

**SUBMISSION OF THE FORUM FOR HUMAN RIGHTS AND THE
INTERNATIONAL COMMISSION OF JURISTS TO THE UN COMMITTEE ON
ECONOMIC, SOCIAL AND CULTURAL RIGHTS IN ADVANCE OF THE
EXAMINATION OF CZECHIA'S THIRD PERIODIC REPORT UNDER ARTICLES
16 AND 17 OF THE INTERNATIONAL COVENANT ON
ECONOMIC, SOCIAL AND CULTURAL RIGHTS**

**71th Session of the UN Committee on Economic, Social and
Cultural Rights**

Composed of 60 eminent judges and lawyers from all regions of the world, the International Commission of Jurists (ICJ) promotes and protects human rights through the Rule of Law, by using its unique legal expertise to develop and strengthen national and international justice systems. Established in 1952, in consultative status with the Economic and Social Council since 1957, and active on five continents, the ICJ aims to ensure the progressive development and effective implementation of international human rights and international humanitarian law; secure the realization of civil, cultural, economic, political and social rights; safeguard the separation of powers; and guarantee the independence of the judiciary and legal profession.

Forum for Human Rights (Forum) is an international human rights organisation active in the Central European region. It supports domestic and international human rights organisations in advocacy and litigation and leads domestic and international litigation activities. FORUM has been supporting several cases pending before domestic judicial authorities and before the European Court of Human Rights. FORUM has authored and co-authored a number of reports and has provided information to UN and Council of Europe bodies on the situation in the Central European region, especially in Slovakia and the Czech Republic.

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Submission of the Forum for Human Rights and the International Commission of Jurists to the United Nations Committee on Economic, Social and Cultural Rights in view of its examination of Czechia's Third Periodic Report under Articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights.

I. Introduction

1. The Forum for Human Rights (Forum) and the International Commission of Jurists (ICJ) present this submission to the Committee on Economic, Social and Cultural Rights (the Committee) for its consideration in the context of its examination of Czechia's compliance with the provisions of the International Covenant on Economic, Social and Cultural Rights (hereinafter "ICESCR"), with a particular focus on **the protection of family and children (Article 10 ICESCR), and especially the right to special measures of protection and assistance (Article 10.3 ICESCR), and the obligation to provide protection to the family (Article 10.1 ICESCR) in respect of children who are either in conflict with the law or whose behaviour is considered "anti-social" or "risky"**¹ **by public authorities.** The purpose of the submission is to assist the Committee with its review of the third periodic report of Czechia on these specific points. This submission, therefore, raises concern about Czechia's compliance with ICESCR Article 10 paragraph 1 and 3 in the context of the Czech system of social protection for the above mentioned groups of children.
2. Article 10 ICESCR guarantees that "[t]he widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children" (para 1). Article 10.3 ICESCR states that:

"(S)pecial measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law."
3. The Committee has indicated that paragraph 3 of article 10 is of immediate application.²
4. In the list of issues in relation to the third periodic report of Czechia adopted by the Committee's pre-sessional working group at its sixty-sixth session (9–13 March 2020),³ under Article 10, the Committee specifically asks for "information on the steps taken to reduce the number of children living in institutions, including by increasing the provision of community-based services or foster care, and on the impact of those steps, statistics on the number of institutionalized children, disaggregated by sex, age, ethnic origin, disability, disadvantaged background and locality, and indication of the reasons for their institutionalization" (para 19).
5. In its replies to the list of issues the Czech government focuses predominantly on giving general information on the projects implemented by the Ministry of Labour and Social

¹ We use the terms "anti-social" or "risky" behaviour to refer to situations when the child is not suspected, accused or convicted of having infringed the penal law, but when their behaviour is assessed as needing intervention by public authorities, including involuntary intervention. These situations include truancy, running away, substance abuse, etc. In the Czech practice, they are also sometimes referred to as "behavioural difficulties".

² E/C.2/GC/3, para. 5

³ E/C.12/CZE/Q/3.

