PORADNA PRO OBČANSTVÍ/OBČANSKÁ A LIDSKÁ PRÁVA

TRANSITION Transition Promotion Program

PUBLIC PROTECTION OF CHILDREN IN THE CZECH REPUBLIC

Public protection of children in the Czech Republic is regulated by Act No 359/1999 of the Coll., which was passed in December 1999 and subsequently amended and augmented several times. This law was drawn up based on the example of existing Czech regulations and essentially has no foreign sources of inspiration.

I. Development of child protection in the Czech Republic after 1948 up to 1989 or 1999

The term “social-legal protection of youth” first appeared in the Czechoslovak legal system following the communist coup in 1948 in a 1951 decree of the minister of labour. This decree assigned the competencies of the abolished Ministry of Social Care to other departments. The new term, evidently inspired by the social-legal advice centres operating in the Soviet Union, was meant to show a rejection of the original “bourgeois” concept of “care for youth”.

To this day the changes introduced in 1951 influence the form of the system for care of at-risk children because they are the foundation of the fragmentation in terms of departments and competencies. The aforementioned decree split the competence in the area of child protection between the Ministry of Health (establishment of institutional facilities for children up to the age of 3, so-called infant institutions), the Ministry of Justice (establishment of so-called youth training centres, formerly called reformatories), and the Ministry of Education, to which were transferred the children's homes for children from the age of 3 to 15, institutions for youth with “physical and sensory handicap”. In addition the tasks in the area of mass guardianship, foster care and “other social-legal protection of youth” were transferred to the education department. 1952 saw the passing of the law on social-legal protection of youth, which abolished all preceding regulations for the protection of children. The social-legal protection of youth, which was transferred to the competence of the Ministry of Justice, consisted primarily of mass guardianship, (public) care, protection of children not in parental

care, and provision of financial contributions to cover the needs of children, in particular those entrusted to “collective care”. If a child could not grow up in the care of its own parents, the law unambiguously preferred collective (i.e., institutional) care. At the “people’s courts” youth bureaux were set up that operated in this form only up to the end of 1956, when they were abolished and their tasks were taken over by the national committees, which in the form of today’s municipal authorities of municipalities with extended scope of powers is the state which persists to this day. In 1956 social-legal protection once again came under the control of the Ministry of Education. This state lasted up to the restoration of the Ministry of Labour and Social Affairs on 30 April 1968, ever since when public protection of children has been under this department. But with the extraordinarily significant exception of establishment of collective care institutions, which are divided up in terms of competence essentially in the way established in 1951.

In the first half of the 1960s, the family act was passed, which essentially abolished the act concerning social-legal protection for youth from 1952 as part of the second (“socialist”) re-codification of the Czechoslovak legal system. The area of child protection was covered by the second part of the family act called “Participation of society in exercise of rights and duties of parents”. The term “social-legal protection of youth” was dropped and replaced with the term “youth care”. The details of the aforementioned “participation of society” in the life of children and families were regulated by a governmental order about the tasks of national committees in childcare. This order can be considered the forerunner of the current law on social-legal protection of children. The governmental order contained many institutes which operate in the field of social-legal protection to this day (cf. for example, the duties and authorisations of the national committees, care orders, youth care committees etc.).

In 1968 the law concerning the Czechoslovak Federation was passed, and the Czechoslovak Socialist Republic became a socialist federation of two republics: Czech and Slovak. Competence in the field of child protection was divided up into competence at the federal level and the level of the republics. This was also reflected in the structure of legal regulations.

In 1975 the text of the 1964 order was incorporated without any great changes into the republic-level laws about social protection. These laws were re-codified without great conceptual changes in 1988. Act No 100/1988 Coll., concerning social protection, and the

associated implementing regulations from 1988 (No 152/1988 Coll.), or 1991 (No 182/1991 Coll.) applied without fundamental change until 1999 and were a significant inspiration during the drafting of the currently valid act on the social-legal protection of children, which has replaced it in this area. The 1988 implementing regulation considered the exercise of public custody and the submission of reports of national committees to courts and other bodies of state to be the exercise of "social-legal protection".

