



28/03/2024

EUROPEAN SOCIAL CHARTER

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

submitted by

THE GOVERNMENT OF THE CZECH REPUBLIC

Report registered by the Secretariat
on 28 March 2024

CYCLE 2024

MINISTRY OF JUSTICE

Office of the Agent of the Czech Government before the European Court of Human Rights

**Follow-up to the decision of the European Committee of Social Rights
in case of No. 148/2017
International Commission of Jurists (ICJ) v. Czech Republic
Report submitted by the Czech Government on 28 March 2024**

I. INTRODUCTION

On 20 October 2020, the European Committee of Social Rights (“the Committee”) ruled, in the case of a collective complaint lodged by the International Commission of Jurists (“the ICJ”) against the Czech Republic, that the Czech Republic was in violation of Article 17 of the European Social Charter (“the Charter”) by failing to provide children under the age of 15 with sufficient procedural rights in proceedings for an otherwise criminal act. The Committee upheld two of the complainant organisation’s allegations, finding unanimously that:

- there was a violation of Article 17 of the Charter due to the failure to ensure mandatory legal assistance for children below the age of criminal responsibility in the pre-trial stage of proceedings;
- there was a violation of Article 17 of the Charter due to the failure to provide alternatives (diversion) to formal judicial proceedings for children below the age of criminal responsibility.

As to the remaining allegations made by the complainant organisation, the Committee found no violation of the Charter.

On 16 June 2021, the Committee of Ministers of the Council of Europe adopted Recommendation [CM/RecChS\(2021\)15](#). Having regard to the response submitted by the Government, on 23 January 2021, to the Committee’s decision (DD(2021)74), the Committee recommended that the Czech Republic:

- pursue the work already initiated and take all necessary legislative and institutional measures to ensure mandatory legal assistance for children below the age of criminal responsibility in the pre-trial stage of proceedings;
- take any appropriate measures to provide alternatives (diversion) to formal judicial proceedings for children below the age of criminal responsibility, observing the child’s human rights and best interests;
- indicate the actions taken to comply with this recommendation in the next report on follow-up to decisions in collective complaints.

II. HANDLING OF THE PROCEDURAL RIGHTS OF CHILDREN BELOW THE AGE OF CRIMINAL RESPONSIBILITY PRIOR TO THE COMMITTEE’S DECISION

JUDGMENT OF THE EUROPEAN COURT OF HUMAN RIGHTS IN *BLOKHIN V. RUSSIA*
(NO. 47152/06, JUDGMENT [GC] OF 23 MARCH 2016)

Prior to the issuance of the Committee’s decision, the Government agent had initiated a domestic debate on aligning the procedural rights of children below the age of criminal responsibility in proceedings for an otherwise criminal act with the Czech Republic’s international commitments. He

did so in response to the judgment of the European Court of Human Rights (“the Court”) in *Blokhin v. Russia* (no. 47152/06, judgment [GC] of 23 March 2016) and, later, the notification to the Government of the collective complaint *ICJ v. Czech Republic*. The safeguarding of the procedural rights of children below the age of criminal responsibility in proceedings for an otherwise criminal act was thus discussed by the [Committee of Experts for the Execution of Judgments of the Court and the Implementation of the European Convention on Human Rights](#), an advisory body to the Government agent, at several meetings, specifically on 14 December 2016, 12 June 2017, 28 February 2018 and 22 November 2018.

To address the issue, the Committee of Experts formed a special working party made up of representatives of institutions that deal with this subject in their activities. However, no consensus was reached by either the working party or the Committee of Experts on the need for remedial action. It was therefore decided that the Committee of Experts would revisit the matter after the Committee had issued its decision on the collective complaint.

II. IMPLEMENTATION OF THE COMMITTEE’S DECISION

A. PUBLICATION OF THE DECISION AND NOTIFICATION TO THE BODIES CONCERNED

The Ministry of Justice published a translation of the decision on its [website](#) and a summary of it in [Zpravodaj kanceláře vládního zmocněnce č. 1/2021](#) (Bulletin of the Office of the Government Agent no. 1/2021). At the same time, the translation of the decision and its summary were sent to the Constitutional Court, the Supreme Court, the Supreme Prosecutor’s Office, the Ministry of Labour and Social Affairs, and all other relevant bodies dealing with this issue.

