. That which applies about a "trial" must apply all the more about "sanctions" (i.e., substantive law).

So with a correct interpretation the entire problematic regulation of letter c) is clearly restricted, apart from dependency of the child (naturally in the sense of the aforementioned; cf. note for International Classification of Diseases), essentially to situations where children have committed a crime or, if it involves children younger than 15, have committed an act that would otherwise be a crime, or, if they are over the age of 15, have repeatedly or consistently committed misdemeanours. This *actus reus* is included from the aspect of social protection and supervision measures in Title VII – Care for children requiring increased attention, specifically in section 33, according to which the body of social-legal protection competent according to the act on judiciary in youth matters and according to the misdemeanours act is the municipal authority of a municipality with extended scope of powers. The status of the body for social-legal protection of children as an independent participant of proceedings in matters of youth in misdemeanour proceedings is given by this title and the specified separate regulations.

In the sense of both laws the task of the child and youth guardian is protection of the child, and so he or she has the right to participate in discussions of a matter and submit remedies in the name of the child. Although this is not representation in the true meaning of the word, there is a situation here similar to the performance of public trial guardianship according to section 17. This also implies that at the moment when the trial ends, the reason for the provision of protection ends, and the child should once again be deleted from the basic youth protection records. One exception is the imposition of a penal sanction on a child under the age of 15 or youth associated with impairment of liberty.

Such a penal sanction may consist of a penal measure (incarceration) or protective measure (protective detention, protective care or protective treatment), penal measure and protective detention in contrast with other protective measures naturally only in the case of youth above the age of 15. In such cases the body of social-legal protection of children is obliged to supervise the performance of institutional care or "remedial care" (protective care, protective detention, protective treatment) according to section 29 or supervise the performance of the penal measure of incarceration according to section 34, and this shall naturally be for as long as these measures restricting the personal liberty of the child last, and then once again the child should be deleted from the basic youth protection records unless there is an expressly declared reason for further exercise of social protection and supervision. This is also implied by the fact that Act No 218/2003 Coll., about judiciary in youth matters, in the cases of enforcement of a court ruling or its amendments entrusts certain tasks to the body of social-legal protection of children expressly only in connection with protective measures (section 83 to section 87, section 95a act on judiciary in youth matters). The only void provision is that of section 81 paragraph 1 of the act on judiciary in youth matters, according to which a decision is taken on a change or cancellation of remedial measures in a public hearing of the youth court which imposed the remedial measure, this (also) at the proposal of the relevant body of social-legal

protection of children. This is because remedial measures consist of supervision of a probation officer, probation programme, upbringing duties, remedial restrictions and rebukes with warnings (section 15 paragraph 2 of act on judiciary in youth matters). The body of social-legal protection of children is not active in the implementation of any of these specific remedial measures, but here the role of supervisory body is taken (and only in certain cases) by the probation officer of the Probation and Mediation Service, and so it is not at all clear on the basis of which findings the body of social-legal protection of children should propose a change or cancellation of these remedial measures.

The provision of section 5 paragraph 2 of Act No 257/2000 Coll., on the Probation and Mediation Service, states that when performing its activities the probation and mediation service works closely with bodies entrusted according to a separate law with the exercise of social-legal protection of children and the provision of benefits to children in material distress to socially non-compliant citizens. But no special competences are established hereby for this body, and so it involves only a cooperation rule that can only be applied during proceedings in youth matters or for the duration of supervision of the performance of certain protective and penal measures because only in these areas is there a definition of some competence of the body of social-legal protection of children (and also of the Probation and Mediation Service), even after the end of the proceedings (and after imposition of the sanction). So the regulation of cooperation becomes more important here. The provision of section 4 paragraph 2d) of the cited act č. 257/2000 Coll. designates that probation and mediation activity consists in particular of the performance of supervision of behaviour of the accused in cases where supervision has been imposed, in the monitoring and supervision of the accused in the course of the trial period, in the supervision of performance of other punishments not associated with incarceration, including punishment of publicly beneficial work, in the monitoring of performance of protective measures.

It is evident that the “supervision” of a probation officer is far broader that in the case of a child and youth guardian (it also covers non-custodial sanctions). But its focus and the aim of the child’s social inclusion is comparable in terms of content. If section 31 paragraph 1 ZSPOD also designates for the child and youth guardian that the care for children given in section 6 consists of the provision of assistance to overcome adverse social conditions and upbringing influences, in order to allow the child’s integration in society, including work integration, then section 4 paragraph 1 of cited Act No 257/2000 Coll. similarly designates that the Probation and Mediation Service provides the accused with expert guidance and assistance, monitors and supervises his behaviour, and cooperates with the family and social environment in which he lives and works with the aim of his leading an appropriate life in the future. The cooperation of the body of social-legal protection of children with the Probation and Mediation Service is regulated in the ZSPOD in section 32 paragraph 4d)) (the social guardian focuses in particular on cooperation with the relevant centre of the Probation and Mediation Service, in particular when investigating conditions of a youth for the purposes of criminal proceedings and for children under the age of 15 for the purposes of proceedings about acts that would otherwise be criminal acts and during the performance of measures imposed on a child or youth according to a separate legal regulation) and in section 51 paragraph 5c) (the body for social-legal protection is obliged to provide the Probation and Mediation Service upon request with information in the scope necessary for criminal proceedings).

Truanting child

As has been repeatedly shown in this contribution, social-legal protection (also) focuses on children whose parents do not perform the duties arising from parental responsibility [section 6a) point 2.], or also on children who neglect mandatory school attendance [cf. section 6c)]. The “single-acting concurrence” of these situations may occur in the case of complete non-performance of serious neglect of mandatory school-attendance or in more serious cases of so-called truancy.

Article 33 paragraph 1 second sentence of the Charter of Fundamental Rights and Basic Freedoms states that school attendance is mandatory for the period designated by the law. But this sentence just develops the first sentence of the same paragraph, which is decisive and states: Everyone has the right to an education. So forced school attendance is derived from the right of everyone (i.e., not only a child) to education, and not the other way around. This is an achievement of the Josephian era and is today in practice the only duty given in the Charter (military service and restriction of ownership are also mentioned).