The 1988 federal social protection law regulated in the first place "care for the family and children" very briefly and in outline as a part of state "social care". It was designated that in the context of care for children, state authorities provide children, parents and other persons with "services and social care allowances, in particular contribution for child maintenance, widower's contribution, contribution for recreation of pensioner's children, and other monetary benefits, material benefits, care service and care in social care facilities". It was also designated that state authorities, in cooperation with other state institutions, perform "advisory and educational activity (preparation for marriage and parenthood) and assist in the creation of beneficial relations in families at risk of breakdown, and contribute to overcoming the consequences of this breakdown. In order to perform these tasks the national committees also establish marriage and pre-marriage guidance bureaux". And finally it was designated that the "national committees discover cases of threatened or disturbed upbringing of children, they act to eliminate their causes and ensure social-legal protection for these children." This was the full coverage of social-legal protection of children in this outline codex of social protection. Further regulation was left to the laws of the individual republics within the federation, and also to legislative instruments. The law of only the Czech parliament No 114/1988 Coll., about the competence of bodies of the Czech Socialist Republic in social protection, in the part "competence of the national committees in the field of social care", and in the part "care for family and children", regulated care for the family and children primarily through enumerative competence provisions, which is a method adopted in the current law on social-legal protection of children. This act was implemented in detail by the decree of the Ministry of Labour and Social Affairs of the Czech Socialist Republic (of the Ministry of Labour and Social Affairs of the Czech Republic, renewed in 1990), which implements the social protection act and act of the Czech National Council about the competence of bodies of the Czech [Socialist] Republic in social protection. This regulation regulated the competence of the family and child care committees (still retained at the level of municipalities "with extended scope of powers" as committees for social-legal protection of children), and also in

its third part the Provision of allowances and social care services in the first place once again care for the family and children. The following were covered here: advisory work and care, screening (seeking out at-risk children), immediate assistance for children in urgent cases, exercise of custody, administrative interim measures for removal of child from household and its location in temporary alternative care, abolished in 1995 by the Constitutional Court, tasks of state bodies in institutional care and care for other citizens, arranging adoption (arranging foster care was covered in a separate foster care act from 1973), care for developmentally challenging children and youths (typically youths who have committed criminal offences), care service, board of voluntary childcare custodians (who were not only to seek out children at risk or disrupted by the environment of their own family, but in contrast with today's "entrusted persons", they were to monitor how families fulfilled their social function and also exercise supervision), and in the end certain financial and material benefits were covered here. But this was naturally not the full extent of regulation of care for the family and children, because its fourth part covered social care facilities, which included marriage and pre-marriage advice centres, homes for mothers with children, special foster care facilities and stations of the child care service. These are social service facilities which exist in the Czech Republic to this day in a modified form. This legal framework was not impacted at all by the fall of the communist regime in 1989 or the breakup of the Czechoslovak Federation in 1992, nor were any fundamental changes cause by the ratification of the Convention on the Rights of the Child in 1991 or adoption of Charter of Fundamental Rights and Basic Freedoms or the Czechoslovak Constitution, also in 1991.

II. Current legal regulation of public protection of children in the Czech Republic

A. Content of law

Basic provisions

The law, which is primarily a special regulation of administrative law, has 11 parts in the current wording. The first two represent basic norms defining the subject of the law's purview, which is protection of the child for beneficial development in the broadest sense (cf. section 1), this being the child in the sense of international conventions, i.e., every under-age person (section 2), and a so-called at-risk child comes under the scope of the law in particular (section 6). It also contains the basic competence provisions (section 4), from which, in combination with the subsequent "competence" sections of the entire law, it is evident that the most significant body exercising public administration in the area of social-law protection is

the municipal authority of a municipality with extended scope of powers, i.e., not a body of state administration but of municipal local government. There are a total of 205 of these in the Czech Republic, and there are also several dozens of authorities of wards or city parts of large statutory cities that have an equal status. These municipal authorities are subordinate to 14 regional authorities, and then the central Ministry of Labour and Social Affairs comes above them. The start of the law mentions the international-law principle of the best interest of the child (section 5) without developing it in any way, and also the right of the child to assistance and its participation rights in the sense of section 12 of the Convention on the Rights of the Child (section 8), right of parents to assistance from the part of "bodies ensuring social-legal protection" (section 9), and in the end the initiative duties of administrative authorities (so-called bodies of social-legal protection of children) and the fundamental of proportionality and subsidiarity of measures which administrative authorities may or should adopt (section 9a), which are important fundamentals primarily because at its own initiative an administrative authority (body of social-legal protection of children) can intervene in the life of a child and its family with fatal results when the result of its most serious measure may be the removal of the child from the family, even permanently.

