



# The Rights of the Child and Alternative Care

Zdeňka KRÁLÍČKOVÁ

PhD, Full Professor, Faculty of Law, Masaryk University (Brno, Czech Republic)

e-mail: [zdenka.kralickova@law.muni.cz](mailto:zdenka.kralickova@law.muni.cz)

ORCID: 0000-0002-4838-4790

**Abstract.** This study is devoted to the right of a child to know his or her origin, parents, to be in their care, or at least to have contact with them if he or she is placed in alternative care. Moreover, it also analyses the best interests of the child as a primary consideration in all actions, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities, or legislative bodies, as well as the child's participation rights. Finally, attention is paid to the new family policy and recent developments in the field of alternative care and the rights of the child removed from his or her family of origin.

**Keywords:** child, parents, family life, alternative family care, foster care, alternative non-family care, institutions, case-law, pro-family policy

## 1. Introduction

The United Nations Convention on the Rights of the Child is the most widely ratified human rights treaty in history and has helped transform children's lives worldwide. Its motto, purpose, and goal, according to the website of the United Nations International Children's Emergency Fund (UNICEF), is *'For every child, every right'*. It also enshrines that:

children are not just objects who belong to their parents and for whom decisions are made, or adults in training. Rather, they are human beings and individuals with their own rights. The Convention says childhood is separate from adulthood, and lasts until 18; it is a special, protected time, in which children must be allowed to grow, learn, play, develop and flourish with dignity.

However, it also states that ‘Still not every child gets to enjoy a full childhood. Still, too many childhoods are cut short’.<sup>1</sup>

The Czech Republic, or former Czechoslovakia, has acceded to the Convention on the Rights of the Child soon after its adoption.<sup>2</sup> This was of considerable significance for the entire legal order at the time. Many provisions of the Convention on the Rights of the Child were paraphrased into domestic black letter law, although the Convention on the Rights of the Child was directly applicable. We focus here on the best interests of the child as a primary consideration in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, as well as the child’s participation rights, the child’s rights to fair trial in all court proceedings related to him or her, and the proceedings related to alternative care. As the child has the right to know his or her origin and parents, and be in their care, entrusting children to alternative care must be seen as exceptional, subsidiary, an *ultima ratio* measure. In general, a child’s rights must be considered and protected as fundamental rights, values, or principles of the legal order.

Subsequently, the professional sphere and the public slowly became familiar with the concept of the Convention on the Rights of the Child and its individual provisions. Although it might seem that the Convention on the Rights of the Child could not cause interpretation and application problems, this was not the case at first. Specifically many problems were posed by, and still relate to, the right of a child to know his or her origin and parents, to be in their care, or at least to have contact with them if he or she is placed in the alternative care of third parties. In the past, alternative care was not always understood as subsidiary, less severe means were not made use of, and family life was not protected. Other problems were the violation of the child’s right to a fair trial or the negation of the child’s participation rights.

It was primarily the Constitutional Court of the Czech Republic that, through its case-law and negative standard-setting, contributed to the fulfilment of children’s rights and to the proper interpretation and application of the Convention on the Rights of the Child in the Czech Republic. Moreover, the case law of the European Court of Human Rights contributed to strengthening the awareness of the right of the child to family life, a right that applies to everyone.

The following section is thus devoted to the most pressing aspects of children’s rights in this area.

---

1 UNICEF, 1989.

2 Published under No 104/1991 Sb.

## 2. The Child as an Integral Part of the Family of Origin

According to the Convention on the Rights of the Child, a child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality, and, as far as possible, the right to know and be cared for by his or her parents.

While the Czech Republic seems to fully respect this fundamental right of the child in terms of the child's rights, the opposite is true in practice. The Czech Republic has been criticised many times by the United Nations Committee on the Rights of the Child for the *de facto* existence of the so-called baby boxes,<sup>3</sup> which, on the one hand, give a chance to an unwanted child to survive after birth, but, on the other hand, allow the child to be recklessly abandoned by his or her mother. Statistics from February 2024 show that there were 87 of them located throughout the country and there have already been 261 abandoned babies recovered from them since the start of the project.<sup>4</sup> The largest number of abandoned babies was recorded in the capital of the Czech Republic, Prague, where there are three such places for leaving new-born children.<sup>5</sup> No relevant information is available on the mothers of these children. By giving birth outside medical facilities, which is not permitted in the Czech Republic, they risk their lives and those of their children. Unfortunately, the state is currently turning a blind eye to this problem. Moreover, even some experts and the public have been tolerating the abandonment of unwanted babies in these places, referring to the idealistic concept of preventing the murder of newborns.<sup>6</sup> However, police statistics show that infanticide still occurs. It is to the credit of the private founder of the so-called baby boxes that, in the last few years, he has also set up shelters for mothers of young children in distress.<sup>7</sup>

In addition to the issue of anonymous births (i.e. outside medical facilities), in private, the so-called hidden births are also possible in the Czech Republic, being regulated by law (see Section 37, Act No 372/2011 Sb., Act on Health Services, as amended). According to the Act, the child whose mother wants her personal data not to be revealed has a 'legal' mother;<sup>8</sup> however, her identity will not be known to the child. The child may demand that 'an envelope with his or her mother's personal data' be opened, for example, in court proceedings for determining parenthood.<sup>9</sup> Much criticism has been levelled at the above-

3 See OHCHR, 2011.

4 See Babybox.cz, 2024.

5 For more, see Babybox.cz, 2024.

6 For the criticism, see Zuklínová, 2005, pp. 250 et seq.

7 See Babybox.cz, 2024.

8 For the concept of status law according to the Czech legal order, see Králíčková, 2021a, pp. 77 et seq.

9 For more critics, see Hrušáková and Králíčková, 2005, pp. 53 et seq.

mentioned rule, including in law journals.<sup>10</sup> However, there are no official statistics available on this matter.

