

**EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITE EUROPEEN DES DROITS SOCIAUX**

December 2024

**Finding on
Follow-up to the Complaint No. 148/2017
International Commission of Jurists (ICJ)
v. Czech Republic**

Assessment of follow-up: International Commission of Jurists (ICJ) against Czech Republic, complaint no. 148/2017, decision on the merits of 20 October 2020, [Recommendation CM/RecChS\(2021\)15](#)

1. Decision of the European Committee of Social Rights on the merits of the complaint

In its decision, the European Committee of Social Rights (ECSR) found that the situation in Czech Republic is in violation of Article 17 of the 1961 European Social Charter (the right of mothers and children to social and economic protection) due to:

A. the failure to ensure mandatory legal assistance for children below the age of criminal responsibility in the pre-trial stage of proceedings.

The ECSR underlined that failure to ensure legal assistance for children below the age of criminal responsibility in the pre-trial stage of proceedings is likely to impact negatively on the course of the proceedings, thereby increasing the likelihood of their being subjected to measures such as deprivation of liberty under the Juvenile Justice Act. The ECSR was therefore of the view that the provision of legal assistance to children in conflict with the law, which is required to secure their social and economic protection in terms of Article 17 of the 1961 Charter, should not be left at the discretion of the authorities, even in the context of the pre-trial stage of proceedings. The ECSR also considered that legal assistance is necessary in order for children to avoid self-incrimination and fundamental to ensuring that a child is not compelled to give testimony or to confess or acknowledge guilt. The assistance of a lawyer is moreover necessary in situations where parents/legal guardians have interests that conflict with those of the child and where it is in the child's best interest to exclude the parents/legal guardians from being involved in the proceedings. As such, mandated separate legal representation for children is crucial at the pre-trial stage of proceedings.

B. the failure to provide alternatives (diversion) to formal judicial proceedings for children below the age of criminal responsibility.

The ECSR considered that the obligation to take all appropriate and necessary measures in order to ensure the effective exercise of children of the right to social and economic protection under Article 17 of the 1961 Charter includes the obligation to develop and take measures to reduce the especially harmful effects of contact with the justice system and to ensure that the danger posed to the child's wellbeing and development by such contact is limited. One of the primary ways in which this can be achieved is through the diversion of children away from formal processes and into effective diversionary programmes in line with international standards on the rights of the child. The ECSR stressed that all diversion measures must be consistent with the child's human rights and in the child best interests. This includes ensuring respect for legal safeguards in this context, such as ensuring legal assistance relating to the diversion offered to the child and the possibility of review of the measure.

2. Information provided by the Government

The Government provided information in relation to the follow-up to this complaint in their submissions dated 28 March 2024 and 24 July 2024.

The Government states that on 1 July 2024, Act No. 165/2024 Coll., amending Act No. 218/2003 Coll., on the responsibility of juveniles for unlawful acts and on juvenile justice (the Juvenile Justice Act), entered into force. It states that this amendment to the Juvenile Justice Act responds to the shortcomings identified in the above-mentioned decision. It was drafted by the Ministry of Justice in cooperation with an expert working group. The amendment was subsequently approved by the Government and both chambers of the Parliament of the Czech Republic.

The Government outlines the main relevant amendments with regard to the violations found in the Committee's decision as follows:

A. With regard to the failure to ensure mandatory legal assistance for children below the age of criminal responsibility in the pre-trial stage of proceedings.

The Government states that according to the amendment, a child under the age of 15 will be mandatorily represented at all stages of proceedings (from the same moment as a suspected juvenile, i.e. as of the submission of an explanation or other act directed towards the child). Where possible, the child will be represented by the same legal representative throughout. The child's legal representative must always be a lawyer, and, as a matter of priority, the child, the child's legal guardians, or the guardian will be allowed to choose the child's legal representative. If they fail to do so, a legal representative will be appointed to the child by the judge.

The Government states that the appointed legal representative's costs are always borne by the State in the first stage of proceedings (the pre-trial stage).