Measures for child protection implemented by authorities

The core of the law is its third part, which is by far the largest, regulating in ten separate titles (often having the nature of independent parts) preventative and advisory activity of the administrative authorities, including possibility to impose care orders as a certain form of sanction (section 12, 13 – for example, reprimands, ordering of supervision, prohibition on certain activities for children), cooperation with the courts during "care of court for under-age child", including tasks of authority in court proceedings (Title II) and including exercise of mass guardianship and care by administrative authorities (section 17), supervision of childcare by other family (Title III), arranging alternative family care, either care by other family (foster care), and also, and somewhat inappropriately, adoption (Title IV), special provisions regulating the currently complex newer institute of temporary foster care (Title V), under the heading "Institutional and protective care" (Title VI) primarily supervision by administrative authorities of children in other institutional care, but which also includes so-called "voluntary stays", including abandoning of newborns in maternity hospital, and concurrently through the same provisions it covers the supervision of enforcement of punitive measures (protective measures, so-called protective care), which by reflecting the basic "substantive-law" regulation as contained in the aforementioned "accompanying" schools act

No 109/2002 Coll., on the exercise of institutional or protective care in school facilities Title VII (care for children requiring special attention), and the next title adds to the introductory parts of the third part of the law certain social work procedures, and then (not very clearly) it individually regulates the specific area of social case workers for children and youth, which focuses mainly on delinquent youth, including supervision of punishments, that is unconditional punitive sentence (and also remand). Then under the term "Social-legal protection in relation to foreign countries" Title VIII regulates (by reference to Title IV) primarily the arrangement of adoption from this country to foreign countries and vice versa, i.e., the administration of the Office for the International Protection of Children in Brno, which also includes other, more peripheral, activities in the area of legal assistance (recovery of maintenance payments from abroad, tasks in the field of the international kidnapping of children etc.). Title IX deals with "Social-legal protection in special cases" (in a somewhat non-systematic and "residual" manner), i.e., the ensuring of urgent help to children who do not otherwise come under the regulation of the law, who do not have a proper residence title on our territory, but who still require protection and assistance (and the law thus only expands the basic provisions to include the securing of so-called urgent assistance in section 15 and 16). This primarily involves the provision of assistance to "unaccompanied" children, which is currently significant from the aspect of migration. Title X is primarily a competence provision that regulates the activity of the somewhat non-functional advisory (and in some areas also executive) bodies - so called committees for social-legal protection of children (at the level of municipality with extended scope of powers) and advisory groups (at the level of regions and the state).

The described regulation can be summed up thus: "protection of the right of the child to positive development and proper upbringing" is performed primarily by the provisions of part three, first title (preventative and advisory activity), but in the case of an increased risk to the child also by the provisions of title II (Child protection measures). "Protection of the justified interests of the child", including protection of its assets, is performed in particular by mass guardianship and care exercised by a body of social-legal protection (section 17 of act on social-legal protection of children) "Action leading to a renewal of the disrupted family function" describes in more detail the activity during the protection of the rights of the child to positive development and proper upbringing. Similarly "securing of alternative family environment" for a child is expressly given in the introduction to the act as a part of the basic definition of social-legal protection of children due to its importance in the context of

activities in social-legal protection of children. The arranging of alternative care for the child is regulated in this law only in process terms. This is because questions of family responsibility, its limitation and other forms of care for a child other than parental care are the subject of private law regulation, which in the Czech Republic means the Civil Code from 2012.

The basic and priority form of care for the child in Czech law is the joint care of both parents, either married or unmarried, as it has been for centuries and millennia in most cultures known. This is derived primarily from section 655 second sentence of the Civil Code, according to which "the main aim of marriage is the founding of a family, the proper upbringing of children and mutual support and assistance", and from section 687 paragraph 2 of the Civil Code, according to which "spouses - are obliged to live together, - to maintain the family society, to create a healthy family environment and jointly care for children". Somewhat paradoxically Czech law wholly neglects these basic aspects of the marriage contract in the following regulation, when in the section "Parents and the child" (section 855 of the Civil Code et seq.) it essentially does not deal with marriage at all, and in section 855 of paragraph 1 it states in general that [both, i.e., even unmarried] "parents and [each, also illegitimate] child have duties and rights towards each other", but in particular (section 858 of the Civil Code), that parental responsibility "arises with the birth of the child and ends as soon as the child becomes fully legally competent". According to section 908 of the Civil Code "if the parents of an under-age child who is not fully legally competent do not live together and do not come to an agreement on arranging care for such a child, a court will decide on it even without being petitioned". So the agreement of the parents takes priority, court approval is not required, with one highly contentious exception, because section 906 of the Civil Code states that "should a decision on divorce of parents of the child be taken, the court will first decide how each of the parents will look after the child in the future. Although according to section 906 paragraph 2 of the Civil Code the "court may decide to approve the agreement of the parents", i.e., an arrangement by agreement is permitted in this case, it is always subject to court approval (without any justification). But in all cases it applies that in the case of parents who live separately de facto (or who do not "share bed and table", although they may continue to live together in the flat or house), the joint care of both parents takes precedence (which means that both parents remain fully substitutable and agree on everything on an ongoing basis), including its specific Czech variant: shared custody. This differs from "joint custody" by virtue of the fact that in the agreement or court ruling there is a detailing of how