Although this is a to a certain extent formal and in part even perhaps outdated classification, and so not always accepted, one can say that the Charter contains two types of standards. First of all it regulates the rights that can be claimed directly, which are all basic human and political rights (article 5 to 23) and some other economic, social and cultural rights. These directly existing and basic rights also include the inviolability of a person and their privacy (article 7), personal liberty (article 8) and protection of private and family life (article 10 paragraph 2). The last mentioned basic right is associated with the right given in article 32 paragraph 4 of the Charter (care for a child and its upbringing is the right of the parents; children have a right to parental upbringing and care. The rights of the parents can be restricted and underage children can be removed from their parents against their will only on the basis of a court ruling based on the law), but in contrast with the other economic, social and cultural rights they can also be asserted directly, so it is of the nature of a "basic" law, and in any case it only develops in more detail the right to protection of family life according to article 10.

The right to education has no source in the introductory basic rights, and in contrast with the complex of rights leading to the protection of family life it is not possible to assert it directly, but according to article 41 of the Charter it applies that the rights (in the schools context also "duties") given in… article 33 … of the Charter can only be asserted within the bounds of the laws which implement these provisions. In any case article 33 of the Charter about education is given after the articles relating to protection of family life. In these contexts it is thus wholly evident which right (or even "basic" right) is more important and which in this sense is a "mere" social or cultural right requiring an implementing act for its implementation.

So in many cases one cannot talk of non-adherence to a "constitutional duty" when the duties arising from the regulation of mandatory school attendance are not adhered to because the scope of mandatory school attendance is a mere arbitrary matter. It is now regulated in sections 36 to 43 of the schools act. The basic provision is section 36 paragraph 1 of this act, according to which school attendance is mandatory for nine academic years, but at most up to the end of the academic year in which the pupil turns seventeen. In addition to this as of 1. 1. 2017 there has been a new duty according to section 34 paragraph 1 according to which from the start of the school year following the day when the child turns five up to the start of mandatory school attendance of the child pre-school education is mandatory; in this way mandatory school attendance (forced school attendance) has in practice been extended to 10 academic years. Mandatory school attendance was 8 years for a relatively long time, and previously it had been 6 years.

As already mentioned, in our country there exists no "learning or study duty", although in practice this expression persists in social protection and supervision. This is perhaps due to the expression in section 6c) "neglects school attendance", which somewhat curiously neglected to use the word "mandatory". This is evidently a relic of the dubious legislation from 1978 (applicable for all the centuries of forced school attendance of only 12 years up to 1990), when on the one hand primary school (second stage – city school) was reduced to the 8th year of primary school (in reality the last, 5th, year of elementary school was done away with, the city school kept 4 years), but at the same time mandatory school attendance was actually extended to 10 years. So everyone had to fulfil the last two years of statutory school-attendance at secondary school (except those repeating the year twice) or as a priority at an apprentice training centre, declared at the time to be the main stream of secondary education. Only in such a context would it have been possible according to the

paternalistic concept of that age for the then child care authorities to be able to check the attendance of a pupil (apprentice) at secondary school (apprentice training college) for two academic years. Nowadays such a thing would be wholly out of the question. Whether or not a minor attends a school after the end of mandatory school attendance is wholly outside the interest of social protection and supervision of bodies of social-legal protection of children because no such duty is included in the legal system. In this context it is possible only to offer social assistance or social activation activity, as was already mentioned in the preceding part. This is due to the fact that all the social work of the body for social-legal protection of children should be performed with the aim of allowing them (children) to integrate into society, including work integration, although in section 31 paragraph 1 it is expressed inappropriately only in relation to children qualified as socially at risk.

In section 31 paragraph 1 of the misdemeanour act from 1990 to 1.9.2016 there was an unchanged regulation of the "misdemeanour in section of schools and youth", the *actus reus* of which was: A misdemeanour is committed by whoever threatens the upbringing and education of a minor in particular by not enrolling the child for mandatory school attendance or who neglects care about the mandatory school attendance of a pupil. It was possible to impose a not high fine of up to CZK 3000 for the misdemeanour. The situation did not change even after 1. 9. 2016, since when this *actus reus* has been covered with the same content in section 182a paragraph 1a) of the schools act, and there was only a slight increase in the maximum level of the fine up to CZK 5000.

If such misdemeanour proceedings are conducted, even if the parent is found guilty of such a misdemeanour (even repeatedly), this never involves an at-risk child in the sense of section 6c) in combination with letter e), because the aforementioned letter e) requires that for a child to be declared at risk it should be a child against whom a crime has been committed threatening the… moral development or… , or there is a suspicion of the commission of such a crime. So it applies that if only a mere misdemeanour of "threatening moral development" (such as neglect of school attendance) has been committed, or there is a suspicion of its commission, it is not possible to consider a child to be at risk, otherwise the stricter qualification according to letter e) focusing only on crimes against a child would make no sense. And so the exercise of social protection and supervision by a body of social-legal protection of children is out of the question if there is no criminal responsibility of persons responsible for upbringing in connection with neglect for forced school attendance.

According to the wholly fundamental provision of section 1 paragraph 2 the separate legal regulations also covering the protection of rights and legitimate interests of the child remain unimpacted. A separate regulation (here school regulations) have precedence over a general regulation (here ZSPOD). As a result the school must resolve truancy or unexcused absence only through school means. If in such a case an, essentially groundless, report is made to the body of social-legal protection of children, it should be discarded and shredded. The same applies for misdemeanour responsibility (this is dealt with by the unit dealing with school misdemeanours, not the unit of social-legal protection of children. The submission is not shredded, but the matter is forwarded to the relevant unit.

But if in contrast not even misdemeanour responsibility is sufficient and there are more serious defects in mandatory school attendance, one can consider criminal responsibility for the offence of threatening the upbringing of a child according to section 201 of the criminal code. Its *actus reus* is: Whoever, even through negligence, threatens the intellectual, emotional or moral development of a child by (a) inciting the child to an indolent or immoral life, (b) allows the child to lead an indolent or immoral life. It has already been stated in this contribution that this was a "flexible" *actus reus* introduced during the Stalinist era. The object of the criminal act here is the interest in proper upbringing of minors so that these persons can sufficiently learn the correct behavioural norms in compliance with the fundamentals of the morals of civil society (or "socialist coexistence", which this constituent element protected originally). Allowing a child to lead an "indolent life" may also consist of the parents not sending their children to school and not ensuring

their education otherwise.