Affairs in the childcare system.⁴ Concerning children in conflict with the law or children whose behaviour is considered as “anti-social” or “risky” by public authorities, the Government just briefly mentions that: “the transformation of institutional education⁵ is based mainly on the need to influence vulnerable children before the start of risky behaviour in order to avoid their institutional education or to maximally reduce its duration”.⁶ This general statement, however, fails to provide the Committee with specific information about the legal conditions under which these children are institutionalised, including in closed facilities, and the procedural safeguards they are provided in the context of the proceedings leading to their institutionalisation.

6. Czechia’s approach to children in conflict with the law or whose behaviour is considered “anti-social” or “risky” by public authorities is dominated by coercive interventions, such as forced removals from their families and their placement in alternative care. Indeed, Forum and ICJ submit that Czechia’s system undermines children’s rights under the ICESCR, and in particular their right to protection of their family life (Article 10.1) and the right to special measures of protection and assistance for all children and young persons without any discrimination for reasons of parentage or other conditions (Article 10.3).
7. The submission focuses on **three specific contexts** of inappropriate provision of social protection to children in conflict with the law or society, which results in disproportionate reliance on deprivation of liberty and denial of adequate procedural safeguards:
 - The treatment of children below the age of criminal responsibility;
 - The treatment of children in conflict with the law in the child protection system; and
 - The treatment of children who have not infringed the penal law, but who are nonetheless subjected to coercive interventions on the stated grounds of their “antisocial” or “risky” behaviour.
8. The next section briefly describes the relevant international human rights law and standards related to: a) the right of the child to protection and deprivation of liberty of children; and b) their right to appropriate procedural safeguards. Section 3 elaborates on Czechia’s failure to provide children with appropriate measures of protection. A number of recommendations are suggested throughout section 3.

II. The relevant international human rights law and standards

(a) The right of the child to protection and deprivation of liberty of children

9. In Czechia, the public authorities’ child protection system has traditionally relied on deprivation of liberty⁷ in different residential welfare institutions. Specifically concerning children in conflict with the law or society, these institutions were supposed to provide the child with the necessary “therapeutic” environment for their criminal, “anti-social” or “risky” behaviour. However, in practice, the children’s experience of these institutions has reflected a very different reality. As a general matter, the former UN Special Rapporteur on the right to health, Dainius Pūras, **has rejected the idea that centres of detention or confinement can be therapeutic environments**, observing that despite all noble efforts to establish a strong culture of respect and care, “violence and humiliation usually prevails, adversely affecting the development of healthy relationships”.⁸ Specifically

⁴ E/C.12/CZE/RQ/3, paras. 67-69.

⁵ The government uses this term to refer to the measure of institutional care ordered by a civil court according to the Act no. 89/2012 Coll., the Civil Code, Section 971 (1).

⁶ E/C.12/CZE/RQ/3, para. 70.

⁷ Like the UN Global Study on children deprived of liberty (A/74/136, 2019, para. 6), we understand deprivation of liberty in terms of the definition provided by Article 4 (2) of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment and article 11 (b) of the UN Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules) as “any form of detention or imprisonment or the placement of a child in a public or private custodial setting which that child is not permitted to leave at will, either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence.”

⁸ A/HRC/38/36, 2018, para. 33.

concerning children, he emphasised that “detaining children is a form of violence”, and urged States to strengthen further the presumption against detention of children with a view to abolition.⁹

10. The UN Committee on the Rights of the Child (hereinafter “the CRC Committee”) has adopted a similar position **rejecting the idea that children can be protected through their detention.**¹⁰ Similarly, a UN Global Study on children deprived of liberty compared the deprivation of the child’s liberty to deprivation of childhood itself.¹¹ The UN Global Study also emphasized that **children should not be institutionalized to receive care, protection, education, rehabilitation, or treatment,** as such institutionalization cannot be a “substitute for the benefits of growing up in a family or a family-type setting within the community.”¹²

11. Article 10 ICESCR requires States to provide protection to the family as a fundamental unit of society, and to provide special measures **of protection and assistance** to families and children. Systematic use of detention fails to provide the necessary special protection for children required by the ICESCR.

