



NGO information to the United Nations Committee on Economic, Social and Cultural Rights for consideration when compiling the List of Issues on the Second Periodic Report of the Czech Republic under the International Covenant on Economic, Social and Cultural Rights

League of Human Rights (LIGA)
Burešova 6, 602 00 Brno
Czech Republic
www.llp.cz; e-mail: brno@llp.cz

INTRODUCTION

1. This written submission provides information to the United Nations Committee on Economic, Social and Cultural Rights (*hereinafter* “the Committee”) for consideration when compiling the List of Issues on the Second Periodic Report of the Czech Republic under the International Covenant on Economic, Social and Cultural Rights (*hereinafter* “the Government’s Report”). This submission concerns relevant issues under the ICESCR with regard to the special protection of young children suspected of having committed an unlawful act (see below section 1.) and to the implementation of the right to the highest attainable standard of health (see below sections 2. - 4.)
2. Young children who come into contact with the criminal justice system are in particularly vulnerable position. The human rights standards acknowledge this vulnerability and require the Government to adopt special measures of protection and assistance, taking into account their age, level of maturity, and intellectual and emotional capacities. The Czech juvenile justice system differentiates between children below the age of criminal responsibility, who are aged 0-15, and juveniles who are aged 15-18. In our submission we focus on children below the age of criminal responsibility because level of their protection is particularly low and it raises serious issues under ICESCR.
3. Children who have suffered serious adverse effects of compulsory immunization have no access to any compensation for the damage to health. The state lowered their legal protection and fails to collect objective data on adverse effects of compulsory vaccination and on vaccine-damaged children. The Czech healthcare system does not ensure special protection of mothers and children in relation to childbirth. In maternity hospitals, where women are in vulnerable position, women’s rights are often not respected, especially their right to informed consent. The state also denies any health care at home births and expose mothers and babies to risks.
4. This submission has been written by the League of Human Rights (*hereinafter* “LIGA”). LIGA is a non-governmental human rights organization established in 2002 and headquartered in Brno, Czech Republic. Our vision is fair, free and engaged society for all. Since 2002, LIGA has been systematically promoting human rights in criminal justice, including children rights. LIGA is a member organization of *Fédération Internationale des droits de l’Homme* (FIDH).

COMMENTS UNDER THE ICESCR

1. Failure to ensure special protection of young children alleged as or recognized as having infringed the penal law

1.1. Failure to promote rehabilitation and restorative justice objectives in juvenile justice system

5. Special protection of young children within the juvenile justice system requires states to introduce specific procedures which promote rehabilitation and are based on restorative justice principles. Rehabilitation relates to the “best interest principle” as recognised under Article 3 Convention on the Rights of the Child (*hereinafter* “the CRC”) and should be understood together with restorative justice principles. According to the CRC Committee’s General Comment no. 10, “*the protection of the best interests of the child means, for instance, that the traditional objectives of criminal justice, such as repression/retribution, must give way to rehabilitation and restorative justice objectives in dealing with child offenders.*”¹
6. According to the Human Rights Committee’s General Comment no. 32, “*states should take measures to establish an appropriate juvenile criminal justice system, in order to ensure that juveniles are treated in a manner commensurate with their age.*”² **In the Czech Republic, even though the Juvenile Justice Act formally recognises restorative justice principles, these do not apply to children below the age of criminal responsibility.** Children below the age of criminal responsibility are perceived as objects of care, rather than subjects with equal rights. They do not have access to basic procedural safeguards, including the right of access to legal representation (see below paras. 6-7); victims are not involved in the proceedings (see below paras. 12-13); there are no diversions available and children below the age of criminal responsibility are always subjected to formal trials; and none of the sanctions available seek to restore disturbed relationships (see below paras. 8-11).

Suggested question to the Government:

¹ CRC/C/GC/10, 25 April 2007, para. 10.

² CCPR/C/GC/32, 23 August 2007, para. 42.

- Please indicate how the state party guaranteed special protection of children below the age of criminal responsibility in juvenile justice system and how does the procedure promotes rehabilitation and restorative justice objectives?