But if education also including "upbringing" of a child was ensured outside of public schooling, even without the "kind permission" of the schools administration, this cannot be a crime, but at most a "school misdemeanour". In such a case the exculpation of parents who ensure the education of a child by private, albeit not officially approved, means would have to be proven in criminal proceedings evidently by an expert report (at the level of the "maturity of the child") If it were discovered that the "emotional, intellectual and moral development of the child, including ensuring of its upbringing and education" – cf. section 858 Civil Code – was ensured, albeit in an "unusual" way (for example the child was never enrolled in a public school or did not attend it), in material terms there is no fulfilment of the hypothesis of the criminal provision that the child was "guided to an indolent or immoral life" or that the accused "allowed the child to lead" such a life, because the specified facts are not immoral nor was the child indolent here. Just a misdemeanour was committed, and there was the mere non-performance of an administrative duty to enrol the child in a public school and send him or her there.

It also applies that a child is protected by the specified *actus rei* of the administratively punishable misdemeanour and court punishable offence, and so the child itself cannot commit them. This applies, although the schools act in section 22 paragraph 1a)) establishes a duty for children as well, when it designates that pupils and students are obliged to attend school or a school facility duly and be educated properly. However, only the legal guardian guarantees this: the legal guardians of children and underage pupils are obliged to ensure that the child goes to school or a school facility properly (paragraph 3). Although a child who plays truant breaches their legal duty, this is legally irrelevant (and so also irrelevant for social-legal protection): At most the child's legal guardian is exposed to misdemeanour or criminal punishment, and one condition for responsibility for the offence is at least negligence (without culpability not even the legal guardian can be prosecuted). And one not even mention the subsidiarity of penal repression – the criminal responsibility of the culprit and criminal-law consequences associated therewith can only be applied in socially harmful cases in which the application of responsibility according to a different legal regulation is insufficient (section 12 paragraph 2 criminal code).

In the case of aforementioned offence of threat to upbringing of child, which is not a "crime" at all, it is also necessary to state that in the basic *actus reus* it is possible to impose a maximum punishment of two years of incarceration, which is the upper limit. And according to section 38 criminal code the penalty must be imposed with regard to the nature and gravity of the criminal act committed and the conditions of the culprit. Where the imposition of a less harsh penalty would be sufficient, the penalty imposed must not have a harsher impact for the culprit. During the imposition of penalties consideration is also given to the legally protected interests of persons harmed by the criminal act. Here the child has the status of injured party, but it is clearly not in their interest that their carer(s) are sent to prison and a decision must be taken on assigning them to substitute care or even an institution. Moreover, the provision of section 55 paragraph 2 first sentence of the criminal code states that for criminal acts where the upper limit of the sentence does not exceed five years of incarceration it is possible to impose a non-suspended sentence of incarceration only on the condition that in view of the person of the culprit the imposition of another punishment would evidently not lead to the culprit leading an orderly life. And even in the qualified *actus reus* according to section 201 paragraph 3 (contemptible motive, repeated or long-term nature) a lower level is designated (6 months to 5 years). The restriction of the personal liberty of the parent and thus preventing of their personal care for the child due to neglect for ensuring that "the child does not lead an indolent or immoral life" would thus have to be wholly exceptional, and the rarity of the limitation of parental responsibility in the area of personal care for the child which should be associated only with a suspended prison sentence for the caring parent should correspond to this. A restriction of personal liberty, i.e. a punishment of a child who is at the same time a protected subject and not a responsible culprit of offences in the area of performance of mandatory school attendance, for example by

ordering of institutional care, is wholly absurd.

In this context it is certainly alarming that the ombudsman has discovered that the third (most frequent) reason (for ordering institutional care) is truancy and the associated poorer school results, which was given as a reason in 166 decisions[12)] (in an investigated sample). In situation, where neglect of school attendance by a child may be an offence of the parent only if the parent caused it, and if it is possible to impose the not very heavy fine of 3000 and now 5000 crowns, and even in cases where the non-performance of school attendance was extensive and led to adverse consequences that were difficult to correct, it is merely an offence where the parent is "locked up" (and prevented from caring for the child) wholly exceptionally, and it is wholly illogical from the legal aspect (not to mention the constitutional aspect) for parental responsibility to be limited in the area of personal care for a child by taking the child from the family and putting in the institutional care. According to section 871 paragraph 2 Civil Code if a parent has committed an intentional criminal act against their child… the court will decide separately if there are reasons to deprive a parent of parental responsibility. This means that not even an intentional criminal act committed by a parent against a child need necessarily be a reason for an infringement of parental responsibility. The provision of section 971 paragraph 1 Civil Code named some situations which could constitute a reason for limiting parental responsibility by ordering of institutional care of a child. Amongst other things, the proper development of the child must be threatened or disturbed to such an extent that it is in conflict with the interests of the child, and this situation should be similarly serious to a situation where there are serious reasons why the parents cannot ensure upbringing (of the child at all). The imposition of a fine for a misdemeanour or imposition of a suspended sentence for an offence of negligence or intent (not a crime) is evidently not such a reason.

If the offence of threat to the upbringing of the child is being prosecuted or if the parent has received a suspended or "alternative" sentence for this in connection with performing mandatory school attendance, the intervention of the body of social-legal protection of children is limited fundamentally only to the activities of preventative social work: to encourage the parents to perform the duties arising from parental responsibility, to discuss with the parents the elimination of shortcomings in the upbringing of the child [section 10 paragraph 1b), c)], or to discuss with the child the shortcomings in their behaviour [section 10 paragraph 1d)]; or activities of basic consultation/ /assistance: helps parents during the resolution of upbringing or other problems associated with care for child, provides or arranges for parents consultation during upbringing and education of the child [section 11 paragraph 1a), b)]. Only if there is no alternative is it possible to designate supervision of a child and carry it out with the cooperation of the school or other institutions and persons which act in particular at the home or workplace of the child [section 13 paragraph 1b)]. Removing a child or a proposal for it (section 13a, section 14 paragraph 1) is out of the question unless the personal care of the parent is prevented (non-suspended prison sentence of the only parent capable of looking after the child, as has already been mentioned several times).

Here one can conclude that it is possible to consider a child to be at risk in the sense of section 6 in the case of non-performance of mandatory school attendance only if a non-suspended prison sentence has been imposed on the parent, the parent should start the prison sentence, and for this time the other parent, grandparents or, with the consent of the legal guardian, another suitable person cannot look after them.

The ordering of institutional care for such a reason, which evidently sometimes occurred (cf. cited report of ombudsman), indicates a certain fetishization of public school education in our society, or in certain professional groups.

It can thus also constitute an evident deviation from the systematic approach and order of priority of basic constitutional rights or social and cultural rights with a hierarchy derived from constitutional regulations and in the context of which the right to education is clearly less important

than the protection of private and family life.