the parents will alternate in the exercise of this closer, i.e., personal care for the child, in a specified period, and in contrast with the general “joint custody” it does not currently require the consent of the parents (cf. section 907 paragraph 1 second sentence of the Civil Code).

If it is not possible to preserve joint custody (at least in the form of so-called shared custody), the parents have no choice but to agree on the entrusting of the child to the care of one of the parents (or the court decides), because by virtue of the fact (and once again this is an anomaly and highly irrational arrangement) in Czech law the exercise of parental responsibility of the other (“non-custodial” or “non-resident”) parent is not in any way limited, here in practice the custody is also “joint” by virtue of its nature.

In the aforementioned matters of the regulation of parental care, the social-legal child protection body essentially acts only as an advice provider in the sense of section 11 paragraph 1, or if it is appointed as the guardian of the child for proceedings in the matters of custody for the court about an under-age child as a public, but only court, guardian [pursuant to section 17a) and section 54b) of the act on social-legal protection of children]. The assertion of inquisitorial, supervisory and police competencies is essentially precluded here.

But if it involves an at-risk child to whom special protection is provided [section 1 paragraph 1c), section 6, section 13 paragraph 1b), section 31 paragraph 1, section 52, section 53, section 54a) of the act on social-legal protection of children, the body of social-legal child protection should, according to letter c) of the commented provision, “take action leading to restoration of the disrupted function of the family”. According to section 9a paragraph 2 second sentence “when exercising and implementing measures [social-legal protection according to third part], that which ensures due care and positive development of the child in its family environment has precedence, and if this is not possible in an alternative family environment”. So it is not always possible, at least temporarily, to assume the basic form of care for a child, i.e., parental care, either in the variant of joint care of both parents or care of one of the parents as described above.

“If neither of the parents or a guardian can look after the child in person, the court may entrust the child to the custody of another person, i.e. to the personal custody of a foster parent (section 953 paragraph 1, section 958 paragraph 1 Civil Code). A “relative or person close to the child” always has priority (section 954 paragraph 2, section 962 paragraph 2). Naturally the grandparents of the child have priority amongst other relatives or close persons because they have a maintenance duty towards the child (section 910 paragraph 1 Civil Code)

consisting primarily of the provision of material support (direct provision of accommodation, clothing, meals and/or “direct supervision”). So in a subsidiary manner grandparents have a certain narrower range of rights associated with care for a child without their being established by a court ruling. As Czech law has omitted to designate the order in which the grandparents have a duty and right to look after and provide for grandchildren, all four living grandparents have the same status. If all four of them apply for custody, the court (or guardian in its proposal) must essentially apply the same criteria as when adjudicating a dispute about a child between two parents. Only when it is not possible to entrust a child to the foster care of grandparents (or the care of other forbears of the child or other relatives or persons close to the child, does state-organised foster care by other persons come into play (cf. part three, title IV act on social-legal protection of children).

Only when foster care by relatives or other people is not possible is institutional care considered. This is stated specifically in section 953 paragraph 2 second sentence and section 958 paragraph 2 Civil Code [“(foster care) has priority over institutional care of a child”]. The priority of foster, i.e., individual family, care over institutional care has been established in Czech law since 1. 4. 1992. At that time section 1 last sentence of the former Act No 50/1973 Coll., on foster care, it was designated that: “entrusting a child to foster care is permitted -, if - institutional care is not more beneficial.” Since that time it should be proven in all cases concerning institutional care not that it has been impossible to arrange alternative family care, but that in the given case institutional care is objectively more appropriate than alternative individual care. The priority of foster care has been further emphasised since 1. 8. 1998 by the amendment of the family act No 91/1998 Coll., which emphasised the fact that “before ordering institutional care the court is obliged to examine whether it is possible to ensure care for the child through alternative family care, which has priority over institutional care”. And so even today, according to section 971 paragraph 1 last sentence Civil Code “in this the court [when deciding on entrusting a child to an institutional facility] always considers whether it is appropriate to entrust the child to the care of a natural person.