It is the above-mentioned pathological behaviour leading to the abandonment of new-born children by their mothers that prevents these children from living with their fathers, in the family of origin. However, such children can be placed in substitute families, but the unfortunate entry into life of these unwanted children is typically followed by further adversity. Not every child is fortunate enough to be adopted, which under Czech law is primarily a status change accompanied by family care.<sup>11</sup> A life in foster care, or even in alternative non-family care, thus represents fate for many children, unfortunately. *De lege ferenda*, it is up to the State to better protect ‘unwanted’ children. This positive obligation to protect family life applies not only to the Czech Republic but also to many other (European) countries.

Recent data from the Ministry of Education, Youth and Sports show that, in the 2022/2023 school year, out of a total of 6,355 children ordered to be institutionalised, only 57 were fully orphaned.<sup>12</sup> The Ministry uses this term to refer to children whose sole parent (holder of parental responsibility) or both parents are deceased or to ‘found’ children whose parents are unknown, often from baby boxes. Data reveals that less than 1% of orphans living in alternative non-family care or institutions in the Czech Republic are fully orphaned. There is the myth of the large number of orphans in such institutions, but most children in institutions have someone to live with: their own parents, grandparents, adult siblings, or other family members. Hence, these children are not legally adoptable. Therefore, the possibility of their return to their parents, to the families of close relatives (e.g. in the form of foster care), or at least the possibility of more extensive contact, is rather the rule nowadays, as evidenced by the data. This is good news for improving social work or the pro-family policy.

### **3. On the Bad Practice and Case Law of the Constitutional Court and the European Court of Human Rights**

The practice of state authorities in removing children from their families and social work with the families of origin has not always been optimal. First, let us

<sup>10</sup> See Králíčková, 2022b, pp. 83 et seq.

<sup>11</sup> On the reform of the concept of adoption of minors, see Králíčková, 2003, pp. 125 et seq.

<sup>12</sup> Ministerstvo školství, mládeže a tělovýchovy, no date.

mention the key decision of the Constitutional Court of the Czech Republic<sup>13</sup> that cancelled the following provision:

If there is an urgent need for it, the National Committee is obliged to take a preliminary measure on which only the court has the right to decide otherwise, to which it immediately notifies it; the court will decide subsequently (Section 46, Act No 94/1963 Sb., On the Family, as amended; the whole act was repealed and replaced in 2012).

In this case, the petitioner filed a constitutional complaint with the Constitutional Court against the decision of the Regional Court in Brno, which dismissed his appeal against the judgment of the Municipal Court in Brno. To substantiate the application, he stated that the decision on the interim measure issued by the administrative authority (the former National Committee) had decided to place his son in institutional care. He thus appealed against the preliminary injunction, but the superior administrative authority did not grant it. He stated that the decisions of the administrative authorities violated his rights and those his child, as the Charter of Fundamental Rights and Freedoms provides that the rights of parents may be restricted and children separated from their parents against their will only by a court decision based on the law (Article 32, para. 4, Constitutional Act No 2/1993 Sb., as amended, Charter of Fundamental Rights and Freedoms). A similar provision is included in the Convention on the Rights of the Child. Because of the submitted petition, the Constitutional Court had to concentrate primarily on comparing the content of the contested provisions proposed for repeal with the content of the provisions of the Charter of Fundamental Rights and Freedoms and the Convention on the Rights of the Child. The Constitutional Court agreed with the complainant that the restriction of parental rights and the separation of children from their parents must be interpreted in accordance with the express wording of the Charter of Fundamental Rights and Freedoms, which is part of the constitutional order of the Czech Republic, and the Convention on the Rights of the Child; in the event of parental disagreement, it can only be implemented by a court decision. The Constitutional Court concluded that the relevant section conflicted with the constitutional order and had to abolish it.

Second, let us refer to the case law of the European Court of Human Rights, in particular, case *Wallová and Walla v. the Czech Republic*.<sup>14</sup> In this case, the European Court of Human Rights held unanimously that there had been a violation of the European Convention for the Protection of Human Rights and

13 Constitutional Court of the Czech Republic, case No Pl. ÚS 20/94 from 28 March 1995.

14 European Court of Human Rights, case *Wallová and Walla v. the Czech Republic*, Application No 23848/04 from 26 October 2006.

Fundamental Freedoms<sup>15</sup> on account that the applicants' five children had been taken into institutional care (see Article 8, right to respect for private and family life). In the cited case, on an application by the authority for the social and legal protection of children, the District Court made an order for the supervision of the applicants' children to ensure that their parents would quickly find suitable housing. Then, the authority applied for a temporary care order for the children on the grounds that the family did not have a suitable and stable home. Hence, the District Court ordered the temporary placement of the three oldest children in a children's home and of the two youngest in another. Subsequently, the District Court ordered the institutional care of the applicants' five children, noting that Mr Walla did not have stable employment and that his wife, who was unemployed, had not yet complied with the formalities which would have enabled her to obtain social benefits. The applicants had thus not made sufficient efforts to overcome their material difficulties and find a home for their family. The District Court ruled that they were not able to bring up the children properly. It also noted that they had not shown any interest in the children, with whom they had not been in contact. This decision was later upheld. Then, the Constitutional Court of the Czech Republic dismissed an appeal by the applicants regarding the fact that the children had been taken into institutional care on the ground that this had been the only possible solution and that it had been in accordance with the law and in the children's best interest. Subsequently, the oldest child ceased to be affected by the care order when he reached the age of majority; custody of the two youngest children was given to a foster care family, a married couple. The orders concerning the second and third child were cancelled later and they were able to return to living with their parents, but under supervision. As grounds for lifting the orders, the Czech courts noted that the applicants had started renting a flat, that Mr. Walla had been working for some months, and that his wife was receiving a disability pension. However, the two youngest children remained in foster care at a substitute family.