1.2. Failure to ensure legal protection of children below the age of criminal responsibility in the pre-trial stage

7. We argue that inherent part of “special protection” of children below the age of criminal responsibility is legal protection in order to ensure basic level of procedural fairness and ensure the right to preparation of his or her defence. The Czech juvenile justice system however deprives children below the age of criminal responsibility of their right to appropriate legal assistance in the pre-trial stage of criminal proceedings. Very clear on legal assistance as part of special protection of children is the CRC Committee. In its General Comment no. 10, the Committee recommends the state parties to “[...] provide as much as possible for adequate trained legal assistance, such as expert lawyers or paralegal professionals”.³ **The right to legal assistance in the context of specific social protection of minors has been also stipulated in number of other UN documents related to juvenile justice.** The Beijing Rules provides that “Throughout the proceedings the juvenile shall have the right to be represented by a legal adviser or to apply for free legal aid where there is provision for such aid in the country“. Other documents, for example a guidance note by the Secretary General of the United Nations on the UN Approach to Justice for Children suggests that “Basic procedural safeguards as set forth in relevant national and international norms and standards shall be guaranteed at all stages of proceedings in state and non-state systems, as well as in international justice. This includes, for example, the right to privacy, the right to legal aid and other types of assistance and the right to challenge decisions with a higher judicial authority.”
8. Under the Juvenile Justice Act, juveniles (age 15-18) receive obligatory legal assistance from the very first contact of the suspected juvenile with the prosecuting authorities. The reason for this broadly formulated mandatory legal assistance is the lack of maturity of juveniles to effectively defend themselves. Unlike juveniles, the law does not provide for mandatory legal assistance by a defence counsel in cases of children below the age of criminal responsibility, who are in the same procedural position. Even though they cannot be held formally liable for criminal offence, they may still be held liable for unlawful act and subjected to serious sanctions, including

³ CRC/C/GC/10, 25 April 2007, para. 49.

sanctions of deprivation of liberty. During the pre-trial stage, which in practice takes months, they are routinely subjected to repeat interrogations at police stations, and can be subjected to blood sampling, fingerprinting and extracting DNA. Without legal assistance children below the age of criminal responsibility are fully at mercy of prosecuting authorities. Eventually this leads to extremely low protection which can negatively influence child development and creates mycelium for inappropriate prosecution and further stigmatization.

Suggested question to the Government:

- **Please inform the Committee how has the state party guaranteed that children below the age of criminal responsibility are provided with appropriate legal assistance in the presentation and preparation of their defence during the pre-trial stage of juvenile justice proceedings?**

1.3. Failure to ensure protection of children below the age of criminal responsibility against unreasonable and unnecessary formal trials before juvenile courts

9. The restorative justice measures such as mediation and various forms of diversions have become important forms of intervention in juvenile justice systems. Human rights approach to juvenile delinquency favours alternatives to formal trial because it prevents unnecessary stigmatisation of young children and thus strengthen their social protection. For example, in the General Comment no. 10, the CRC Committee recommends the state parties to “[...] *take measures for dealing with children in conflict with the law without resorting to judicial proceedings as an integral part of their juvenile justice system [...].*”⁴ Other relevant UN documents also underline requirement of diversions and alternatives to formal trial. According to the Beijing Rules, in the juvenile justice system, “*consideration shall be given, wherever appropriate, to dealing with juvenile offenders without resorting to formal trial by the competent authority*”, and more specifically „*the police, the prosecution or other agencies dealing with juvenile cases shall be empowered to dispose of such cases, at their discretion, without recourse to formal hearings, in accordance with the criteria laid down for that purpose in the respective legal system*”.⁵ The Riyadh Guidelines provides that “*Community-based services and programmes should be developed for the prevention of juvenile delinquency, particularly where no agencies have yet been*

⁴ CRC/C/GC/10, 25 April 2007, para. 26.

⁵ A/RES/40/33, The United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules"), Rule 11.

established. Formal agencies of social control should only be utilized as a means of last resort“.⁶ The United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules) recommends that “*Where appropriate and compatible with the legal system, the police, the prosecution service or other agencies ... should be empowered to discharge the offender if they consider that it is not necessary to proceed with the case for the protection of society, crime prevention or the promotion of respect for the law and the rights of victims. ...*”.⁷

10. In cases of children below the age of criminal responsibility, the Czech juvenile justice system does not provide for any alternatives (diversions) to formal trial before the juvenile court. After the case has been suspended under Article 159a(2), the state prosecutor is obliged under Article 90(1) Juvenile Justice Act to refer the case of a child to the juvenile court. Even though the Juvenile Justice Act proclaims in Article 3(1) that it is built on restorative justice principles, it does not provide for mediation or any form of diversions available to children below the age of criminal responsibility who are thus always subjected to formal judicial proceedings, including when committing petty offences. The law does not enable the prosecuting authorities to protect the child from potential harm caused by stigmatization before the juvenile court.⁸

Suggested question to the Government:

- **Please indicate the measures that the state party plans to adopt in order to ensure that children below the age of criminal responsibility are dealt with without resorting to judicial proceedings whenever appropriate and desirable?**

1.4. Failure to explicitly ensure restorative justice measures, such as mediation between a child below the age of criminal responsibility and a victim or conference

⁶ A/RES/45/112, The United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines), para. 6.