Even if we were not to accept this strict conclusion, we can proceed from the fact that the UN Committee proceeds from the assumption that the right to education must not be implemented at the expense of other basic rights of the child. So without the imposition of a non-suspended prison sentence on the caring parent, removing a child from the family for the reason described should be wholly out of the question.

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3) Where in the below text nothing else is given for the annotation, this means ZSPOD.
4) Article III paragraph 1 second sentence of Constitution 9 May from 1948: "Work in favour of the collective...is a general duty."
5) "Up to 1957 it was "only" a misdemeanour absurdly called "Protection of right to work" (not, as would correspond to its content, for example, "Disruption of working duty" or similar; even this clearly sums up the Orwellian nature of the totalitarian regime). The provision of section 72 criminal code administrative number 88/1950 Coll. designated who intentionally avoids work or who in some other way infringes the exercise of the right to work, in particular who impedes or threatens or who disrupts the organisation of work managed by the state or the economic plan, especially by disrupting the planned gaining or dislocation of labour. It should be added that in the 1950s it was possible to impose prison sentences of up to three months for administrative misdemeanours. And in this context the Theresian convention of "detention in forced labour camp" was also preserved in the form of "protective education".
6) In the International Classification of Diseases ICD-10 for the items F10-19 (Mental and behavioural disorders due to psychoactive substance use) in the fourth place the classification of "2. Dependence syndrome" is defined as follows: A cluster of behavioural, cognitive, and physiological phenomena that develop after repeated substance use and that typically include a strong desire to take the drug, difficulties in controlling its use, persisting in its use despite harmful consequences, a higher priority given to drug use than to other activities and obligations, increased tolerance, and sometimes a physical withdrawal state. The dependence syndrome may be present for a specific psychoactive substance (e.g. tobacco, alcohol, or diazepam), for a class of substances (e.g. opioid drugs), or for a wider range of pharmacologically different psychoactive substances.
7) In a comparable way with effect from 1. 7. 2017 section 7 of the new act 251/2016 Coll., concerning certain misdemeanours; this new regulation wholly replaces the "old" misdemeanour act No 200/1990 Coll.
8) According to section 49 of the misdemeanour act (in the wording effective from 1. 9. 2016) a misdemeanour is committed by a person who (even through negligence) impugns the honour of another person by offending them or by ridiculing them, or who harms the health of another, who restricts or prevents the member of an ethnic minority from exercising the rights of members of ethnic minorities, or causes harm to another due to that other person belonging to an ethnic minority or due to that persons ethnic origin, race, skin colour, gender, sexual orientation, language, faith or religion, age, medical disability, political or other persuasion, membership or activity In political parties or political movements, union organisations or other associations, due to their social origin, assets, family, medical condition or family status, and also who intentionally disrupts civic coexistence by threatening another with harm to health, falsely accuses another of an offence, who acts wilfully against another, or who commits some other gross behaviour against another.
9) Similarly the provision of new act No 250/2016 Coll., concerning responsibility for misdemeanours and proceedings in them, i.e., its section 18 (a person is not responsible for a misdemeanour if they were under the age of 15 when it was committed), section 76 paragraph 1d) (the administrative body will drop a case by means of a declaration without starting proceedings if the accused at the time of the commission of the act was under the age of 15) and section 86 paragraph 1f) (the administrative body will stop the proceedings by means of a declaration if the accused at the time of the commission of the act was under the age of 15).
10) section 237 of Act No 117/1852 imperial law., on crimes, offences and misdemeanours also stated: criminal acts committed by children up to the end of the tenth year of life will be dealt with only by home admonishment; but from the start of the 11th year up to end of the fourteenth year of life acts which would be considered crimes for an adult will be punished as misdemeanours. But according to section 269 it applies that non-adults can become guilty in two ways (also) by such criminal acts which are in themselves only offences or misdemeanours. It then applied here that such acts committed by non-adults were dealt with only by home admonishment; but if this did not occur, or under special circumstances, they were dealt with by admonishment and measures of the security body. So in the case of misdemeanours the lower age limit of "misdemeanour responsibility" was unclearly set at 10 years of age, but their public punishment was meant to be exceptional up to the age of 14.
11) Council of Europe and International Juvenile Justice Observatory. Prague: Institute for Criminology and Social

Prevention, 2012, page 22.
12) Ombudsman. Report from systematic visits to school facilities for the performance of institutional care and protective care 2011, page 41.

Runaway child

A situation where a child repeatedly runs away from their parents or other natural or legal persons responsible for the upbringing of the child [section 6d)] constitutes a mixed reason for threat to the child. It is mixed because it does not involve a cause of threat to the child so much as only symptomatology. Absconding can be a manifestation of a mental disorder, and then naturally it does not primarily involve a socially at-risk child, but it comes within the ambit of regulations about the provision of health services. Or running away is a manifestation of an unhappy home situation of the child (in this context an institutional facility for children and youth can also be considered the home).

A child may run away because a crime has been committed against it and in particular because there is a danger that it will be repeated, then of course it involves a child the risk to whom is qualified primarily by letter e), or it may be a child who is at risk of domestic abuse or a child to risk to whom is qualified by letter g). Running away may also be caused by an abuse of rights arising from parental responsibility [letter a) point 3]. A child's escapes thus generally constitute a reason for a detailed evaluation of the child's situation, either for subsequent qualification of "threat" to the child according to another letter of section 6, or for arranging or ensuring associated services (such as health services), because it need not necessarily involve a socially at-risk child, but a child at risk otherwise. The word "repeatedly" naturally implies that a one-off escape is not the subject of any investigation from the part of the body for social-legal protection of children because it may be common "mischief" or other imprudence.

But the question of the limited legal capacity of minors is central in the context of an "escape" of a child from care and their potential securing and return to such care (to parents, foster carers, to institution). Unfortunately the provision of section 31 Civil Code does not regulate in a standard manner the age limit as it was customary in law for more than five hundred years up to 1950 or 1964, and as is generally the custom abroad. It only very briefly designates that it is assumed that every minor who has not become fully legally competent is responsible for acts in law in terms of their nature corresponding to the intellectual and volitional maturity of minors of his age. They become fully legally competent at the age of 18 (section 30 Civil Code).