Adoption stands wholly apart from the specified hierarchy of the forms of child care because it does not constitute any form of care for a child (alternative - other -family care) as “adoption means the acceptance of someone else’s child as one’s own (section 794 Civil Code). Under Czech law adoption had priority from the formal law aspect over foster care from 1. 6. 1973 to 31. 3. 2000, until when according to the former Act No 50/1973 Coll., on foster care, it applied that “entrusting to foster care is permitted according to this law if it is

not possible to ensure the proper care for the child, primarily through its adoption". However, this regulation came into conflict with the constitution from 6. 2. 1991, when the Convention on the Rights of the Child came into force for the Czech Republic, which in article 8 states that "States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations". But according to the contentious regulation of Czech law it still applies that "the family relationship between the adopted person and the original family ends with adoption, as do the rights and duties arising from this relationship (section 833 paragraph 1 Civil Code). The aforementioned highly problematic section 1 of the former Act No 50/1973 Coll. was definitively cancelled with effect from 1. 4. 2000 by section 66 point 1 of the act on social-legal protection of children. This was due in part to the fact that at the same time the Convention on the Adoption of Children was being ratified (No 132/2000 Coll. m.s.). This Convention proceeds from the premise that adoption is not an institution of alternative family care, but a special status institution and it is essentially based on the consent of the parents. Although it does concede that gaining the consent of the father or mother will not be essential (although naturally only exceptionally), but only when "the father or mother have been stripped of their parental rights with regard to the child or at least the right to consent to adoption". This Convention also emphasises the principle that "the competent authority will not permit adoption until the relevant investigations concerning the adoptive parent, [but mainly] the child and its family have been carried out".

Naturally punitive sanctions, be it protective orders (protective care, protective treatment, protective detention) or punitive measures (imprisonment), are wholly separate from the hierarchy of civil law child care forms.

Facilities of services for children, primarily crisis asylum stay

The fourth part covers so-called social-legal protection facilities which are (usually under wholly different and quite inappropriate names) expert social advice facilities (section 40 paragraph 1), early care facilities for children with health disabilities (ibid), facilities for expert services in alternative family care (section 40 paragraph 2), low threshold facilities for children and youth (section 41; under the name "social care activity facilities"). Somewhat paradoxically the law also describes "educational recreation camps" as facilities (section 43). Paragraphs 42 to 42n cover the only significant social-legal protection facilities, i.e., children's asylums (under the name "facilities for children requiring urgent assistance") as a residential crisis centre intended exclusively for children unaccompanied by parent or close

persons in contrast with comparable foreign facilities. Czech law does not in any way cover other residential facilities of *other form of care for child*.

Financial and material support for foster care

The subsequently inserted (in 2012) newer fifth part refers back in content terms to the third part, and under the title "Foster care" covers the so-called foster contract (the act uses the expression "foster care agreement") as a contract for the provision and brokering of material support or services to foster parents when caring for entrusted children. This part also regulates allowances for foster care. On 1. 1. 2013 foster care allowances were transferred from the general law about state social support; but in essence no changes were made to their sphere, right to them and allowance proceedings compared to their previous regulation. This is a group of social allowances that have existed in the Czech Republic since 1973. They are non-contributory allowances, so their payment is not dependent on compliance with social insurance periods. The only condition is that the court entrusts a child into the alternative care of a person other than the parents. These allowances are thus provided even when a court grants custody of a child to grandparents or other close relatives of the child.

<u>At present the law regulates the following foster care allowances:</u>

1. Contribution to cover the needs of a child as alternative support and income of child at a basic level of €194 to €285 per month depending on the age of the child with possible increase depending on child's medical disability (currently the highest monthly allowance can reach €388).
2. Fee for foster carer as income of foster carer (if both spouses are foster carers, it is paid to only one of them) at a level of €471 when one child is looked after, €706 in the case of care for two children, €1176 in the case of care for at least three children or in the case of care for severely disabled child. €784 per month is paid to foster carers for a temporary period if they have designated emergency duty and are obliged to take a child into care immediately in a crisis situation at any time. In contrast, grandparent foster parents are only entitled to a fee if there are "circumstances worthy of special consideration". But in practice the authorities pay out these fees in approximately 90% of cases.
3. One-off contribution at the end of foster care as income of the child at the level of €980.