⁷ United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules), G.A. res. 45/110, annex, 45 U.N. GAOR Supp. (No. 49A) at 197, U.N. Doc. A/45/49 (1990), para 5.1.

⁸ The CRC Committee in its General Comment no. 10 specifically noted obligation of the state parties “[...] to promote measures for dealing with children in conflict with the law without resorting to judicial proceedings”, and emphasized particularly that these are not certainly “[...] limited to children who committed minor offences, such as shoplifting or other property offences with limited damage, and first-time child offenders.”. See, CRC/C/GC/10, 25 April 2007, para. 25.

11. Moreover, under Article 93(1)-(9) of the Juvenile Justice Act, if found committing and unlawful act, the court can impose one or a combination of following sanctions:
- a) educational duties,
 - b) educational restrictions,
 - c) warning from competent authorities, legal representatives, school or educational facility,
 - d) supervision of a probation officer,
 - e) assignment to the therapeutic, psychological or other appropriate upbringing programme in the upbringing care facility,
 - f) protective custody,
 - g) protective medical treatment (ambulatory or institutional).
12. Even though there is a range of sanctions available, none of them is based on restorative justice principles. The law does not explicitly provide for any form of mediation between the child under the age of criminal responsibility and the victim, or any form of conferences with the family of the perpetrator, either during the proceedings before the juvenile court, or as a result of the proceedings.

Suggested question to the Government:

- **Please provide information whether the state party has ensured that measures such as mediation between the perpetrator and the victim, conferences with the family of the perpetrator are provided in cases when the child below the age of criminal responsibility is the perpetrator?**

1.5. Failure to ensure victims' participation

13. The Czech system of juvenile justice does not ensure the healing power accompanying full victim participation throughout proceedings against children below the age of criminal responsibility. Unlike proceeding against juveniles, the proceedings against younger children do not require active victim participation and also do not offer any real procedural possibility for the victim to take active part at any stage of the proceedings. The 1985 UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power recognised victims' rights of access to justice and fair treatment. The UN General Assembly moreover emphasised that where appropriate, like in a juvenile justice system, the *"informal mechanisms for the resolution of disputes, including mediation, arbitration and customary justice or indigenous practices, should be utilized [...]* to facilitate conciliation and redress for

victims.”⁹ Also the CRC Committee in its General Comment no. 10 on juvenile justice recommended the state parties to acknowledge different forms of victims’ participation based on restorative justice principles, including mediation and conferences.¹⁰

14. In the pre-trial phase, the victim is not officially involved in the proceedings and there is no legal possibility for the police or probation service to put together the perpetrator and the victim, e.g. in a form of mediation or conference. The child and the victim cannot benefit from any form of reparatory mediation. During the trial stage, the victim is not recognised under the Czech law as a concerned party, has no official standing and cannot take an active part. Thus, the victim is fully excluded from the proceedings before the juvenile court. Finally, there is no measure available under the Czech law which would facilitate reparation of damaged relationships between the perpetrator and the victim and their communities.

Suggested question to the Government:

- **Please indicate how the state party plans to ensure victims’ rights in proceedings against children below the age of criminal responsibility under the Juvenile Justice Act and the Civil Procedure Code?**

2. Failure to ensure protection of children in case of adverse effects of compulsory immunization

2.1 Failure to provide vaccine-injured children with access to compensation

15. Even though the State has obligation to provide immunization against the major infection disease occurring in the community,¹¹ the right of children to the highest attainable standard of health must be respected when fulfilling this obligation. According to the CESCR Committee’s General Comment No. 14, *“In all policies and programmes aimed at guaranteeing the right to health of children and adolescents their best interests shall be a primary consideration.”*¹²

⁹ A/RES/40/34, 29 November 1995

¹⁰ CRC/C/GC/10, 25 April 2007, para. 27.

¹¹ CESCR/E/C/12 – The right to the highest attainable standard of health, 11 August 2000, para 44.

¹² Ibid, para 24.