But in its finding I. ÚS 3304/13 the Constitutional Court stated (in the context of procedural competence) that the age of 18 cannot represent the boundary before which a child cannot be involved in proceedings at all (analogously: or it cannot exercise any of its rights – "legal capacity") and after which fully (thus analogously: in contrast from when it can exercise all of its rights). In practice the brevity of the civil-law regulation (section 31) leads to the customary application of a simple wholly unlawful equation: "person younger than 18 – person wholly lacking in legal competence". Which of course conflicts with the cited section 31 Civil Code and also separate legal regulations, but in particular with article 12 of the Convention on the Rights of the Child. Primarily a youth (underage adult) older than 15 is fully competent in labour-law terms (if they have completed mandatory school attendance). According to section 34 paragraph 1b) of the Labour Code one fundamental particular of a contract of employment is the place or places of performance of work where the work is to be performed. Arranging such a place is wholly in the hands of the youth.

From this one must also infer the full legal competence of a minor over the age of 15 to decide and designate its place of residence in the context of constitutionally guaranteed basic freedoms – freedom of movement and residence (article 14 of the Charter of Fundamental Rights and Basic Freedoms). The public-law rule of section 10 paragraph 10 of Act No 133/2000 Coll., about records of inhabitants, according to which the legal guardian of a person younger than 15 or other

natural person into whose care the child has been entrusted by a court decision reports a change of place of permanent residence corresponds fully with this. The legal guardian of a citizen whose legal capacity has been restricted such that they have no legal capacity for acts according to paragraphs 5 and 6 reports a change of place of permanent residence.

So in matters of reporting a change of place of permanent residence a citizen older than 15 would have to have their legal capacity in residence matters attained at the age of 15 (not 18!) expressly limited by a court. And it is not decisive if such an adult minor citizen is in parental, custody, foster or institutional "care" (the quotation marks are because it is not care at all, but sustenance) (according to section 971 Civil Code). According to section 892 paragraph 1 Civil Code parents (or custodian, foster carers or director of institution) have a duty and right to represent the child in legal acts for which it has no legal capacity. If in a certain matter an underage person according to section 31 Civil Code, or according to separate regulations is already legally competent, in this matter legal guardianship ends. As a result only the Police of the Czech Republic search for "runaway" underage persons and hand them back to their legal or other guardians, and police regulations also respect the aforementioned principles. So for this reason it applies that the need to return an underage person to parental or similar care cannot be automatically derived from the simple fact that the person is underage. Whereas in the case of a person younger than 15 (14) (child) it is essentially necessary to proceed from the assumption that remaining outside the specified care is in itself a risk to life and health, but one cannot say the same in all cases for a youth (up to the age of 18). In some cases youths are capable of looking after themselves. So in the case of a 17-year-old who has left parental (or other comparable) care and does not want to remain in it, it is always necessary to consider whether it is necessary to secure that person in order to return them to this care. If for example the child has somewhere to live, is capable of looking after themselves, or a close person is looking after them, especially if parental (or other comparable) care is the subject of neglect or harmful behaviour, it is not essential to return the child to parental or other comparable care[14)]. The fact that an underage adult (i.e., older than 14 or 15) if fully legally competent in terms of freedom of movement and determination of place of their residence, is given by the fact that according to Act No 218/2003 Coll., about judiciary in youth matters, the youth court and in preparatory proceedings the state attorney can impose upon a youth a care duty which designates in particular that they live with their parent or other adult responsible for their upbringing. Naturally as a sanction or measure according to the specified law it imposes on a child under the age of 15, and in particular on a youth, a duty to do something, to not do something, or to bear something which it otherwise, *ipso facto*, would not have to. Otherwise it would not involve the imposition of any sanction or "care duty" but merely a declaration of an otherwise generally existing duty.

The same interpretation principle undoubtedly applies for a body of social-legal protection of children and for correct interpretation of section 6d). And so also in cases of youths, if it involves regulation of "care" after divorce, guardian courts generally rules only on formal further "joint care" (they do not entrust the child into the formalised exclusive "care" of one of the parents or "alternating" care) and they do not deal with contact with the child at all.

Act of inclusion of child in basic records – "declaration of child as at risk and acknowledgement of special protection"

As was shown in many places in the preceding two parts of this contribution, in the exercise of social-legal protection of children one must draw a strict distinction between social assistance, consisting of the activities of prevention and consultation that can fundamentally only be provided with the agreement of the client, and social protection and supervision. In this the child is included in the youth protection records, youth protection file documentation is kept on the child (file No "Om"), where the administrative authority gains a right to gather personal data (including sensitive data) about the child and its parents even without their consent as part of this documentation, and where it also gets the right to assert the performance of an investigation (visiting service) in the private

premises of the participants even without their consent, or a duty is imposed on participants to allow such an investigation if it is essential to protect the life or health of a child or for protection of their rights [section 53 paragraph 2c)] etc. It is a set of measures and activities, i.e., other acts of the administrative authority by which there is undoubtedly a very significant interference with the rights and duties of the affected persons, and they thus have the character of administrative police.

The provision of section 54 states that the municipal authority of a municipality with extended scope of powers keeps records of children

a) given in section 6,

b) for whom a guardian or custodian has been appointed.

The connected section 55 paragraph 1 designates that the municipal authority of a municipality with extended scope of powers keeps file documentation about children included in the records according to section 54. It is evident that a certain act, i.e., inclusion in the records, acts as an "entry ticket to the system" of social protection and supervision. The act also mentions inclusion in the records in other places, primarily in connection with the arranging of substitute care. If it involves children, according to section 21 paragraph 1 second sentence, the municipal authority of a municipality with extended scope of powers opens file documentation on the child… for the purposes of arranging substitute family care on the basis of an evaluation of the situation of the child and their family and on the basis of an individual child protection plan; the municipal authority of a municipality with extended scope of powers always opens this file documentation after the submission of a petition to the court or if otherwise court proceedings have been initiated which could lead to a child being removed from the care of the parents or other persons responsible for the upbringing of the child.

After such a file is forwarded to the regional authority, according to section 22 paragraph 1 it applies that the regional authority keeps records of the child for the purposes of arranging adoption of foster care. In other words a decision is not issued about the inclusion of the child in these records because the reason for this act is objective, it occurs due to the circumstance itself described in the law (ipso facto), and there is no reason to evaluate anything. But in contrast with this, the inclusion of substitute care candidates in the records of candidates is performed by a decision (section 22 paragraph 6 – the regional office decides on the inclusion of an applicant in the records of applicants) – these are proceedings for a request. Section 24c titled "deletion records of children or records of applicants kept by regional authority" regulates the two methods of deletion. Deletion is performed either by decision (paragraph 2) in proceedings initiated by official authority by which the rights and duties of substitute care applicants are amended, and by deletion having the nature of a sanction (for example the applicant gravely breached its duty to announce changes in data). Or it is a mere administrative act, which is once again a reflection of another, independently arising objective circumstance which it is not necessary to evaluate. This is so if, for example, an applicant's application has been granted and they have been offered the chance to meet a chosen child and they will be allowed to ask that the child be entrusted to their care.