The Government refers in this sense to Article 89 c) of Act No. 165/2024 Coll., amending Act No. 218/2003 Coll., on the responsibility of juveniles for unlawful acts and on juvenile justice (the Juvenile Justice Act).

B. With regard to the failure to provide alternatives (diversion) to formal judicial proceedings for children below the age of criminal responsibility.

The Government states that according to the amendment, the State prosecutor assesses whether it is necessary to apply to a juvenile court for a measure to be imposed on a child under the age of 15, or whether statutory conditions have been met under which such an application need not be made. It is possible to refrain from submitting an application to the juvenile court if:

- (a) considering the nature and gravity of the otherwise criminal act, the attitude of the child under the age of 15 towards the commission of the act and his or her behaviour after the commission of the act, the child's personality, educational background, and existing way of life, and, where appropriate, the time that has elapsed since the commission of the otherwise criminal act, it is clear that the imposition of a measure on the child is not necessary and that the purpose of this Act has been achieved;
- (b) in connection with the commission of an otherwise criminal act by a child under the age of 15, his or her legal guardian, guardian, foster parent, another person in whose custody the child has been placed, the school attended by the child or the institutional-care facility in which he or she lives has already subjected the child to sufficient correctional means or measures under special legislation, or a court or a child protection agency has decided to impose a correctional measure under special legislation, and this procedure can be considered sufficient to achieve the purpose of this Act;
- (c) the measure proposed for imposition would be entirely irrelevant alongside a measure which has already been imposed, or is expected to be imposed, on a child under 15 for another otherwise criminal act, if such measure is sufficient to achieve the purpose of this Act; or
- (d) the measure proposed for imposition would be entirely irrelevant alongside a measure which has already been imposed, or is expected to be imposed, on a child under 15 for an offence committed by him after the age of 15, if such measure is sufficient to achieve the purpose of this Act.

The Government states that in the judicial phase of the proceedings, the juvenile court may dispense with the imposition of a measure without a hearing if the matter can only be decided on the basis of documentary evidence submitted by the parties and the child under the age of fifteen and the public prosecutor's office agree to decide the matter without a hearing, or if they have waived their right to participate in the hearing.

The Government refers in this sense to Articles 89 i), 89 j) and 92 of the of Act No. 165/2024 Coll., amending Act No. 218/2003 Coll., on the responsibility of juveniles for unlawful acts and on juvenile justice (the Juvenile Justice Act).

In light of the above, Czech Republic is of the view that it has remedied the violation found by the Committee and aligned the procedural rights of children under the age of 15 in proceedings concerning an otherwise criminal act with Article 17 of the 1961 Charter.

3. Assessment of the follow-up

The ECSR acknowledges the Government's efforts and measures taken with a view to implementing the ECSR's decision and the Committee of Minister's recommendation.

It welcomes the amendments brought to the Juvenile Justice Act by Act No. Act No. 165/2024 Coll. with regard to:

A. the failure to ensure mandatory legal assistance for children below the age of criminal responsibility in the pre-trial stage of proceedings.

The ECSR notes that Article 89c of the Juvenile Justice Act provides for mandatory legal representation for children under the age of fifteen years in the pre-trial stage of proceedings as follows: "(1) A child under the age of fifteen years shall be represented by a legal representative from the moment he or she gives an explanation as a child in respect of whom it is being ascertained and clarified whether he or she has committed an otherwise criminal act or other acts are being carried out against him or her in a manner other than in a confidential manner pursuant to this Act or the Code of Criminal Procedure, including acts that are urgent and non-repeatable, unless the giving of an explanation or the carrying out of another act cannot be postponed and the notification of the legal representative thereof secured."

It also notes that Article 89c) (2) of the Juvenile Justice Act provides that: "A child under the age of fifteen years shall have a legal representative until the child reaches the age of eighteen years. If the public prosecutor, the public prosecutor's office or the juvenile court considers it appropriate, taking into account the degree of intellectual and moral maturity of the child under fifteen years of age and the circumstances of the case, the child shall have a legal representative until the child reaches the age of twenty-one years."