(b) The right of the child to protection and their right to appropriate procedural safeguards

12. Under international human rights law and standards, appropriate procedural safeguards in respect of children have evolved in recent years, building on the principle of **interdependence and indivisibility of all human rights**¹³ and on **the principle of the child's best interests.**¹⁴

13. The European Committee of Social Rights has recently had an opportunity to consider procedural safeguards for children in conflict with the law. In its decision on the merits in the case of *International Commission of Jurists (ICJ) v. the Czech Republic* of 20 October 2020, the European Committee emphasized that

“in order to ensure the social and economic protection of children under Article 17 of the 1961 Charter, States Parties must **take all appropriate and necessary measures to ensure that children enjoy adequate protection, including appropriate legal procedural protections.** A failure to do so and the resultant risks posed to the child in the context of, and a result of, the relevant legal proceedings are likely to have significant and wide-ranging implications both for the child’s short-term circumstances and for their longer-term mental, moral and social development. Such measures are therefore central to ensuring the child’s right to social and legal protection in terms of Article 17.”¹⁵

14. A similar approach should also be adopted for the child’s rights to special measures and protection guaranteed by Article 10.3 of the ICESCR.

15. Among the procedural safeguards for children in conflict with the law, the **right to legal assistance** is of crucial importance. The CRC Committee has emphasized the child’s right to legal representation, in addition to a guardian or representative, in any administrative or judicial proceedings involving the determination of the child’s best interests, when there is a potential conflict between the parties in the decision.¹⁶ The CRC Committee,¹⁷

⁹ Ibid., para. 69.

¹⁰ CRC/C/GC/21, 2017, para. 44.

¹¹ A/74/136, para. 3.

¹² Ibid., para. 65.

¹³ CRC/GC/2003/5, para. 6.

¹⁴ CRC/C/GC/14, para. 6.

¹⁵ *International Commission of Jurists (ICJ) v. the Czech Republic*, decision on the merits of the European Committee of Social Rights of 20 October 2020, collective complaint no. 148/2017, para. 83. Emphasis Added.

¹⁶ CRC/C/GC/14, para. 96.

¹⁷ CRC/C/GC/24, para. 51.

the European Committee of Social Rights¹⁸ and the European Court of Human Rights¹⁹ have all also stressed the importance of legal representation for children in conflict with the law, including children below the age of criminal responsibility, if they are held responsible for their unlawful acts,²⁰ from the very first contact with the law enforcement authorities. Specifically, concerning Czechia, the CRC Committee recommended ensuring mandatory legal representation of children in judicial proceedings.²¹

III. THREE SPECIFIC CONTEXTS IN WHICH CZECHIA FAILS TO PROVIDE CHILDREN WITH APPROPRIATE MEASURES OF PROTECTION

16. Below, Forum and ICJ describe three specific contexts in which Czechia fails to provide children with appropriate social protection. They relate to children who are **either in conflict with the law or society**. Common to all three contexts are: (i) an **unreasonable reliance on depriving children of their liberty**, in violation of their right to liberty, among others; and (ii) **the lack of adequate procedural safeguards** in law and practice. With respect to all three contexts, we submit that Czechia has failed to meet its obligation to establish measures of protection for the child, under Article 10(3) ICESCR, with consequences for compliance with other ICESCR rights, such as the right to health under article 12 of the ICESCR.²²

III.1. Children below the age of criminal responsibility (Article 10.3; Article 10.1)

17. In Czechia, albeit **children below the age of criminal responsibility**²³ are not formally criminally responsible, they **are still subject to formal legal proceedings** in connection with suspicion of their having infringed the penal law, and formal measures may be imposed on them as a result. These measures significantly overlap with measures that may be imposed on children who may be held criminally responsible. They include measures depriving children below the age of criminal responsibility of their liberty as a result of their being forcibly placed either in an educational or psychiatric institution (see scheme no. 1).

Scheme no. 1: Juvenile justice measures²⁴ applicable to children below 15 and juveniles²⁵

| Measures | | Children below 15 | Juveniles |
|-----------|---|-------------------|-----------|
| Divisions | Discontinuation of criminal prosecution | X | √ |
| | Approval of settlement | X | √ |
| | Withdrawal of criminal prosecution | X | √ |
| | Refrainment from imposing a measure | √ | √ |

¹⁸ *International Commission of Jurists (ICJ) v. the Czech republic*, decision on the merits of the European Committee of Social Rights of 20 October 2020, collective complaint no. 148/2017, paras. 89-100.