An analogous situation would then apply in the case of inclusion of a child in the basic records of children given in section 54 a), because if it is a child for whom the administrative authority has appointed a guardian or custodian [letter b) ibid], there also arises a reason for inclusion in youth protection records on the basis of an objective circumstance, and so it can be performed by a simple administrative act (by recording).

But also in the case of the children given in section 6 the act of their inclusion in basic youth protection records (register) may have either form, i.e., a decision or a mere administrative record. When and how it should be is certainly clear from the preceding parts of this contribution. It is an

administrative act if the child becomes a complete orphan and if in the context of care for a minor the guardianship court orders a preliminary measure according to section 452 of act on special court proceedings or it has imposed on the children or parents certain restrictions or prohibitions of activity. Also if the court has entrusted the child to substitute care. In practice this involves inclusion in the records as a result of the fact that without judicial enforcement the parents would not duly perform a duty arising from parental responsibility or they really do not perform it [section 6a)], but the administrative authority need not carry out any evidentiary proceedings because the court has done so itself and already ruled. And it also involves situations where a body responsible for criminal proceedings has initiated acts against the child in criminal proceedings [section 6c) combined with section 32 paragraph 4b) and section 33 paragraph 1]. Also situation where a body responsible for criminal proceedings has issued a decision imposing a ban on contact of accused parents with the child, and for this very reason it is essential that the body for social-legal protection of children be informed of such a decision immediately (section 88m paragraph 5 criminal code). This ban on contact is issued in the case of children against whom a crime has been committed threatening their life, health, liberty... [section 6e)]. Also evidently if a parent has been ordered to leave the household [section 6g)]. And finally inclusion in the youth protection records by a mere administrative record will suffice in a situation where an underage foreign child in this country is an applicant for international protection or asylum, or who enjoys additional protection [section 6h)].

In all other cases the body for social-legal protection of children must absolutely clearly conduct administrative proceedings and issue a decision about the inclusion of the child in the records of children according to section 54 a), because the act of inclusion meets all the definition traits of administrative proceedings: administrative proceedings are a procedure of the administrative body the aim of which is the issue of a decision by which in a certain matter there is an establishment, amendment or cancellation of rights and/or duties of a named person or by which in a certain matter there is a declaration that such a person has or does not have the rights or duties (section 9 administrative code). In view of the significant legal consequences, a child must have the possibility to defend itself against such a measure, potentially via the legal guardians. They must have the possibility to dispute the reasons which led the administrative authority to take a child under social protection and supervision (for declaration of a threat to a child and acknowledgement of special/increased protection/attention), i.e., reasons for provision of "special protection of child". For practical reasons it is also a reason why by delivery of the decision about inclusion in records the child (via its legal guardians) learns that it has been included in some records and that extensive youth protection file documentation has been opened for it and that personal data, including sensitive data will be collected about it. In connection with the preceding parts of this contribution one can sum up that it primarily involves situations where:

- on the basis of findings gained during a verification (cf. section 137 of the administrative code) one can conclude, without proceedings being conducted concerning this or a court having ruled that parents do not perform their duties or do not perform or they abuse the rights arising from parental responsibility [section 6a) body 2. and 3.]; in the proceedings it will primarily be proven that these circumstances persist for such a time or are of such an intensity that they adversely affect the development of children or they are or could be the cause for the adverse development of children;

- the children are threatened by their own substance or non-substance addiction [section 6c)]; in addition naturally a medical report is necessary and in the proceedings it will also be proven that these circumstances persist for such a time or are of such an intensity that they adversely affect the development of children or they are or could be the cause for the adverse development of children;

- a youth repeatedly or consistently commits misdemeanours [section 6c)]; in the proceedings it will be proven not only that these circumstances persist for such a time or are of such an intensity that they adversely affect the development of children or they are or could be the cause for the adverse development of children, but the administrative authority will have to deal with the interpretation of

the expression “repeatedly” or “systematically”;

- the child repeatedly runs away from home [section 6d)]; this applies concerning the scope of evidence, as has already been stated above; but generally it involves a child younger than 14 or 15;

- the child is the victim of a serious criminal act threatening life, health, liberty or their human dignity, moral development or assets [section 6e)], but the body of social-legal protection of children has not been designated as a guardian for it for criminal proceedings, and so the child cannot be included in the records by an administrative act according to section 54b); in the proceedings it will once again be proven that these circumstances persist for such a time or are of such an intensity that they adversely affect the development of children or they are or could be the cause for the adverse development of children;

- the child has repeatedly or for a period longer than 6 months been sent, not on the basis of a court decision, to a facility (institution) for the care of children and youth or to another residential facility which provides it with full direct support, i.e., accommodation, clothing and meals and potentially also supervision and ensuring of upbringing [section 6f)]; in the proceedings it will again be proven that these circumstances persist for such a time or are of such an intensity that they adversely affect the development of children or they are or could be the cause for the adverse development of children, and the administrative authority will have to deal with the interpretation of the expression “repeatedly”;

- the child is threatened by violence between parents or other persons responsible for the upbringing of the child or violence between other natural persons [section 6g)]; in the proceedings it will once again be proven that these circumstances persist for such a time or are of such an intensity that they adversely affect the development of children or they are or could be the cause for the adverse development of children;

A specific process regulation for inclusion of the child in the records according to section 54a) in section 54 to section 56, or in section 60 to section 64 ZSPOD is lacking. Only a separate regulation for evidence in this context is derived from generally binding legal regulations. According to section 10 paragraph 3c) and d) the municipal authority of a municipality with extended scope of powers is obliged to regularly evaluate the situation of the child and their family, in particular from the aspect of evaluation of whether it involves a child given in section 6, and to process on the basis of the evaluation of the situation of the child and its family an individual child protection plan determining the causes of threat to the child (i.e., only in those cases where during the “evaluation” it is discovered that the child is socially at risk in the sense of section 6). According to paragraph 5 of the cited provision it applies that the individual plan for protection of the child (at risk in the sense of section 6) is drawn up from the start of the period of provision of social-legal protection, at the latest within 1 month of the inclusion of the child in the records of the municipal authority with extended scope of powers.