4. Contribution for purchase of car if 3 and more children are entrusted to foster care, this being 70 % of the purchase price of the vehicle, but a maximum one-off payment of €3922, and at the same time a maximum of €7843 for a period of 10 calendar years.

Authorisation for provision of services to foster carers and private subjects

Part six of the law then follows on from, or from the logical aspect in terms of content precedes, the fourth part about institutions of social-legal protection where it regulates the registration of social-legal protection services (similar to the way that Act No 108/2006 Coll., concerning social services, regulates the registration of social services), but once again under the wholly unsuitable title of "provision of social-legal protection by entrusted persons", which constantly leads people to assume incorrectly that it involves a transfer of competence in the area of public administration. And yet it is a typical regulation of administrative proceedings about the issue of public-law authorisation for the provision of certain services designated in law, including authorisation to establish the aforementioned facilities (in this it is comparable to the issue of a trade certificate), including inspection of quality of the provided services, but their regulation is included in a separate part with one paragraph.

Common provisions

The eighth part contains a summary of various competence provisions, the regulation of provision of official information (section 51), authorisations of official persons as supervision custodians for investigations at residence of child (section 52), duties of parents and other persons to cooperate closely with administrative authorities, including reporting of various information (section 53), outline regulation of official file documentation (section 54 – 56) and the strict non-disclosure duty of all officials and other cooperating persons (section 57). The ninth part deals with administrative offences, and the tenth and last material part deals very briefly with certain provisions about administrative proceedings (but also local competence, based on the criterion of official recorded permanent residence of a child, section 61).

B. Brief overview of certain later amendments

Formally the law has 67 sections, some of which were dropped by later amendments. But mainly entire new groups of sections were gradually included in the law. So in practice the law now has 130 sections containing 490 paragraphs. So the scope of the text corresponds to approximately 500 sections of standard scope. As a result this regulation is highly unclear

internally for the layman. And the law has been amended more than thirty times (on average two amendments per year). But only a small number of these amendments have been materially significant. The most significant of these was the 2001 amendment, which fundamentally added to the area of arrangement of alternative family care, and also the "first fundamental" amendment from 2006, which introduced the institution of temporary foster care and at least attempted to introduce some rules to activity of children's asylums ("facilities for children requiring immediate assistance"), which had been essentially unregulated up to then and from which (during the half a decade from when the act came into force) an uncontrollably expanding institutional care system had developed in addition to the school facilities regulated by the act on institutional care in school facilities. The "second fundamental" amendment consists of the law from 2012 which attempted to standardise the procedures of administrative authorities (section 9a paragraph 3, 4 and implementing regulation No 473/2012 Coll.) at the level of a law to establish certain modern social care instruments [evaluation of situation of clients, individual planning, case conferences; section 10 paragraph 3 lit. c) to e), paragraph 5, section 14 paragraph 2, 3 and the aforementioned implementing regulation] and in particular to emphasise support for foster care by establishing the right of foster carers to clearly defined forms of support and assistance (Fifth part, in particular section 47a – section 47c) including ensuring of their financing as mandatory expenditure (section 47d). The "third fundamental" amendment consists of the "amendment law" of 2013, since 1. 1. 2014 harmonizing (at least in formal terms) the regulation of the law with an extraordinarily significant re-codification of private law , primarily with the new Civil Code, mainly in the area of care in a not-own family.

C. Certain critical moments in the regulation of public child protection

When the law was being adopted, legislators decided on a wholly minimalist concept for the scope of its competence and content. Simply put, they merely transferred from the existing family act the basic provisions regulating the involvement of the state in family relations, they transferred the provision of advice and other material content and potentially social allowances and finally police, i.e., control competencies from laws dealing with social protection and the thereby regulated social care and its components in the form of "Care for the family and children" as a complex of screening activities, they eliminated some of them, and at the level of the law they added certain elements previously dealt with only in implementing social protection regulations. They added the general, primarily analytical competencies (in practice impossible to monitor) of "monitoring adverse phenomena in

children" and "action to eliminate them", and in addition they incorporated some of the residual regulations of the former foster care act, specifically the brokering of foster care and regulation of former facilities for the performance of foster care (the now abolished former section 44 – 47).