¹⁹ See *Blokhin v. Russia*, judgment of the European Court of Human Rights (Grand Chamber) of 23 March 2016, complaint no. 47152/06, para. 198; *Panovits v. Cyprus*, judgment of the European Court of Human Rights of 11 December 2008, complaint no. 4268/04, paras. 64-66; *Salduz v. Turkey*, judgment of the European Court of Human Rights (Grand Chamber) of 27 November 2008, complaint no. 36391/02, paras. 50-55.

²⁰ See *Blokhin v. Russia*, judgment of the European Court of Human Rights (Grand Chamber) of 23 March 2016, complaint no. 47152/06, paras. 179-182.

²¹ CRC/C/CZE/CO/5-6, para. 20 (b).

²² See especially the thematic reports of the UN Special Rapporteur on the right to health, Dainius Pūras, on the right to health of adolescents, A/HRC/32/32, and on the right to health and deprivation of liberty, A/HRC/38/36.

²³ The minimum age of criminal responsibility is 15 in Czechia.

²⁴ Measures defined by the Act no. 218/2003 Coll., concerning youth responsibility for unlawful acts and judicial proceedings involving youths. In the juvenile justice system, the term “youth” is used as an umbrella term that covers both children below and above criminal responsibility.

²⁵ The term “juvenile” is used in the Czech juvenile justice system to refer to children above the age of criminal responsibility, i.e. children over 15 years of age.

| | | | |
|-------------|---|---|---|
| Educational | Supervision of probation officer | √ | √ |
| | Probation Program | X | √ |
| | Educational duties | √ | √ |
| | Educational restrictions | √ | √ |
| | Admonition with warning | √ | √ |
| | Placing in a therapeutic, psychological, or another suitable educational program in the centre of educational care* | √ | X |
| Protective | Protective care* | √ | √ |
| | Protective treatment, ambulatory or institutional* | √ | √ |
| | Security detention* | X | √ |
| | Confiscation of an item | X | √ |
| Punitive | Community service activities | X | √ |
| | Financial measures | X | √ |
| | Financial measures with a conditional suspension of sentence | X | √ |
| | Confiscation of an item | X | √ |
| | Prohibition to undertake activities | X | √ |
| | Banishment | X | √ |
| | House confinement | X | √ |
| | Ban from sport, cultural and other social events | X | √ |
| | Imprisonment conditionally suspended | X | √ |
| | Imprisonment conditionally suspended under supervision | X | √ |
| | Unconditional imprisonment* | X | √ |

* Measures that result or may result in the child's detention in an institution

18. The proceedings against children below the age of criminal responsibility consist of **two main stages**:

- **the pretrial stage** before the law enforcement authorities under the supervision of public prosecution and
- **the trial stage** before the juvenile court.

19. However, at **the pretrial stage, children below the age of criminal responsibility** do not benefit from at least the same level of procedural protection as children above the age of criminal responsibility who are charged with criminal offences. In addition, **the trial stage is mandatory** for children below the age of criminal responsibility, unlike in respect of children who may be held criminally responsible or in relation to accused adults.

20. The European Committee of Social Rights has found this system²⁶ to be **in breach of the right of the child to social and economic protection under Article 17 of the 1961 European Social Charter** on two grounds. First, the State's failure to provide children with legal assistance from their very first contact with law enforcement authorities, especially during police questioning. Second, the State's failure to provide these children with diversion and restorative justice measures.

21. Similarly, the UN Committee on the Rights of the Child has urged Czechia in its latest Concluding Observations on the country's fifth and sixth periodic reports under the Convention on the Rights of the Child to ensure that children below the age of criminal responsibility "are not treated as offenders, benefit from high-quality, free and independent legal aid, access to their case files, evidence and the right to appeal and are

²⁶ *International Commission of Jurists (ICJ) v. the Czech republic*, decision on the merits of the European Committee of Social Rights of 20 October 2020, collective complaint no. 148/2017.

never placed in closed institutions for young offenders” and “to establish and promote non-judicial measures, such as diversion, mediation, and counselling, for all children in conflict with the law, regardless of their age, and, wherever possible, the use of non-custodial sentences for children, such as probation or community service.”²⁷

22. The Czech government is currently preparing a draft amendment to the national legislation, namely the Juvenile Justice Act,²⁸ which should provide children below the age of criminal responsibility with mandatory legal representation from the very first contact with the law enforcement authorities and with alternatives to formal judicial proceedings before the juvenile court. However, the draft has not yet been finalized, let alone enacted into law.