16. In the Czech Republic, the vaccination against 9 diseases is mandatory for children; nevertheless the State has not assumed any responsibility for possible adverse effects of the vaccines. For now the possible legal responsibility falls on the doctors administering the vaccines, who, therefore, have no motivation to report any side effects; only a fractional number of side effects are ever reported. This means that there are **no objective data on the vaccines safety**. There are **no known cases of compensation awarded for adverse effects of vaccination**, even though there are cases of death of children due to vaccination.¹³
17. In January 2013 the new Civil Code comes into force and even the current strict liability of doctors for administering drugs will be abolished. The current Civil Code regulates the strict (absolute) liability of healthcare providers for negative consequences of drugs administration, including vaccines. The new legislation abolished this strict liability and a victim will have to prove a fault of doctor to obtain compensation. At the same time, responsibility of doctors was not replaced by state responsibility. Thus, the situation of the victims dramatically gets worse. The forthcoming situation, when vaccine-injured children and their families bear all negative consequences without any compensation for undergoing the risk in favor of community, can be described as an unallowable retrogressive measure.¹⁴
18. In March 2011, National Advisory Committee on Immunization, an advisory body of the Minister of Health, for the first time pointed to the necessity to incorporate the responsibility of the State in case of adverse effects of mandatory vaccines into the amendment of Protection of Public Health Act.¹⁵ However, no change occurred.
19. **The State is not respecting basic rules for limiting the exercise of fundamental rights to autonomy and freedom in decision-making regarding health-care through mandatory treatment** that must be intended to protect the rights of individuals, the limitations must be proportional and the least restrictive alternative must be adopted.¹⁶ Provided that the State forces the families to vaccination in favor of

¹³ Vojtech Thon, immunologist, pointed out the documented death of eight children due to this particular improper vaccination. Article by Vojtech Thon entitled „Bezpečné očkovaní nejen proti tuberkulóze“ (“Safe vaccination against tuberculosis”), published on 29th April 2010, in Zdravotnické noviny, available at (only in Czech): <http://www.zdn.cz/denni-zpravy/komentare/bezpecne-ockovani-nejen-proti-tuberkuloze-451356>.

¹⁴ CESCR/E/C/12 – The right to the highest attainable standard of health, 11 August 2000, para 32, 48.

¹⁵ Record of the meeting of the National Advisory Committee on Immunization held on 31 March 2011 at the Ministry of Health, para 8. Available at: http://www.mzcr.cz/Verejne/dokumenty/zapis-ze-zasedani-narodni-imunizacni-komise-31-3-2011_5110_2138_5.html.

¹⁶ Ibid, para 28.

society, in case of adverse effects **compensation must be guaranteed** as a progressive realization of right to health and healthy development of children.

Suggested question to the Government:

- **Please inform the Committee which measures have been taken in order that vaccine-injured children have access to compensation for the injuries and damage to health?**

2.2 Failure to collect data on adverse effects of vaccination and vaccine-damaged children

20. Properly documented and repeatedly occurring side effects may help the affected persons prove the causal link between vaccination and harm to health, and obtain damage compensation from the doctor. However with regard to the above described current situation when doctors may be held strict liable (without fault) for the adverse effects of vaccination, they have naturally no motivation to report them to the authorities.

21. Subsequently, the State has **no objective information on adverse effects and damaged children and is not able to adopt or implement a national health policy designed to ensure the right to health in this field.** The State does not develop efforts to use and improve *“epidemiological surveillance and data collection on a disaggregated basis, the implementation or enhancement of immunization programmes and other strategies of infectious disease control”*, as the CESCR Committee requires in General Comment No. 14.¹⁷

Suggested question to the Government:

- **Please indicate how the state ensures the reporting of adverse effects in a way to obtain objective information to protect children’s right to health?**

3. Failure to ensure special protection of mothers in relation to childbirth

¹⁷ CESCR/E/C/12 – The right to the highest attainable standard of health, 11 August 2000, para 16.

22. Concluding observations of the Committee on the Elimination of Discrimination against Women (*hereinafter* “the CEDAW”) adopted during its forty-seventh session, 4-22 October 2010, emphasized the violation of the rights of women in hospitals and the availability of assisted home deliveries:

“36. While acknowledging the need to ensure maximum safety for mothers and newborns during childbirth, as well as the State party’s low perinatal mortality rate, the Committee takes note of reports about interference with women’s reproductive health choices in hospitals, including the routine application of medical interventions, reportedly often without the woman’s free, prior and informed consent or any medical indication, a rapid increase in the caesarean section rate, separation of newborns from their mothers for up to several hours without health-related reasons, refusal to release the mother and child from hospital before 72 hours after childbirth, and patronizing attitudes of doctors which impede the exercise by mothers of their freedom of choice. It also notes reports about women’s limited options for delivering their babies outside hospitals.