The more detailed wording of these rules which, if they involve “evaluation of child’s situation” are the more detailed rules for verifying the findings that could constitute a reason for initiating administrative proceedings based on official authority (i.e., for inclusion in the youth protection records, cf. section 42 and in particular section 137 paragraph 1 administrative code), are given in criteria 9c of annex No 1 (quality standards of social-legal protection for provision of social-legal protection by bodies of social-legal protection) of decree No 473/2012 Coll., concerning implementation of certain provisions of the act on the social-legal protection of children.

Verification (“evaluation”) here has two phases. It is designated: in all cases, in particular at the moment when the child is entered in the children’s records given in section 54 of the act, the body of social-legal protection of children performs a basic evaluation of the needs of the child and the

situation of the family (hereafter "evaluation") focusing on the question of whether it involves a child defined in section 6 and section 54a) of the act, a child given in section 54b) of the act (this naturally does not require evaluation - it is based on the nature of the matter), or a child included in the children's records for other reason (because it is an orphan or because the body of social-legal protection was informed of the initiation of acts of criminal proceedings against the youth). If from the conclusion of the evaluation it is evident that it is a child defined in section 6 of the act, the body of social-legal protection performs a detailed evaluation. In other words if the body for social-legal protection investigates whether the case may involve a socially at-risk child according to section 6 who is not included in the records as a result of guardianship, and if it comes to the conclusion that the ascertained circumstances do not indicate this, the verification will be completed hereby and the child will not be included in the records at all. Only in the opposite case will the body of social-legal protection of children carry out a "detailed evaluation", i.e., will actually start proceedings for inclusion of the child in the records based on official authority.

The areas of circumstances that must be verified here are defined in quite great detail in section 1 (Focus and scope of verification of situation of the child and its family) of the aforementioned decree No 473/2012 Coll. In such proceedings the principle of material truth must be applied in full (section 3 administrative code: the administrative body proceeds in such a way that there is a verification of the state of matters about which there are no reasonable doubts…; section 50 paragraph 3 administrative code: The administrative body is obliged to ascertain all circumstances important for the protection of public interest. In proceedings in which a duty should be imposed based on official authority, the administrative body is obliged, even without a proposal, to ascertain all decisive circumstances in favour of and to the detriment of the person on whom the duty is to be imposed – here for example a duty of persons responsible for upbringing to bear public supervision of the child and adhere to their duty of cooperation with the body of social-legal protection of children, including duty to bear an investigation in the home etc.).

For the aforementioned actual proceedings "about inclusion in records" only the administrative code is applied, with the exception of the more detailed provisions about evidence ("evaluation"). If the conditions for the further recording of the child no longer apply, the child should be deleted from the records without delay, as implied by section 54. But of course a child has a right to social protection and supervision (to "special protection") and so administrative proceedings should be conducted about its deletion and a decision issued about the fact that the child no longer enjoys this protection and will no longer be under public supervision, or also that it no longer has a subjective claim to such protection and supervision ("special protection") under unchanged conditions. But for such a procedure one obstacle may be the rule of section 101c) or e) administrative code, according to which it is only possible to conduct new proceedings and issue a new decision in the same matter if a separate law so designates.

So it is necessary to deal seriously with the question of what formal form the proceedings for inclusion (and then the associated proceedings for deletion from records according to section 54a) should have. According to the aforementioned section 55 paragraph 1 about children included in records according to section 54 the municipal authority of a municipality with extended scope of powers keeps file documentation which according to paragraph 2 of the same section contains in particular personal data about the children, their parents, data about upbringing conditions of these children, records about the results of an investigation in the family, records about discussions with the parents or other persons, copies of submissions to courts and other state bodies etc. According to section 13 paragraph 1b) it applies that should the interest of the due upbringing of the child so require, the municipal authority of a municipality with extended scope of powers can designate supervision of a child and perform it in cooperation with the school or other institutions or persons who operate in particular at the home or workplace of the child. The authority will in the first place perform supervision itself, and it shall do so by means of a visiting service, i.e., it will carry out on-site investigations according to section 52.

The purpose of administrative supervision and the conditions for carrying it out are the same as the purpose and conditions for inclusion of a child in the basic records and the keeping of youth protection file documentation. As has already been stated, from the practical aspect the body of social-legal protection of children would be obliged to supervise a child given in section 6, whether it issues an administrative decision about it according to section 13 paragraph 1b) or not. Thus the supervision consists of the performance of an investigation at the child's home, the gathering of data about the child etc. (in this sense the terms "supervision", "social supervision", "public supervision" and "special child protection" are synonyms).

So one can conclude that the administrative proceedings for inclusion of a child in the child records given in section 54a) should always be in the form of proceedings for designation of administrative supervision of a child according to section 13 paragraph 1b). All the more because for this case the law contains a regulation for the cancellation of such a decision. Section 13 paragraph 4 indicates that the municipal authority of a municipality with extended scope of powers cancels the upbringing measures that it has imposed (i.e., supervision).

a) if it achieves its aim (= the reason consisting of the threat to the child in the sense of section 6 has ceased), or

b) if it does not achieve its aim: it can still decide on the imposition of another upbringing measure or select another suitable measure of social-legal protection (but such a decision in the case of administrative supervision is in practice out of the question, unless it would be enough to deal with the matter by a "reprimand" with subsequent closure of file),

c) if circumstances change; letter b) sentence after semi-colon applies comparably (the change of conditions is a general reason and also covers the aforementioned achieved purpose of supervision).

The cancellation of administrative supervision will at the same time justify the automatic deletion of the child from the basic records according to section 54a) and the archiving of youth protection file documentation according to section 55 paragraph 1 in connection with paragraph 7a). For this reason it was not necessary to conduct special proceedings about such a deletion so that the decision on the cancellation of administrative supervision contains a separate statement about the current deletion from records, but it is definitely appropriate for it to be stated in the justification that these circumstances will occur in connection with the enforceability of the decision on the cancellation of supervision.

Administrative proceedings "about declaration of a threat to a child and acknowledgement of special protection of a child", i.e., "about designation of supervision of a child", which immediately has inclusion of the child in the basic youth protection records is nothing exceptional in the field of administrative law. Indeed, this is a standard procedure. One may consider for example proceedings for the declaration of a thing to be a cultural monument, about its cancellation and the associated records of cultural monuments ("central record"), proceedings about registration of significant landscape elements and its cancellation, proceedings for declaration of temporary protected areas or declaration of territories to be specially protected and their recording ("central nature protection record"), proceedings for declaration of a tree to be a historical tree, proceedings for determination of protected deposit territory according to the mining act etc.