Recommendation:

- **Forum and ICJ urge the Committee to recommend that Czechia take steps to amend the current legislation and reform the existing child justice system for children below the age of criminal responsibility in a way that provides these children with mandatory legal representation from their very first contact with law enforcement authorities and with a wide range of non-judicial solutions, preferably based on restorative justice principles.**²⁹

III.2. Children in conflict with the law in the child protection system (Article 10.1; Article 10.3)

23. The existence of a specific system for children below the age of criminal responsibility, formally designed as civil and purportedly protection-oriented, is not the only way to deprive children in conflict with the law of effective procedural and substantive safeguards for their protection, including safeguards militating against depriving them of their liberty unreasonably. The criminal justice standards are also circumvented by considering the suspicion of an unlawful act by a child as a “behavioural problem” and **referring children in conflict with the law, both below and above the age of criminal responsibility, to civil (family/guardianship) courts.** In practice, it is not rare that following a suspicion of criminal conduct of the child, two parallel legal proceedings are initiated. One is held before criminal justice authorities and the other before the civil court.

24. However, before the civil courts, **children are not guaranteed any specific safeguards.** They are not mandatorily provided with the legal representation of a lawyer, but are instead represented by social workers who represent the public authority and who act as the child’s guardian *ad litem* for the protection of the child³⁰.

25. Furthermore, the civil court may order placement of children in conflict with the law in an alternative care institution, usually one with a closed regime (diagnostic institution, children’s home with school, closed educational facility) which is common for both “children in need”³¹ and children who have been found guilty of an offence by the juvenile court.³² These placements often take place upon interim orders that are issued at the

²⁷ CRC/C/CZE/CO/5-6, 2021, para. 48 (b) and (c).

²⁸ Act no. 218/2003 Coll.

²⁹ As formulated, for instance, in the Recommendation CM/Rec(2018)8 of the Committee of Ministers to member States concerning restorative justice in criminal matters.

³⁰ So called social and legal child protection authority.

³¹ Children under the public protection. The national legislation defines this group quite vaguely in the Act no. 359/1999 Coll., on social and legal protection of children, Section 6. It covers virtually all children who face adverse circumstances in their lives where these circumstances have existed for a period of time or were of such intensity that they have an adverse impact on children’s development or can result in children’s adverse development.

³² According to the national legislation, these institutions should be built separately for children placed there upon a juvenile court order and upon a civil court order. Nevertheless, the type of the institutions and the main principles on which they operate, especially the intensive discipline and re-education, are still the same. Furthermore, in practice both groups of children live together.

beginning of the civil proceedings and may serve as a **de facto substitute for pre-trial detention**. Later in the civil proceedings, the civil courts may decide on imposing so-called institutional upbringing as an alternative care measure that again serves as a **de facto substitute for measures adopted by the juvenile court**. **The civil law does not establish strict conditions equivalent to those in the criminal justice system, either for interim measures or institutional care, since these measures are not deemed punitive but protective.** The result is that the practice of civil proceedings parallel to the criminal proceedings concerning children in conflict with the law nullifies the effectiveness of the criminal justice guarantees militating against depriving children of their liberty unreasonably.

26. The 2017 thematic report of the Czech School Inspectorate on those closed educational facilities confirmed the prevalence of this practice and the high number of children who are placed in these institutions for having committed a criminal offence by a decision of the civil court.³³ The report listed **the child's criminal behaviour as the second most common reason for the child's placement in these institutions**, appearing in more than one-quarter of cases (25,1%; 1000 in absolute numbers). Moreover, the number of children placed in these institutions by a juvenile court following their having been found guilty of an unlawful act remains constantly low compared to children placed in these institutions by the civil court (see table no. 1).