#### **4. The Subsequent Legal Changes: New Standards of the Social and Legal Protection of Children**

Regarding the above analysed bad practice of both the authority for social and legal protection of children and the courts, the Czech legislator subsequently established several rules aimed at providing children from socially disadvantaged backgrounds with dignified treatment in the spirit of the Convention on the Rights of the Child. In this context, both the substantive and procedural legislation was amended. As inadequate financial and housing conditions must not lead to the

<sup>15</sup> Published under No 209/1992 Sb.

conclusion that the parents of the children are incompetent to raise and care for them, it was stipulated that the removal of children from their families must be seen as *ultima ratio*, as an exceptional solution for an exceptional situation and realised only by the court. As a rule, this must always be preceded by less intrusive and invasive interventions in the family situation. Any alternative care must be conceived as subsidiary to the care of the parents for the children in the family of origin. The rights of the children have to be respected, including participation rights. Finally, any state action must always pursue the best interests of the child.<sup>16</sup>

The so-called Children Act has also been amended many times in this respect (Act No 359/1999 Sb., on Socio-Legal Protection of Children, as amended, further ‘ChildA’).<sup>17</sup> In the current version, the social-legal protection focuses on children

- a) whose parents have died, fail to fulfil the obligations arising from parental responsibility, or do not exercise or abuse the rights arising from parental responsibility;
- b) who have been entrusted to the care of another person responsible for the upbringing of the child, if that person fails to fulfil the obligations arising from the entrustment of the child to his or her care;
- c) who lead an idle or immoral life consisting in particular of neglecting school attendance, not working, even if they do not have a sufficient source of livelihood, using alcohol or addictive substances, being at risk of addiction, living in prostitution, have committed a criminal offence or, in the case of children under the age of 15, have committed an act which would otherwise be a criminal offence, repeatedly or persistently commit offences under the law governing offences, or otherwise endanger civil coexistence;
- d) who repeatedly abscond from their parents or other natural or legal persons responsible for the upbringing of the child;
- e) on whom an offence endangering life, health, liberty, their human dignity, moral development, or property has been committed or is suspected of having been committed;
- f) who, at the request of their parents or other persons responsible for the child’s upbringing, are repeatedly placed in institutions providing continuous care for children or whose placement in such institutions lasts longer than 6 months;
- g) who are threatened by violence between parents or other persons responsible for the upbringing of the child or violence between other natural persons;

16 Previously, Králíčková, 2022b, pp. 83 et seq.

17 Krausová, Novotná, 2006, pp. 1 et seq.

h) who are applicants for international protection, asylum seekers or persons enjoying subsidiary protection and who are in the territory of the Czech Republic unaccompanied by their parents or other persons responsible for their upbringing.

If these facts persist for such a period or are of such intensity that they adversely affect the development of the children or are or may be the cause of the adverse development of the children, measures must be taken. One of the key previous amendments to the so-called Children Act also introduced new terms and measures such as an individual plan for the child's upbringing, providing counselling, or organising case conferences. The rights of the child, including participatory rights, were also emphasised.

Following long-standing criticism of bad practice, especially by the United Nations Committee of the Rights of the Child, the Czech legislator has attempted further remedies, by trying to reduce the number of children in institutional care in favour of foster care (e.g. through financial support for foster care provided by the child's grandparents). However, the main goal of the state's pro-family policy is to gradually eliminate care for children under the age of 3 years in nurseries and similar institutions.<sup>18</sup>

However, substantial changes in this field took place in connection with the new Civil Code of 2012 (hereafter, CC; Act No 89/2012 Sb., effective since the 1 of January 2014). Further, the incorporation of family law matters into this main source of private law, Book II – Family Law, was significant.<sup>19</sup> Specifically, the new concept of parental responsibility<sup>20</sup> conceived according to international conventions and in harmony with the Principles of European Family Law regarding Parental Responsibilities<sup>21</sup> enacted by the Commission on European Family Law<sup>22</sup> must be highlighted.<sup>23</sup> In the light of this perception, the child is no longer conceived as a passive object of his or her parents' activities but as an active subject with legally guaranteed rights. In relation to the above legislative changes in connection with case *Wallová and Walla v. the Czech Republic*, the current Civil Code also provides that unfavourable financial circumstances or the inadequate housing conditions of the child's parents may not be the reason for removing a child from his or her family, namely the parents (Section 971, para. 3, CC). The Civil Code also states that 'any radical solution' must be preceded by milder measures, such as a warning to the parents, or by supervision of the family, including active social work.

18 Ministerstvo práce a sociálních věcí, 2020.

19 Králíčková, 2014, pp. 71 et seq.; 2021a, pp. 81 et seq.

20 Králíčková, 2022a, pp. 85 et seq.

21 For more, see Boele-Woelki *et al.*, 2007.

22 Commission on European Family Law, no date.

23 See Králíčková, 2021b, pp. 85. et seq.



Finally, the Ministry of Labor and Social Affairs presented ‘The New Family Policy Strategy 2023–2030’ (hereinafter Strategy)<sup>24</sup> based on the finding that the Czech society has been undergoing constant social, demographic, and economic development and that the family remains a highly preferred value today. The situation of families was characterised by declining fertility rates, aging population, changing family structure, women achieving higher education, differential employment by gender and age, and relative and absolute poverty of families with children.<sup>25</sup> The Strategy was transposed into the following five main objectives:

- a) support the importance of family values, increase social prestige and appreciation of the family, and strengthen the institutional anchor of the family policy in the Czech Republic;
- b) develop an environment supportive of stable family relationships and strengthen risk phenomena prevention in the family;
- c) promote balance between family life and work;
- d) create a favourable environment for material and financial stability of families; and
- e) support families at all stages of life and in specific situations.<sup>26</sup>

## 5. On Alternative Family Care

### 5.1. General

According to the Convention on the Rights of the Child, a child has the right to grow up primarily with his or her parents. Parents have not only the right but also the obligation to have the child with them and exercise the rights and duties arising from parental responsibility.