The law declared a systematic separation of material from the area of social care (*the new legal regulation of social-legal protection of the child is therefore intended to...separate this legal regulation from the matter of social care with which it is not linked conceptually*), without it actually explaining the theory behind the conceptual shift convincingly when it is clear that many of the official activities in the area of advice and assistance to families at risk of social exclusion or other adverse social and other influences are of the nature of social care (or more accurately, "social assistance"). This is due to the fact that the idea that child protection (and family support) is not conceptually linked with social assistance is valid only for police supervision (i.e., authorisation to carry out investigations in households and institutions), to a certain extent for the exercise of mass guardianship and care and for arranging not-own-family care and adoption. These areas represent a significant group of competencies of the affected bodies, but from the nature of the matter they are secondary ones. It grossly underestimated the area of rights to social assistance in the form of services and material or financial allowances as a result of the specified concept when with an essentially unenforceable and only general provision it established the right of children and parents to unspecified assistance in the introductory sections 8 and 9. Later it added a certain right to concrete assistance only in connection with assistance during realisation of a child's property rights [i.e., rights to maintenance payments; section 10 paragraph 1f), section 11 paragraph 1e)].

Legislators, somewhat impatiently, did not wait during the constantly dragging legislative work on the preparation of the law about social services, later published under No 108/2006 Coll., and in the context of the badly named institution of "authorisation to perform social-legal protection" they also changed the registration of some selectively chosen social services (all from the area of social prevention, the law gave up on social care, which is also linked with the aforementioned contentious concept of separation from social assistance) when the aforementioned Act No 108/2006 Coll., concerning social services, then regulated many of the types of these services, and this duplicity of regulation gave rise to many practical problems which had to be "bridged" by the interpretation of both laws. The preamble expressed an ambition to also be, to a limited extent, a special "law about specific social

services by stating that it allows the *public to be represented by physical or legal persons wanting to participate in this social task to register for the defined social-legal protection activities on a voluntary basis. But certain activities constituting a fundamental interference in the status of the child or persons responsible for it will be reserved to state bodies.* This once again confirmed the highly problematic conceptual premise perceiving social-legal protection of children as the exercise of state administration and not primarily as social assistance, including the provision (brokering) of services. But for these services the law did not cover any effective financial instruments. In fact, in contrast with the general principle that *the state covers costs arising in connection with the exercise of social-legal protection of a body of social-legal protection (section 58 paragraph 1p. as amended up to 2006), it clearly states that the costs incurred by the entrusted person in connection with the exercise of social-legal protection are borne by that person* (the costs of a facility are borne by the founder of the facility; section 58 paragraph 1*f.*). There was a poorly conceived and limited parliamentary attempt to intervene in this concept, where the state defined the framework for the activity of *specific* social services for families and children but refused to provide them with any statutory financial support, when some founders of asylums for children ("facilities for children requiring immediate assistance") successfully lobbied parliament in 2005/6 an gained relatively generous funding per bed in an institution (currently approximately €900 per month; section 58 paragraph 2 in connection with section 42g et seq.), but of course without any really effective supervision of the use of this financing. In 2012 the principle of statutory "state contribution" was extended to the financing of costs associated with performing the undertakings from foster contracts (section 47d) in an amount of approximately €1880 per one contract per year. Other services that can be "registered" by authorisation, without a similar means of financing (when at the same time at least conventional grant proceedings are absent) remained essentially dead – in practice these facilities were not founded at all.

D. Three fundamental shortcomings of the act on the social-legal protection of children

In 1999 the law did not attempt to eliminate two other fundamental and long criticised failings of the entire Czech system of care for at-risk children inherited from the communist era that persist to this day and stand witness to the lost opportunities.

The first of them is a resignation to unification of the regulation of services for at-risk children and their families, and these mainly include services of institutional care for children, where the law focused only on such alternative care in residential institutions. This was also declared in the preamble, where it is stated that *there is a new conception for monitoring the*

exercise of institutional care without this law interfering in the structure and rules for the activity of facilities established in the purview of the Ministry of Health, Ministry of Education, Youth and Physical Education, and in part also the Ministry of Labour and Social Affairs. The result was the preservation or even petrification of the existing organisational and systemic fault of the fragmentation of this segment of essentially residential social care services for children which had persisted in our country as a relic of the early 1950s, when our country saw the introduction of wholly unsuitable *departmental separation of institutions ensuring care for children ...in a way similar to the USSR and Hungary, which with regard to the Soviet model dealt with the departmental distribution of these institutions last* (preamble to law of 1952). And this was happening when not only in other neighbouring states, but also in nearby Slovakia a fundamental part of all residential services for children was being transferred to the competence of the ministry of labour, social affairs and the family. Even twenty years after the passing of the law and thirty years after the regime change, this organisational and control disunity has resulted in the area of institutional care not being impacted in a fundamental manner, and in many cases providers of the specified services refuse to participate in any way in the modernisation of the system for child protection and to adopt effective transformation plans.