Table no. 1: Number of children in closed alternative care institutions upon a civil court order and a juvenile court order

| | Juvenile court order (so-called protective upbringing) | Civil court order | |
|-------------|---|-------------------|--------------------------|
| | | Interim order | Institutional upbringing |
| 2015 | 73 | 520 | 1 501 |
| 2016 | 83 | 470 | 1 566 |
| 2017 | 83 | 427 | 1 500 |
| 2018 | 87 | 412 | 1 559 |
| 2019 | 103 | 394 | 1 628 |
| 2020 | 121 | 354 | 1 581 |

Source: *Ministry of Education, Youth, and Sports*

27. In order to comply with Article 10 of ICESCR, Czechia must abandon the practice according to which suspicion of having committed an unlawful act or a child's alleged criminal behaviour constitute reasons for ordering placement of the child in institutional care, as well as the possibility that these children's cases be dealt with in parallel to criminal proceedings in civil proceedings before the civil court. Such placements, although ostensibly designed for the "protection" of the child, in practice provide insufficient safeguards to respect the child's ICESCR rights, including rights to family life under Article 10.1. Furthermore, by applying punitive measures to children under the guise of protection, with lower safeguards and protections than apply to adults, such measures are directly contrary to the State's obligation under Article 10.3 to ensure special measures of protection for the child without discrimination.

³³ See Czech School Inspectorate. Kvalita výchovně-vzdělávací činnosti v zařízeních pro výkon ústavní nebo ochranné výchovy. Tematická zpráva. [Quality of the upbringing-educative effort of the facilities for institutional and protective upbringing. Thematic report; online]. Prague: Czech School Inspectorate, 2017 [accessed 25/11/2021], p. 5. Available in Czech at: https://www.csicr.cz/Csicr/media/Prilohy/PDF_el_publicace/Tematick%C3%A9%20zpr%C3%A1vy/01-F_TZ-Kvalita-vychovne-vzdelavaci-cinnosti-v-zarizenich-pro-vykon-UV-OV_FINAL-2-5.pdf

Recommendations:

- **Forum and ICJ urge the Committee to recommend that Czechia takes all necessary steps, including legislative amendments,³⁴ to ensure that the suspicion that a child has committed an unlawful act or the child's criminal behaviour is not dealt with by the child protection system in parallel to the child justice system.**

III.3. Children whose behaviour is considered "antisocial" or "risky" and the problem of "status offences" (Article 10.1, Article 10.3 ICESCR)

28. Criminal behaviour is not the only reason why a civil court may order alternative care placement of the child in a closed regime facility. The category of **"behavioural difficulties" or "behavioural problems"** is understood much more broadly and may be considered and applied to cover all behaviours of the child that are considered "antisocial" or "risky" (e.g., "truancy", substance and alcohol "abuse", "aggressive behaviour", etc). These overly broad terms are not defined by national legislation³⁵ and their interpretation in the hands of representatives of child protection authorities and family courts depends on the vagaries of public opinion and upon societal attitudes towards the child's behaviour as acceptable or not. Despite the likelihood of abuse, the specific interpretations are of significant importance as they result in a child's forced confinement to an institution and in their subordination to the institutional regime. So-called "care" placements made on these grounds are likely to lead to violations of children's rights under the Covenant, including their right to family life (Article 10.1), given the vagueness of the laws and criteria applied, as a result, they are likely to be discriminatory, contrary to Article 2.2 ICESCR and contrary to the rule of law.

29. According to official statistics, "behavioural difficulties" are **the third most common reason for the removal of children from their family**. While maltreatment and abuse together constitute only approximately 5.5 % of all removals from families, "behavioural difficulties" constitute **nearly one-quarter** (see tables no. 2 and 3).³⁶ Children placed in closed regime institutions (diagnostic institutions, children's homes with school, and closed educational institutions) represent **one-third of all institutionalised children upon civil court orders** (see table no. 4).

Table no. 2: Official reasons for removals of children in the Czech Republic from their families (2016 - 2020)

| | Child maltreatment | Child abuse | Neglect of the child's upbringing | Upbringing difficulties in the child's behaviour | Other obstacles in the care of the child on the part of the parents | Total |
|--------------------------|---------------------------|--------------------|--|---|--|--------------|
| 2016 | 158 | 42 | 1 665 | 937 | 1 010 | 3 812 |
| 2017 | 141 | 24 | 1 640 | 871 | 1 070 | 3 746 |
| 2018 | 122 | 43 | 1 541 | 862 | 1 071 | 3 639 |
| 2019 | 167 | 29 | 1 608 | 843 | 932 | 3 579 |
| 2020³⁷ | 144 | 25 | 1 463 | 552 | 719 | 2 903 |

Source: *Ministry of Labour and Social Affairs*

³⁴ Especially to the legal conditions of institutional care as defined in Act no. 89/2012 Coll., the Civil Code, Section 971 (1).