Removing a child from the care of the parents or other relatives is always a subsidiary solution to the care of the child in the natural family, which enjoys special protection. At the same time, it is an *ultima ratio* solution in situations where other instruments, such as educational measures, cannot be used to protect the best interests of the child. It must be stressed that any alternative solutions in relation to parental care are temporary and are admissible only for the period during which the parents themselves are unable to provide for the child. Moreover, they can only be used if the aim cannot be achieved by less severe means, as stressed in the case law of the European Court of Human Rights, especially in *Kutzner v.*

24 See Ministerstvo práce a sociálních věcí, no date, p. 1.

25 See Ministerstvo práce a sociálních věcí, 2017, pp. 10–19.

26 For more Ministerstvo práce a sociálních věcí, 2017, pp. 3–4.

*Germany*.<sup>27</sup> Such interference must be proportionate to the aim pursued, namely the protection of the minor child, and must also respect the rights of the child and pursue his or her best interests or welfare. Alternative family care, which includes foster care, care by a person other than the child's parents, and guardianship with personal care, is a special form of care for a child at risk in a family or family-like environment. These measures have many things in common, such as their temporary nature and the fact that the parent-child family status relationship is maintained, but the mutual obligations and rights change in practice. They also have priority in relation to alternative non-family care or institutional care.

The child's interest in being placed in one of the forms of alternative family care is the primary consideration. For any procedure, it is also necessary to ensure the child's participation rights and the right to a fair trial. Placing a child outside the family, in another alternative suitable environment, is by no means the end of the state's intervention. Such intervention may later even be significantly intensified. Thus, the authority for the social and legal protection of children is obliged to provide assistance to the parents after the child has been placed in alternative care, in particular helping to arrange family circumstances that would enable the child to return to the family; dealing with the child's living and social situation, including the family's material needs; or enabling cooperation with social security authorities and other authorities; for this purpose it should also provide the parents with professional advisory assistance.

The Civil Code regulates all forms of alternative family care. They differ from each other both in their prerequisites, their purpose, and their consequences for the child and his or her parents. In practice, they always depend on the needs and wishes of the individual child, the situation in his or her family of origin, and a range of circumstances. Ultimately, the best interests of the child must always be pursued, and the child's participatory rights must be fully respected.

## 5.2. Foster Care

The legal regulation of foster care has undergone many changes over time. It was widely used in the former Czechoslovakia before the communist coup of 1948, which resulted in many legal changes, especially 'the collectivisation of childcare' according to the Soviet model.<sup>28</sup>

The Civil Code now defines it as alternative care for a child at risk in a family or a family-like environment (Section 958 ff, CC).<sup>29</sup> Foster care has an irreplaceable

27 European Court of Human Rights, case *Kutzner v. Germany*, Application No 46544/99 from 26 February 2002.

28 For the new concept, see Hrušáková, 1993, pp. 101 et seq.

29 For the family-like environment, see, for example, the concept of so-called SOS Children's Villages, SOS dětské vesničky, z.s., no date.

place in the system of forms of care for children in an alternative environment, but it must always be understood as subsidiary to the child's natural family, or family of origin, which enjoys special protection, and simultaneously as a priority in relation to alternative non-family care (i.e. institutional care) or upbringing. It must be stressed that any alternative solutions to parental care are temporary. They may be used only for the period during which the child's parents are unable to provide the necessary care for the child and only if the objective cannot be achieved by less severe means.

The purpose of foster care is to provide personal care to the child in a supportive, subsidiary way to the care of the parents. However persistent the barriers to family care may seem at first, everyone, including the State, has a duty to encourage the development of the family bond between the parents and the child. The purpose and goal of foster care is not a permanent but a temporary solution, which is paralleled by intensive social work with the family of the child in crisis. Hence, foster care can be short-, medium-, or long-term, always in relation to the obstacles in the personal care of the child's parents and in relation to the needs, interests, wishes of the child.<sup>30</sup>

Maintaining and developing the child's attachment to his or her family refers to relationships not only in the nuclear family (parents and child) but also in the extended family. It is thus about preserving the child's natural attachment to those close to him or her. Foster care also has an important role to play in this respect, as it enables the child's *de facto* situation to be confirmed by persons close to the child, particularly grandparents, if the child cannot be cared for by his or her parents. In practice, in approximately 60% of cases, foster care is exercised between family relatives as unmediated foster care.

However, foster care can also be mediated only by the State, which, based on the law and through the competent authorities, searches for suitable foster parents for a child at risk. A child may thus be entrusted to the foster care of strangers. In this case, the role of the State becomes more important. In addition to the mediation of foster care, the State provides this alternative form of care for the child not only by providing material security (i.e. foster care benefits) and controlling it, but in the form of support in the form of training and accompanying foster parents.<sup>31</sup>

The private-law relationship between the foster parent and the child is manifested in the provision of personal care for the child. A foster parent shall be entrusted the foster care of a minor child if the child's interests require such entrustment, and the future foster parent, or future foster (married) parents, should provide a guarantee of the child's proper upbringing. A relative or close

30 For the new concept, see Králíčková, 2010, pp. 106 et seq.

31 See Králíčková *et al.*, 2020, pp. 1127 et seq.

persons take precedence unless this is not in accordance with the best interests of the child. Residence in the Czech Republic is another condition.

The duties and rights of a foster parent include:

- a. to take personal care of the child;
- b. to bring up the child and exercise the rights and duties of parents in daily matters;
- c. to decide on the child's ordinary affairs in the representation of the child and the administration of the child's property;
- d. to inform the parents about the child's essential matters;
- e. to maintain, develop, and deepen the child's relationship with his or her parents, relatives, and close persons, and in principle to allow the parents to have contact with the child.

It should be emphasised that the child's parents remain the holders of parental responsibility, continue to be the child's legal representatives, have the right to administer the child's property and make decisions in the child's essential matters (e.g. healthcare or education), and have the right to meet the child in person, unless otherwise stipulated.<sup>32</sup> A child also has the right to regular personal contact with his or her parents. If there is a disagreement between the parents and the foster parents on an essential matter concerning the child (e.g. the choice of school or profession), not only the foster parent but also the child or the parents may petition the court for a change of rights or obligations, termination of foster care, or another decision.