37. The Committee recommends that the State party consider accelerate the adoption of a law on patients’ rights, including women’s reproductive rights; adopt a protocol of normal birth care ensuring respect for patients’ rights and avoiding unnecessary medical interventions; ensure that all interventions are performed only with the woman’s free, prior and informed consent; monitor the quality of care in maternity hospitals; provide mandatory training for all health professionals on patients’ rights and related ethical standards; continue raising patients’ awareness of their rights, including by disseminating information; and consider taking steps to make midwife-assisted childbirth outside hospitals a safe and affordable option for women.”

3.1. Failure to protect women’s rights in maternity hospitals and secure full respect to informed consent

23. We argue that inherent part of “special protection” of women in relation to childbirth is protection of women’s dignity and rights in maternal hospitals. As commented on by the CEDAW, interferences with women’s reproductive health choices often take place in Czech hospitals, including the routine application of medical interventions without informed consent and refusal to release the mother and child from hospital before 72 hours after childbirth. It seems that there is no system of monitoring whether women’s rights are respected in hospitals.

24. It is necessary to notice that the Ministry of Health, in particular its expertise, prefers “the obligatory stay” of the newborns in the maternity hospitals and for a long term

it has been refusing any ambulant and home births. The aforementioned results from the traditional paternalistic conception of the relations between the doctors and patients in the Czech Republic. The majority of the doctors or the medical facilities prefer the traditional practiced attitude to the care, which is the most comfortable for them, not regarding the amount of respect to the rights of the individual patients. The motivation could also be based on the health insurance system of reimbursement, which does not cover such a lucrative amount for the delivery itself compared to the following hospitalization and the procedures, which are performed on mothers and newborns in a hospital.

25. Even though the current methodological guideline / regulation published in the Bulletin of the Ministry of Health no. 7/2005 cannot *de iure* impose any obligations to the parents, including the obligation to tolerate the interventions to the parents i.e. the obligation of the newborn to stay for 72 hours following the birth in the hospital, in practice this regulation is used by the medical staff to argue that newborns cannot be released with their mothers shortly after the birth. This situation can even lead to forced returns of newborns back to the hospital if the women do not wish to respect the regulation as happened in the case *Hanzelkovi v. the Czech Republic* (43643/10) currently pending before the European Court of Human Rights (*hereinafter* “the ECtHR”)¹⁸.

Suggested questions to the Government:

- **What steps has been taken by the state party in relation to the recommendations adopted by the Committee on the Elimination of Discrimination against Women during its forty-seventh session?**
- **Is it possible for women with newborns to choose the length of their stay in maternal hospital, can they be released immediately after the childbirth?**
- **How the state party monitors ensuring respect to women rights and informed consent in maternal hospitals?**

3.2. Failure to protect women’s and children health and life during home childbirth

¹⁸ More information on the case can be found on the official webpage of the ECtHR:

[http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx#{"fulltext":\["hanzelková"\],"itemid":\["001-116023"\]}](http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx#{)

26. We argue that inherent part of “special protection” of children and women in relation to childbirth is the availability of midwives for assistance during childbirth at home. The Czech legislation however denies those women who decide to give birth at home any medical assistance. The European Court of Human Rights (*hereinafter* “the ECtHR”) held that women may decide on the circumstances of the delivery and ruled in favor of the Applicant in the case of *Ternovszky v. Hungary*, 67545/09. The ECtHR rejected the difference proposed by the Hungarian Government between the choice of home delivery and assisted home delivery. In its judgment the Court held that the choice for home deliveries entails the involvement of health professionals.
27. Data from other countries show that some women will always opt for home delivery. Between 1 and 3 % of deliveries are planned home deliveries in Germany, United Kingdom, Ireland and France; this number is even higher in the countries where deliveries outside hospitals are common and supported - more than 8 % in Wales and over 20 % in the Netherlands. Despite the fact that also in the Czech Republic there is a significant number of women opting for home delivery, these women and their children are denied any medical assistance at their homes. Situation in the Czech Republic can be characterized by the cases *Dubská v. the Czech Republic* and *Krejzová v. the Czech Republic* (nos. 28859/11 and 28473/12) currently pending before the ECtHR¹⁹.

Suggested question to the Government:

- **How the state party guarantees protection of women and children in relation to childbirth at homes?**

Brno, 2 October 2013

Zuzana Candigliota
Legal director

¹⁹ More information on the cases can be found on the official webpage of the ECtHR:
http://www.echr.coe.int/Pages/home.aspx?p=hearings&w=2885911_10092013&language=lang