³⁵ Act no. 359/1999 Coll., on social and legal protection of children, and act no. 89/2012 Coll., the Civil Code.

³⁶ We prefer to use data for 2019 since these are not influenced by the COVID-19 pandemic and thus are likely to give an accurate picture of the normal situation in the Czech Republic. Source: Ministry of Labour and Social Affairs.

³⁷ It is very likely that these numbers and the reduction in number of children removed from their families by more than 600 were due to the COVID-19 pandemic.

Table no. 3: The total number of removed children and the proportion of those who were removed due to “upbringing difficulties in the child’s behaviour” compared to the cases of child maltreatment and abuse

| | Total number of removals | The proportion of cases of child maltreatment and child abuse in the total number of removals (%) | The proportion of cases of “upbringing difficulties” in the child’s behaviour (%) |
|--------------------------|--------------------------|---|---|
| 2016 | 3 812 | 5,2 | 24,6 |
| 2017 | 3 746 | 4,4 | 23,3 |
| 2018 | 3 639 | 4,5 | 23,7 |
| 2019 | 3 579 | 5,5 | 23,6 |
| 2020³⁸ | 2 903 | 5,8 | 19 |

Source: Ministry of Labour and Social Affairs

Table no. 4: The number of children placed in closed regime institutions (diagnostic institutions, children’s homes with school, closed educational institutions) by civil court orders 2016-2020

| | Children homes (open institutions) | Diagnostic institutions | Children homes with school | Closed educational institutions | Total number in educational institutions | Total number of children in closed regime institutions upon civil court orders | % |
|-------------|------------------------------------|-------------------------|----------------------------|---------------------------------|--|--|------|
| 2015 | 3 778 | 336 | 724 | 961 | 5 799 | 2 021 | 34,9 |
| 2016 | 3 824 | 358 | 712 | 966 | 5 860 | 2 036 | 34,7 |
| 2017 | 3 887 | 365 | 676 | 886 | 5 814 | 1 927 | 33,1 |
| 2018 | 3 848 | 370 | 727 | 874 | 5 819 | 1 971 | 33,9 |
| 2019 | 3 978 | 373 | 761 | 888 | 6 000 | 2 022 | 33,7 |
| 2020 | 3 957 | 350 | 706 | 879 | 5 892 | 1 935 | 32,8 |

Source: Ministry of Education, Youth, and Sports

30. Although “behavioural difficulties” or “behavioural problems” are not officially defined as “status offences”,³⁹ effectively they are. Restrictions on rights, including deprivation of liberty, are imposed on children following “behaviour” that is not itself illegal, and which would not be punishable if engaged in by an adult. The difference is that **these “behaviours” are dealt with outside the criminal justice system, resulting in lower procedural and substantive protections for children, including when faced with deprivation of liberty.** As mentioned above, the institutions where these children are placed are the same as the institutions for children in conflict with the law (diagnostic institutions, children’s homes with school, closed educational facility). The regimes to which these two groups of children are subjected differ only slightly.⁴⁰

³⁸ It is very likely that these numbers and the reduction in number of children removed from their families by more than 600 were strongly influenced by the COVID-19 pandemic.

³⁹ The CRC has expressed concern about the very concept of status offences, including because of it is inherently discriminatory - CRC/C/GC/21, para. 26. The CRC Committee thus urges the State parties to abandon this practice - CRC/C/GC/10, para. 8; CRC/C/GC/24, para. 12.

⁴⁰ Children who are placed in these closed facilities upon a juvenile court order are not allowed to be visited by other persons than their relatives and close persons and leave the facility without being accompanied by a member of the staff unlike children placed in closed facilities upon a civil court order. However, the everyday regime of both groups is in practice practically the same and it is strictly organised and supervised. See Act no. 109/2002 Coll., on institutional and protection upbringing in educational facilities and preventive upbringing care in educational facilities.