As mentioned above, foster care is relatively generously funded by the state. Foster care benefits are regulated in a special act (Section 47e ff, ChildA) as:

- a. contribution to cover the child's needs differentiated according to the age of the child and the degree of disability (reimbursement);
- b. foster parent remuneration for foster parents providing mediated foster care based on the minimum wage (recurrent);
- c. foster care allowance for foster carers providing unmediated foster care (for instance, for grandparents) set with regard to the subsistence level (reimbursement);
- d. child takeover allowance (one-off);
- e. contribution to the purchase of a personal motor vehicle (one-off).

In this context, it is necessary to add an additional benefit, which is a maintenance allowance to which an adult or fully competent person who is

---

32 For details, see Králíčková, 2022a, pp. 88 et seq.

dependent and was in foster care before his or her majority is entitled (Section 50b ff, ChildA).

However, the above-mentioned funding of foster care by the state does not relieve the parents of the child of their maintenance obligations. Parents are obliged to pay maintenance for their child according to their, often, very limited possibilities, abilities, and property situation to the state, which may require enforcing it.

Finally, foster care is terminated or revoked by the court when the child reaches the age of majority or full legal capacity, in case of the death of a child or foster child, or in case of the divorce of the foster parents for joint foster care. Here, too, it must be emphasised that a child has always the right to request to be returned to his or her family of origin. This is linked to the child's right to live with his or her parents or close relatives. The child's parents have the same rights. Then, a court decides to terminate foster care and returns the child to his or her parents. However, if it is not possible for the child to return to his or her parents, a court may decide on the termination of foster care and on a new alternative environment for the child.

### **5.3. Professional Foster Care**

'Foster care for a temporary period' is a special form of foster care. This statutory terminology is used for so-called professional foster care, introduced into the legal order recently (Section 958, para. 3, CC and Section 27a, ChildA). It can only be performed by foster parents registered in the register of persons suitable for temporary foster care maintained by the regional authority for the social and legal protection of children. The selection of these persons is carried out very carefully. Applicants for temporary foster care must be professionally prepared based on the facts that their care will be short-term and they will usually need to care for the child soon after his or her birth. The court decides on the temporary placement of a child in this form of foster care by way of an interim measure, which lasts for three months from its enforceability or until the decision on the merits is enforceable. Professional foster care is legally limited in time: it may last no longer than one year (except for the custody of siblings). After the end of professional foster care, the child is returned to his or her family of origin if the reasons for the removal of the child have ceased. If the court finds that the return of the child to the family of origin is not realistic in the short term, it decides on a more stable form of foster family care in the interest of the child. Moreover, financing by the state is regulated in a similar way as in the case of foster care.

#### **5.4. Care by Persons Other than the Child's Parents**

This form of alternative family care for a child is intended especially when the caregiver is a relative or a person close to the child or his or her parents, and when it is possible to determine the parents' or other direct relatives' (e.g. grandparents) maintenance obligations to the child to the extent that it corresponds to the child's justified needs (Section 957, CC). An indisputable advantage of this type of care is the fact that the caregiver and the child know each other, they usually share a family bond, and the transition of the child to this care is not as emotionally demanding. The rights and obligations of a caregiver are similar to those of foster parents. However, this form of childcare is not funded by the State and the child's parents fulfil their maintenance obligation to the child directly to the caregiver, or caregivers if they are married.

#### **5.5. Guardianship with Personal Care**

A guardian must be appointed to the child, for instance, in the event of the death of the child's parents. Hence, in principle, all obligations and rights of a child's parents belonging to the concept of parental responsibility are exercised by a guardian. However, the guardian is not the holder of parental responsibility. Even if a guardian is a natural person (e.g. a grandmother or an adult sister), he or she *ex lege* does not have to take personal care of the child – unlike a foster parent. Even if the child has a guardian, he or she may be placed in foster care or alternative non-family care, as the personal care of the child is not the primary purpose of guardianship (Section 928, CC). That is, guardianship is not in principle a form of alternative family or personal care, as its aim and purpose are much more complex.

In practice, it always depends on the specific situation in the family of origin of the child, on his or her needs, and on his or her wishes and best interests. However, if the guardian has personal custody of the child by virtue of a court order, he or she is entitled to all foster care benefits, similar to a foster parent (Section 939, CC in connection with Section 47e ff, ChildA).<sup>33</sup>

### **6. Alternative Non-family Care**

#### **6.1. General**

International treaties, particularly the Convention on the Rights of the Child, provide for the right of a child who is permanently or temporarily deprived of his or her family environment or who cannot be left in that environment in his or

---

33 For more details, see Králíčková *et al.*, 2022, pp. 324 et seq.

her own best interest to special protection and assistance guaranteed by the State. Such a child must be provided with alternative care, preferably family care.

According to civil law, institutional care must be distinguished from institutional protective care according to criminal law, the purpose of which is completely different. Both forms of alternative non-family care are temporary measures which must be evaluated on an ongoing basis. Unless otherwise provided, the child's parents remain the holders of parental responsibility and have the right to exercise its various components.<sup>34</sup> However, in the best interest of the child, they must endure certain factual or legal restrictions; otherwise, the purpose of institutional care and institutional protective care would be completely defeated. They may have personal and regular contact with the child unless expressly prohibited.

Institutional care or institutional protective care should not, as a matter of principle, be seen as a punitive measure but as helping the child and his or her family of origin bridge a period of crisis.<sup>35</sup> After all, the system of care for a child at risk is currently focused on preventing the child from being at risk and on supporting the development of that child in a family environment. Only a court can decide to remove a child from his or her family of origin and place him or her in a substitute family or in alternative care of family or non-family form. This radical intervention is usually preceded by educational measures.

## **6.2. Institutional Care, or Upbringing**

Collective education, or upbringing, is not organised with the purpose of sanctioning, but to help the child and his or her family in the situations regulated by law (Section 971 ff, CC). It can perform various functions in relation to the reasons listed below.