The ECSR takes note that Article 89 c) of the Juvenile Act (as amended by Act No. Act No. 165/2024 Coll.) sets out mandatory legal representation for children under the age of fifteen years from the moment the child gives an explanation in the pre-trial stage of proceedings. The Committee considers therefore that the situation has been brought in conformity with Article 17 of the 1961 Charter on this point.

B. the failure to provide alternatives (diversion) to formal judicial proceedings for children below the age of criminal responsibility.

In its decision on the merits, the ECSR noted that under Article 90 (1) of the Juvenile Justice Act, the state prosecutor has an obligation to bring a case of a child below the age of criminal responsibility before the juvenile court (paragraph §114 of the decision on the merits).

The ECSR notes that following amendments to the Juvenile Justice Act, the current Article 89 j) (1) provides several situations when the public prosecutor may not need to file a motion for the imposition of a measure on a child under the age of fifteen (as referred by the Government above). These conditions refer to situations in which: (a) the imposition of a measure on the child is no longer necessary; (b) the school or the educational establishment in which the child lives has already applied sufficient educational means and this procedure can be considered sufficient to achieve the purpose of this Juvenile Justice Act; (c) the measure which it would propose to impose would be wholly irrelevant in addition to a measure which has already been imposed; (d) the measure which it would propose to impose would be wholly irrelevant in addition to any measure which has already been imposed on a child under the age of fifteen

years for an offence committed by him after the age of fifteen years or which he is expected to be imposed.

The ECSR notes that under the current legislation, namely Article 89 i) and 89 j) of the Juvenile Justice Act, the public prosecutor assesses whether the pre-conditions referred above are met and, in that case, the public prosecutor does not need to submit the application to the juvenile court. However, the ECSR notes that if the conditions listed above are not met, the public prosecutor shall, without undue delay, submit a proposal to the youth court for the imposition of a measure on the child (Article 89i) of the Juvenile Justice Act).

The ECSR recalls that the obligation to take all appropriate and necessary measures in order to ensure the effective exercise of children of the right to social and economic protection under Article 17 of the 1961 Charter includes the obligation to develop and take measures to reduce the especially harmful effects of contact with the justice system and to ensure that the danger posed to the child's wellbeing and development by such contact is limited (see decision on the merits, §120). One of the primary ways in which this can be achieved is through the diversion of children away from formal processes and into effective diversionary programmes in line with international standards on the rights of the child (such as CRC, see UN CRC, General Comment No. 24 (2019) on children's rights in the child justice system, §6) (*ibid*).

The ECSR considers that it may be left to the discretion of the States Parties to decide on the exact nature and content of measures of diversion, and to take the necessary legislative and other measures for their implementation (see decision on the merits, §121). With regard to the form that such diversion measures might take, the ECSR noted that according to the UN CRC a variety of community based programmes have been developed such as community service, supervision and guidance by designated officials, family conferencing and other restorative justice options, including reparation to victims (UN CRC, General Comment No. 24 (2019) on children's rights in the child justice system, §17) (*ibid*).

The ECSR notes that the public prosecutor has an option not to bring the case to the juvenile court provided that any of the conditions referred to in Article 89j) are met. However, this discretion arises in a limited range of circumstances, and it does not appear to qualify as diversion of children from formal proceedings as required by the ECSR's decision in this case. The ECSR recalls that diversion should be the preferred manner of dealing with children in the majority of cases and diversion options should be available from as early as possible after contact with the system, before a trial commences, and throughout the proceedings (see decision on the merits, §117).

In light of the above, the ECSR considers that the situation has not been brought into conformity with Article 17 of the 1961 Charter on this point.

Finding

The Committee finds that:

- (A) the situation has been brought into conformity with Article 17 of the 1961 Charter with respect to the failure to ensure mandatory legal assistance for children below the age of criminal responsibility in the pre-trial stage of proceedings;
- (B) the situation has not been brought into conformity with Article 17 of the 1961 Charter with respect to the failure to provide alternatives (diversion) to formal judicial proceedings for children below the age of criminal responsibility.