31. The issue of alternative care placements of children due to their behaviour being considered “antisocial” and “risky” has been most recently raised by the Council of Europe Secretariat in their submission to the CRC Committee’s Day of General Discussion on “Children’s Rights and Alternative Care” (16-17 September 2021). The submission mentioned the results of the Council of Europe’s 2021 survey that “confirmed that children with challenging behaviour continue to be placed in large and small residential care settings, foster care, medical facilities, and secure accommodation”. The submission therefore proposed that the States support these children and young persons “through a child centred approach rather than imposition of penalties” and develop interventions promoting resilience, strengthening protective factors, empowering children and parents, promoting coping skills, eliminating or reducing violence, discrimination and inequalities.⁴¹
32. In its last set of Concluding observations concerning Czechia, the CRC Committee expressed concern about children’s “high institutionalization rates, including in large institutions, (...) for “behavioural difficulties”, (...)”⁴² and recommended that Czechia “ensure that children are only separated from their family if it is in their best interests and after a comprehensive assessment of their situation (...) and abandon the practice of placement for ‘behavioural difficulties’”.⁴³
33. Forum and ICJ consider that the institutionalization of children as practised in Czechia constitutes a violation of their family life rights under Article 10.1 and of their protection rights under 10.3. Recommendations made by the Committee to Finland, Latvia and Norway respectively support such an understanding:
- In its Concluding Observations to Finland, with regard to article 10, the Committee was concerned at the frequent recourse to placing children in alternative care. The Committee therefore recommended that Finland prioritise efforts to keep children in or return them to the care of their family and to ensure the families’ access to forms of support in the caregiving role. It further recommended that Finland increase the capacity of preventative social care services, address the shortage of qualified personnel and ensure that children can benefit effectively from social care services.⁴⁴
 - In Its Concluding Observations on Norway, the Committee raised concern “that a number of children continue to be removed from parental care and put in foster care or institutions and that many of them have serious mental health conditions.”⁴⁵ It therefore recommended that Norway, among other things: “(a) Identify and address the root causes of the situations that have led to the removal of children from parental care; (b) Ensure that the removal of children from parental care is used as a measure of last resort; (c) Strengthen periodic comprehensive reviews of children placed in foster homes or institutions; (d) Provide parents with the necessary assistance and support for them to exercise their parental role and responsibilities in the upbringing and education of their children; (e) Provide municipalities with sufficient resources and support so that they can effectively undertake preventive work in families at risk and follow-up work for children in foster families or homes; (f) Ensure the timely detection of children with mental health conditions and provide the necessary services”.⁴⁶

⁴¹ The Council of Europe Secretariat’s submission is available at:
<https://owncloud.unoq.ch/s/j0qk6e5tZMjqhsk?path=%2F3.%20IGOs>

⁴² CRC/C/CZE/CO/5-6, para. 30 (c).

⁴³ *Ibid.*, para. 31 (e).

⁴⁴ Concluding observations on the seventh periodic report of Finland, Adopted by the Committee at its sixty-ninth session (15 February–5 March 2021), E/C.12/FIN/CO/7, paras. 32-33.

⁴⁵ Concluding observations on the sixth periodic report of Norway, Adopted by the Committee at its sixty-seventh session (17 February–6 March 2020), E/C.12/NOR/CO/6, para. 30.

⁴⁶ *Ibid.*, para. 31.

Recommendations:

Forum and ICJ urge the Committee to recommend that Czechia take necessary measures, including by:

- **Abandoning the practice of separating children from their families and placing them in alternative care due to their “behaviour difficulties” or “behaviour problems”. To this end, Czechia should adopt all necessary measures, including legislative amendments.⁴⁷**
- **Ensuring that a civil court order can never lead to placement of a child in a closed regime facility (diagnostic institution, children’s home with school, closed educational facility). To this end Czechia should adopt all necessary measures, including legislative amendments.⁴⁸**

⁴⁷ Especially to the legal conditions of institutional care as defined in Act no. 89/2012 Coll., the Civil Code, Section 971 (1).

⁴⁸ Especially to Act no. 109/2002 Coll.