Institutional care may be ordered by the court if previous measures did not provide a remedy (Section 971, CC). This must be understood in the broader context of any interference by the state authority in the relationship between the parents and child. These may be educational measures, which are admonitions, supervision, restrictions, and social work imposed according to the Civil Code (Section 925, CC) or pursuant to a special act (Sections 13 and 13a, ChildA); or other measures of social and legal protection consisting in particular of preventive and advisory activities or any of the judicial interventions in parental responsibility (suspension of exercise, restriction of parental responsibility or its

---

<sup>34</sup> See Šínová *et al.*, 2016, pp. 63 et seq.

<sup>35</sup> For the critics of bad practice by the Public Defender of Rights (Ombudsman), see Kancelář veřejného ochránce práv, 2017.

exercise, or deprivation of parental responsibility); or decisions on the restriction or prohibition of personal contact between parents and a child.<sup>36</sup>

The prerequisites for ordering institutional care are set out by law as follows. If the child's upbringing or physical, intellectual, or mental condition, or proper development are seriously endangered or disrupted contrary to the child's interests, or if there are serious reasons why the child's parents cannot ensure the child's upbringing, the court may order institutional care as a necessary measure. The court would do so if the measures taken previously have not provided a remedy. At the same time, the court always considers whether it is appropriate to give priority to entrusting the child to natural persons, or alternative family care. As mentioned above, insufficient housing or property conditions of the child's parents or persons who have been entrusted with the child's care cannot in themselves be a reason for a court decision on institutional care if the parents are otherwise capable of ensuring the proper upbringing of the child and the fulfilment of other obligations arising from their parental responsibility. Finally, in its decision ordering institutional care, the court shall indicate the facility in which the child is to be placed. In doing so, it shall consider the interests of the child and the statement of the authority for the social and legal protection of children.

Institutional care can be ordered for a maximum of three years, with the proviso that it may be extended in exceptional cases (Section 972, CC). It is newly stipulated that the court is always obliged to review at least once every six months whether the reasons for ordering institutional care persist, regardless of the facility in which it is performed (Section 973, CC).

### **6.3. Institutional Protective Care, or Upbringing**

Institutional protective care, or upbringing, is a measure of criminal law (Section 22, Section 93, Act No 218/2003 Sb., Juvenile Justice Act, as amended, which replaced the inadequate original regulation in the Criminal Code). It is imposed as a protective measure on juveniles (criminally responsible persons) and children under the age of 15 years who have committed a criminal act (criminally irresponsible persons). The law distinguishes two variants of institutional protective care, or upbringing, as follows:

- a. optional protective care, or upbringing, can be used for a child under the age of 15 years, when he or she commits an otherwise criminal offence; the juvenile court may impose, as a rule based on the results of a previous educational-psychological examination, protective education in addition to other measures if this is strictly necessary to ensure his or her proper upbringing;

---

36 Krausová and Novotná, 2006.



- b. compulsory protective care, or upbringing, must be imposed by the juvenile court on a child who has committed an offence for which the Criminal Code provides for the imposition of an exceptional penalty and who, at the time of the offence, had reached 12 years of age but was under 15 years of age.<sup>37</sup>

## 7. Special Provisions on the Rights of the Child

As already mentioned in relation to the Convention on the Rights of the Child, the child has participation rights guaranteed by law, be it the Civil Code, the so-called Children Act, or civil procedure codes, that is, both the Civil Procedure Code (hereafter CPC; Act No 99/1963 Sb., as amended,) and the Act on Special Court Proceedings (hereafter, SPC; Act No 292/2013 Sb., as amended).<sup>38</sup>

In accordance with the Convention on the Rights of the Child, it is possible to say that the child has the following rights:

- a. to be informed;
- b. to express his or her views and wishes;
- c. to influence, by his or her opinion, the decisions; and
- d. to completely determine, by his or her opinion, the decisions.<sup>39</sup>

In this spirit, the Civil Code provides that, before making a decision that affects the interests of the child, parents shall inform the child of everything that is necessary for the child to form his or her own opinion on a given matter and communicate it to the parents; this does not apply if the child is unable to properly receive the information, form his or her own opinion, or communicate it to his or her parents; the parents shall pay due attention to the child's opinion and take the child's opinion into account when making a decision (Section 875, para. 2, CC).

The court has a similar information obligation towards a child if it decides the child's case (Section 867, CC). Further, the child must receive information about the possible consequences of compliance with his or her view or the possible consequences of any decision in the case or matter that concerns him or her. To strengthen the participatory rights of the child, the Civil Code establishes a rebuttable presumption, according to which a child over 12 years of age is presumed to be able to receive the information, make his or her own opinion, and communicate it (Section 867, para. 2, the second sentence, CC). Finally, the court must pay due attention to the opinion of the child. However, the court must

37 For the history and current regulations, see Šámal *et al.*, 2011.

38 For details, see Radvanová, 2015, pp. 36 et seq.

39 On the family procedural rights of the child, see Martiny, 2017, pp. 737 et seq.

always pursue the best interests of the child or his or her welfare. In this context, the Civil Code provides that, if the court finds that a child is unable to properly receive the information or form his or her own opinion or communicate it, the court shall inform and hear a person who is able to protect the interests of the child; this person's interests must not be in conflict with the interests of the child (Section 867, para. 2, the first sentence, CC). The child's parents usually defend the best interests of the child. However, if there is a potential conflict of interest, the court shall appoint guardian *ad litem* to the child (Section 948 ff, CC).

Moreover according to the so-called Children Act, the child who can form his or her own opinions has the right, for the purposes of social and legal protection, to express those opinions freely when all matters affecting him or her are discussed, even without the presence of his or her parents or other persons responsible for his or her upbringing. The child's views shall be given due weight, appropriate to his or her age and mental maturity, in consideration of all matters affecting him or her. In its action, the state social authority shall consider the wishes and feelings of the child, in line with his or her age and development, so as not to endanger or impair his or her emotional and psychological development. Finally, the child who is able, in view of his or her age and intellectual maturity, to assess the impact and significance of decisions arising from judicial or administrative proceedings to which he or she is a party, or other decisions relating to his or her person, shall receive information from the authority for the social and legal protection of children on all relevant matters concerning his or her person; a child over the age of twelve years of age shall be deemed to be able to accept the information, form his or her own opinion, and communicate it (Section 8, para. 2, 3, ChildA).