The second fundamental shortcoming is closely associated with the first one as it is also related to institutional care. As far back as 1974 the official materials of the Ministry of Labour and Social Affairs stated *that the physical and mental development of children entrusted to institutional care has been the subject of long-term research of many scientific fields. But modern psychological, paediatric and pedagogical research many years ago proved the adverse influence of a child's long-term residence in an institution on the child's mental and physical development and the development of the emotional aspect of the child's mental life.* Modern Czechoslovak (and later Czech) society did not lag behind the rest of Europe in terms of scientific knowledge, but it lags significantly in implementing this knowledge in practice and, in particular, in legislation. The currently valid act on the social-legal protection of children is clear evidence of this. As a result, in spite of a professional discussion that has been ongoing for more than 20 years, institutional care for children under the age of 3 has still not yet been banned in the Czech Republic, and up to one thousand such children are still sent to institutions in the Czech Republic every year. Today all other neighbouring states (Poland, Slovakia) have a legal prohibition on putting the youngest children in institutional care (in Poland 10 years of age, in Slovakia currently 6 years of age,

up to 2012 it was up to 3 years of age). And such regulation represents the typical content of regulations from the field of child protection.

Institutional care for children over the age of 3 in the Czech Republic is regulated by Act No 109/2002 Coll., on institutional care or protective care in school facilities and on preventative care in school facilities and the amendment of other acts. This law, which for the most part is essentially just a rewriting of the former decree of the Ministry of Schools from 1981, i.e., from the socialist era, is a typical public-law regulation, although it primarily regulates the legal conditions of other form of care for a child, i.e., the institution of family (private) law. This is no surprise given the fact that in parallel in the same section throughout the entire law it also regulates the "enforcement" of the punitive sanction of protective care. So from the aspect of "enforcement" it does not distinguish between family law measures and criminal law measures. Once again this is a relic of the wholly unsuitable concept of socialist legal doctrine. So the specified act has the nature of a prison regulation, and subsequently it is no surprise that its content regulated "disciplinary rewards and punishments" and also covers "solitary confinement". This is then reflected in many outlawed habits often maintained to this day, such as morning and evening roll call, a sophisticated points system and public declaration of rewards and punishments before an assembled group, i.e., customs wholly unsuitable in interpersonal relations that have arisen in care for children.

E. Organisational and financial securing of public child protection

At the first level 205 municipal authorities of municipalities with extended scope of powers and other authorities in statutory cities split into individual areas ensure social-legal protection in the Czech Republic. The 14 regional offices are superior to them and perform monitoring and provision of methodological management. The central administrative authority is the Ministry of Labour and Social Affairs. In 2016 the Ministry of Labour and Social Affairs provided grants to 227 sites of the first degree. By 2013 the volume of these grants had risen to slightly less than CZK 740 million per year. In 2014 the basic volume of the grants rose to CZK 850 million in connection with the overall changes in the system of child protection. There were further increases in the following years. In 2016 the true level of the grants for performance of public administration by municipal authorities of municipalities with extended scope of powers was (after accounting) CZK 1,179,717,679.64, or somewhat less than 1 ‰ of the total state budget of the Czech Republic. As of 31. 12. 2016, 2576 employees worked in these first degree bodies in the entire Czech Republic.

As far as regional authorities are concerned, which are not financed out of specific-purpose grants for the performance of social-legal protection of children, but where the exercise of state administration in the competence transferred by the state to these local government bodies is included in the general contribution for the exercise of state administration, there was a total of 110 workers in this section at the regional authorities and they had a total of CZK 81.4 million.

In 2016 a total of 336 thousand allowances were paid out for foster care. The total volume of paid out funds, including statutory insurance, was CZK 3,277,584 thousand, or approximately 3 ‰ of the overall volume of the state budget.

In 2016 a total of CZK 3,469,089 thousand, i.e., more than 3 ‰ of the total volume of the state budget, was paid out from public budgets for the operation of school facilities for the performance of institutional care or protective care for somewhat less than 7 thousand beds.

Including other transfers from public budgets that directly or indirectly concern the ensuring of child protection (i.e., inclusion of costs for certain types of social services or preventative programmes implemented by many departments and other subjects), sometimes it is stated that the expenditure from public budgets to finance the system of care for at-risk children in 2016 was 10.8 billion crowns, which in terms of the volume of the state budget, which is by far the most significant source for these purposes, would mean approximately 1 % of all public funds.