Subsidiarity principle

In conclusion one must again emphasise that all the activity of the body for social-legal protection of children during social protection and supervision is first and foremost subject to the subsidiary principle. This is expressed at the very start of the act, albeit not very clearly, in section 1

paragraph 2 in the words: The separate legal regulations also covering the protection of rights and legitimate interests of the child remain unaffected. The principle is also augmented with the "material element" of threat to the child given in the conclusion of section 6 – if these (child threatening) circumstances persist for such a time or in such an intensity that they have a negative impact on the development of children or could be the cause for the adverse development of children. The principle of section 9a paragraph 1 adds to this: should a situation occur that threatens the proper upbringing and positive development of the child which the parents or other persons responsible for the upbringing of the child cannot resolve or are incapable of resolving themselves, it is essential to take the necessary social-legal protection steps according to the third part to protect the child. In other words: the body of social-legal protection of children does not replace "school prevention" (dealt with according to school regulations) or medical prevention (dealt with by public health protection regulations, or regulations about provision of health services even without the consent of the minor), nor criminal prevention (dealt with via criminal or other regulations and entrusted in organisational terms to the Police of the Czech Republic or the Probation and Mediation Service). Only if schools or other bodies of schools administration, bodies of public health protection, police etc. are not competent to deal with the relevant matter according to the nature of the social threat to the child, may there be a consideration of the competence of the body of social-legal protection of children in compliance with section 1 paragraph 2.

So if the competence of other bodies or public subjects is ruled out, in the context of the evaluation of the child's situation it is primarily necessary to evaluate whether in the sense of section 6 it involves such a circumstance the intensity of which is so serious that it could require the adoption of a social protection and supervision measure, and whether, for example, simple social assistance would not suffice (the law says "preventative and consultation activity", cf. section 10 and section 11). This is also associated with the need for a current evaluation of whether the legal guardians or other persons objectively (with possible social assistance) in the sense of section 9a paragraph 1 really cannot or are unable to deal with such a situation themselves, because even when the conditions of section 1 paragraph 2 and at the same time section 6 are met, the conditions necessary for declaring a child to be at risk are not necessarily given.

This end can also be served by family conferences, where sufficient capacities are often found for a resolution of the child's situation within the family, including the broader family. Although the law does not yet explicitly designate such a principle, there applies commensurately in this context due to the principle of economy (cf. in particular section 6 paragraph 2 administrative code), what is often included expressly in the laws of other central European states, i.e., that the body of social-legal protection of children refrains from intervention not only if the family is capable of resolving a situation themselves, but also if an available social service with which the family is working or engaging in cooperation is capable of dealing with it. This is also clearly implied by article 18 of the Convention on the Rights of the Child, according to which the state should make all efforts to ensure that the principle is acknowledged that both parents have joint responsibility for the upbringing and development of the child. Parents, or in corresponding cases legal guardians, have the primary responsibility for the upbringing and development of the child. Paragraph 2 of the cited article adds that this basic responsibility of parents should be supported by the state (with the aim of guaranteeing and supporting the rights designated by this convention) providing the parents and legal guardians with the necessary assistance during the performance of their task of upbringing of children and primarily that it will ensure the development of institutions, facilities and services for care of children. And so only after all the described possibilities have been ruled out, or their ineffectiveness has been discovered, is it possible to declare a child to be at risk and initiate their social protection and supervision from the level of the administrative authority without the subsidiarity principle being thereby breached. So only then can one "designate supervision of a child", declare "special protection" over them and at the same time "include them in the children's records according to section 54a) ZSPOD".

Conclusion

In its three parts the article "Socially at-risk child: Personal purview of the act on the social-legal protection of children" focused on the interpretation of the term "(socially) at-risk child", which has a fundamental significance for the delineation of the personal purview of one of the branches of social protection law – social-legal protection of children. It is important to understand that a child or their parents or other person always has a right to social assistance provided by bodies of social protection if there is an adverse social situation. This assistance consists primarily of professional social consultation or the arranging of associated services, but it is not possible for an administrative authority to force them on the child or other persons – it is conditional on the consent of the client. Only if the rights of the child are breached in the grossest manner, or there exists a higher intensity of threat to the positive development of the child (difficult social situation in the objective sense) is it possible for an administrative authority to declare the child to be at risk, to designate administrative supervision of the child's upbringing and to include the child in the basic records of at-risk children, i.e., to start providing the child with social assistance and also social protection and supervision or special protection. And it is also necessary to respect the principle of subsidiarity of social-legal protection: administrative authorities with this purview do not intervene in cases where the competence to resolve a specific problem of a child is entrusted to another body of public authority (such as bodies of school administration, primarily head teachers, public health protection bodies or providers of health services during their provision without the consent of the patient or his legal guardian, bodies active in the field of crime prevention or probation and mediation etc.).

In addition to this there is another large group of authorisations of bodies of social-legal protection of children associated with the exercise of collective custody and guardianship of children or collective participation in criminal and misdemeanour proceedings if conducted against youths (in the case of "criminal" proceedings also against children younger than 15, although these are only criminal proceedings *de facto*, because *de jure* such criminal proceedings are covered only by civil procedural regulations). The reasons which led to the designation (appointment) of the body of social-legal protection of children as the public custodian, guardian or independent participant in such proceedings may naturally overlap in certain cases with the reasons of "threat to child" according to section 6, but this is far from always the case. However, officials performing social-legal protection of children in administrative authorities must always be aware of these contexts during their work and must carefully distinguish the reasons and scope in each case of provided social intervention.

This is because interventions of public authority in the privacy of families relying on "sanction" and "supervisory" provision of the ZSPOD are wholly subsidiary, supporting measures if it really is not possible to do it otherwise. The scope of their use in practice should be narrower rather than broader. The administrative protection and supervision of children and youth should truly only have a place in cases of the grossest breach of the rights of children or if there is a criminal-law aspect (child primarily as a victim or culprit on the other hand). Everything else should be left according to the principle that everyone (primarily a body of public authority) is obliged to respect the free decision of a person to live their life as they see fit, to a domestic solution, or for provision of consultation and assistance to those elements of society which are entrusted with this in the first place (school, providers of social and other similar services).