Regarding civil procedural law, the child is the subject of the court proceedings, not their object. This also applies to alternative care proceedings. In general, the child's capacity to be a party to the proceedings arises at birth. His or her procedural capacity (i.e. his or her ability to act independently before the court) depends on his or her capacity to act or on the degree of his or her intellectual and voluntary maturity in relation to his or her age. A minor who is not fully capable of acting independently is also usually not able to act independently in court and needs a representative.<sup>40</sup> In principle, the child's parents as holders of parental responsibility are allowed to represent him or her by operation of law. The child's parents usually defend the best interests of the child; however, if there is a potential conflict of interest, the court shall appoint a guardian *ad litem* to the child (Section

40 For some proceedings, the law grants standing to a minor child who is not fully competent, usually over 16 years of age. This is the case in proceedings for the permission to marry (Section 368, SPC), for protection against domestic violence (Section 403, SPC), for adoption (Section 431, SPC), for the granting of legal capacity to a minor child, to obtain the consent and withdrawal of the consent of the legal representative to the independent operation of a commercial establishment or other similar gainful activity (Section 469, SPC), and for the return of a minor child in cases of international child abduction (Section 481, SPC).

948 ff, CC). Finally, to ensure the effective protection of a minor child who is not fully capable of exercising his or her legal capacity in the often demanding court proceedings, the law provides support representation by a legal representative based on a decision of the president of the chamber (§ 23, CPC). Even if such a child is capable of exercising his or her legal capacity in terms of substantive law, that is, is sufficiently intelligent and mature to engage in the legal actions which gave rise to the claim that forms the subject matter of the proceedings and is thus procedurally competent in the proceedings for this reason, the president of the chamber may decide that he or she shall be represented.

## 8. On the New Case Law of the Constitutional Court

Although the law in books (black letter law) provides significant scope for children to exercise their participation and procedural rights, they do not always find application in practice, as evidenced by a recent decision of the Constitutional Court of the Czech Republic,<sup>41</sup> in which the court stated:

In proceedings for interim measures concerning the placement of a minor (close to the age of majority) in an institution providing institutional education, the courts are obliged to give the minor the opportunity to be heard. To do otherwise is contrary to the best interests of the child, a denial of the possibility of exercising participation rights, and an expression of arbitrariness in the application of the law.

It appears from the cited decision that the parents of the minor complainant requested the District Court to issue an interim order and subsequently a judgment on the merits that the minor complainant be placed under institutional care. According to the District Court, the 16-year-old complainant's behaviour at that time continued to deteriorate, and his development was in danger. The minor had been ignoring all his obligations for a long time, living an idle life, and not receiving any education. He commits 'defective' behaviour and meets inappropriate people who endanger his development. The Regional Court subsequently dismissed the complainant's appeal, as it had already ruled on the merits. Thus, the applicant's guardian *ad litem* lodged a constitutional complaint against both decisions.

The Constitutional Court found several errors in the civil courts' procedure. The complainant was neither heard nor represented by a guardian in the proceedings before the District Court for the interim measure; nor was he heard in the proceedings before the Regional Court. The Regional Court sought the applicant's

<sup>41</sup> Constitutional Court of the Czech Republic, case No II ÚS 2225/23 from 1 November 2023.

views through the guardian and was satisfied with one affirmation, namely that the minor had asked for the interim measure to be annulled. However, according to the Constitutional Court, such a procedure cannot be approved. If the courts considered that the minor had not chosen the right path in life and that there were reasonable doubts as to whether his normal development was impaired, it was their duty to ascertain his opinion on the case. This means listening to him and considering his other ideas about the future. From the complainant's statement, it could have become clear whether in the absence of his parents' personal care there were other possibilities of alternative care or provision of housing. In the case of minors close to the age of majority, it is possible to include both the extended family and families of close friends, a partner, a boarding school, and, in extreme cases, a shelter. Placing a minor in institutional care is always a last resort, or *ultima ratio* option. The Constitutional Court also commented on institutional care as a form of alternative care. However, this should only be chosen when the family is unable to provide care, and no other (less invasive) alternative can be found. Finally, the Constitutional Court found that the contested decisions violated the applicant's fundamental right to communicate his viewpoint and his right to be heard in judicial proceedings guaranteed by the Convention on the Rights of the Child, as well as the right to judicial protection, the right to have the case heard in his presence guaranteed by the Charter of Fundamental Rights and Freedoms, and, finally, the right to a fair trial guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms.

## 9. Conclusions

As analysed above, the Czech Republic is still facing several issues, just like any other country. However, several amendments to national law and the case law of the European Court of Human Rights and the Constitutional Court of the Czech Republic have contributed to the fulfilment of children's rights, their comprehensive protection, and the strengthening of their right to family life, especially the family of origin. The new pro-family policy, which focuses on preventing and strengthening the key functions of the child's family of origin, including financial support and affordable housing, contributes to the fulfilment of the Czech Republic's obligations and to the implementation of the Convention on the Rights of the Child. However, some aspects remain unnoticed by the legislator such as the reality of the so-called baby boxes.

## References

- Babybox.cz (2024) *Statistika babyboxů ke dni 17. května 2025*. Available at: <https://www.babybox.cz/media/pdf/statistika-babyboxu.pdf> (Accessed: 29 February 2024).
- Boele-Woelki, K., Ferrand, F., González-Beilfuss, C., Jänterä-Jareborg, M., Lowe, N., Martiny, D. and Pintens, W. (2007) *Principles of European Family Law regarding Parental Responsibilities*. Antwerpen – Oxford: Intersentia.
- Commission on European Family Law (no date) *Commission on European Family Law*. Available at: <https://www.ceflonline.net/> (Accessed: 9 February 2024).
- Hrušáková, M. (1993) *Dítě, rodina, stát*. Brno: Masarykova univerzita.
- Hrušáková, M. and Králíčková, Z. (2005) ‘Anonymní a utajené mateřství v České republice – utopie nebo realita?’, *Právní rozhledy*, 2, pp. 53–57.
- Kancelář veřejného ochránce práv (2017) *Sborník Rodina a dítě II*. Available at: [https://www.ochrance.cz/vystupy/edice-stanoviska/Sbornik\\_Rodina\\_a\\_dite-2.pdf](https://www.ochrance.cz/vystupy/edice-stanoviska/Sbornik_Rodina_a_dite-2.pdf) (Accessed: 10 January 2024).
- Králíčková, Z. (2003) ‘Adoption in the Czech Republic: Reform in the Light of the Child Welfare Laws’, in A. Bainham (ed.) *The International Survey of Family Law 2003 Edition*. Bristol: Jordan Publishing, pp. 125–142.
- Králíčková, Z. (2010) *Lidskoprávní dimenze českého rodinného práva*. Brno: Masarykova univerzita.
- Králíčková, Z. (2014) ‘New Family Law in the Czech Republic: Back to Traditions and Towards Modern Trends’, in B. Atkin (ed.) *The International Survey of Family Law 2014 Edition*. Bristol: Jordan Publishing, pp. 71–95.
- Králíčková, Z. (2021a) ‘On the Family and Family Law in the Czech Republic’, in T. Barzó and B. Lenkovics (eds.) *Family Protection From a Legal Perspective. Analysis on Certain Central European Countries*. Budapest – Miskolc: Ferenc Mádl Institute of Comparative Law – Central European Academic Publishing (CEA), Studies of Central European Professors’ Network, pp. 77–109.
- Králíčková, Z. (2021b) ‘Changes in Czech family law in light of the principles of European family law’, *Law, Identity and Values*, 1, pp. 85–98.
- Králíčková, Z. (2022a) ‘Czech Republic: The Content of the Right to Parental Responsibility’, in P. Sobczyk (ed.) *Content of the Right to Parental Responsibility. Experiences – Analyses – Postulates*. Budapest – Miskolc: Central European Academic Publishing, pp. 73–104.
- Králíčková, Z. (2022b) ‘The rights of the child at risk’, *Law, Identity and Values* 2, pp. 83–100.
- Králíčková, Z., Hrušáková, M., Westphalová, L. et al. (2020) *Občanský zákoník II. Rodinné právo (Section 655–975). Komentář*. 2<sup>nd</sup> ed. Praha: C. H. Beck.
- Králíčková, Z., Hrušáková, M., Westphalová, L. et al. (2022) *Rodinné právo. Učebnice*. 3<sup>rd</sup> ed. Praha: C. H. Beck.

- Krausová, L. and Novotná, V. (2006) *Sociálně-právní ochrana dětí*. Praha: ASPI.
- Martiny, D. (2017) 'Práva dítěte v rodinném právu – evropské tendence', *Právník*, 2, pp. 737–750.
- Ministerstvo práce a sociálních věcí (2017) *Koncepce rodinné politiky* [PDF]. Version: 4 September 2017. Available at: [https://www.mpsv.cz/documents/20142/225508/Koncepce\\_rodinne\\_politiky.pdf/5d1efd93-3932-e2df-2da3-da30d5fa8253](https://www.mpsv.cz/documents/20142/225508/Koncepce_rodinne_politiky.pdf/5d1efd93-3932-e2df-2da3-da30d5fa8253) (Accessed: 9 February 2024).
- Ministerstvo práce a sociálních věcí (2020) *Zpráva o rodině 2020*. Available at: <https://www.mpsv.cz/documents/20142/225508/Zpr%C3%A1va+o+rodin%C4%9B+2020.pdf/c3bdc63d-9c95-497d-bded-6a15e9890abd> (Accessed: 9 February 2024).
- Ministerstvo práce a sociálních věcí (no date) *Cíle strategie grafika*. Available at: [https://www.mpsv.cz/documents/20142/4552532/Cile\\_strategie\\_grafika.pdf/98027e7f-d6ef-11d9-2c61-196fb3fb3c3a](https://www.mpsv.cz/documents/20142/4552532/Cile_strategie_grafika.pdf/98027e7f-d6ef-11d9-2c61-196fb3fb3c3a) (Accessed: 9 February 2024).
- Ministerstvo školství, mládeže a tělovýchovy (no date) *Zařízení pro výkon ústavní výchovy a ochranné výchovy – počet zařízení, prostorové podmínky, děti a mládež – podle zařízení a území*. Available at: <https://statis.msmt.cz/rocenka/rocenka.asp> (Accessed: 1 July 2023).
- OHCHR (2011) *Committee on the Rights of the Child reviews report of Czech Republic*. Available at: <https://www.ohchr.org/en/press-releases/2011/06/committee-rights-child-reviews-report-czech-republic> (Accessed: 15 July 2023).
- Radvanová, S. et al. (2015) *Rodina a dítě v novém občanském zákoníku*. Praha: C. H. Beck.
- Šámal, P., Válková, H. and Sotolář, A. (2011) *Zákon o soudnictví ve věcech mládeže. Komentář*. 3<sup>rd</sup> ed. Praha: C. H. Beck.
- Šínová, R., Westphalová, L., Králíčková, Z. et al. (2016) *Rodičovská odpovědnost*. Praha: Leges.
- SOS dětské vesničky, z.s. (no date) *SOS dětské vesničky*. Available at: <https://www.sos-vesnicky.cz/> (Accessed: 10 February 2024).
- UNICEF (1989) *Convention on the Rights of the Child*. Available at: <https://www.unicef.org/child-rights-convention> (Accessed: 15 February 2024).
- Zuklínová, M. (2005) 'Několik poznámek k právním otázkám okolo tzv. baby-schránek', *Právní rozhledy*, 7, pp. 250–253.