B. PREPARATION OF DRAFT AMENDMENT TO THE JUVENILE JUSTICE ACT

The Committee of Experts discussed the execution of the Committee’s decision at its meeting on 13 May 2021. It recommended that the preparation of the legislative proposal for an amendment to Act no. 218/2003 on the responsibility of juveniles for unlawful acts and on juvenile justice (“the Juvenile Justice Act”), intended to align Czech legislation on proceedings in cases involving children under 15 for otherwise criminal acts with the Charter, should include persons representing children in such proceedings, whether they be lawyers or NGOs.

The Legislation Department of the Ministry of Justice therefore formed a *Working Party for the Implementation of the Decision of the European Committee of Social Rights in ICJ v. Czech Republic* with the aim of drafting legislative amendments. Besides representatives of the Legislation Department of the Ministry of Justice, the members of this working party included representatives of the Office of the Agent of the Czech Government before the ECHR, the Ministry of the Interior, the Institute of Criminology and Social Prevention, and representatives of the judiciary who are involved in this issue in their work (the Supreme Court, the Supreme State Prosecutor’s Office, the Hradec Králové Regional Prosecutor’s Office, and the České Budějovice Regional Court). Representatives of non-profit organisations represented in the Committee of Experts also commented on the draft. At the same time, the Czech Republic’s other international commitments in the field of juvenile justice were analysed, along with the projected financial implications of providing legal representation for a child under the age of 15 in the pre-trial stage of proceedings.

The Ministry of Justice, in collaboration with the above-mentioned expert working party, [drafted an amendment to the Act](#). According to the amendment, mandatory legal representation of a child at the stage preceding proceedings before the juvenile court is to be newly enshrined in proceedings concerning children under the age of 15 for an otherwise criminal act. The amendment

also enshrines the possibility of an alternative approach to the child's case always being heard in a formal court hearing, as has been the practice until now.

The Government approved the draft amendment to the Juvenile Justice Act on 6 September 2023 under [Resolution no. 672/2023](#).

The Bill was subsequently presented to the Parliament of the Czech Republic for debate. It is currently under discussion in the Chamber of Deputies as [Chamber Document no. 540](#). On 27 February 2024, the Chamber of Deputies approved the draft in its second reading.

C. CONTENT OF THE DRAFT AMENDMENT TO THE JUVENILE JUSTICE ACT

1. INTRODUCTION

The proposed amendment to Title III of the Juvenile Justice Act more comprehensively regulates all stages of proceedings in cases involving children under the age of 15.

First, it provides for a “criminal stage”, covering an investigation into whether an otherwise criminal act has been committed and whether it was committed by a child under the age of 15.

Secondly, it regulates the stage of the proceedings before the State Prosecutor's Office, the aim of which is to assess whether the criteria have been met to apply to a juvenile court for measures to be imposed on a child under the age of 15 or whether the proceedings can be discontinued at this stage without the child being brought before the court.

Thirdly, Title III also governs the judicial stage of juvenile court proceedings.

2. MANDATORY REPRESENTATION OF THE CHILD AT ALL STAGES OF THE PROCEEDINGS

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.

In proceedings involving children under the age of 15, the legal representative deals with criminal-law issues relating to the act that has been committed. As this places these legal representatives in a position somewhat similar to that of a defence counsel, it is proposed that they be appointed from the roster maintained for the purposes of assigning a defence counsel in criminal proceedings. This will fulfil the requirement of the Committee's decision that children under the age of 15 should have the same legal safeguards available to them as an adult in the same situation. Moreover, as an emphasis is placed on defending the best interests of the child in proceedings involving children under 15, it is preferable for the legal representative to be a lawyer who specialises in such proceedings. This is why the amendment allows lawyers to request that their specialisation in proceedings involving children under 15 be recorded in a special roster. A lawyer on this roster will be appointed as a legal representative for a child under 15 as a matter of priority.

The appointed legal representative's costs are always borne by the State in the first stage. If the juvenile court imposes a measure on a child, it may, in justified cases, order that these costs be paid by such child under the age of 15 or by other persons who have a duty of care for the child. In this situation, in addition to the financial circumstances, the juvenile court assesses further circumstances

in which the child committed the otherwise criminal act. It considers the motives for and nature of the child's conduct, the child's personal characteristics and social background, and, where appropriate, other circumstances.

3. THE POSSIBILITY FOR THE STATE PROSECUTOR'S OFFICE NOT TO APPLY FOR MEASURES TO BE IMPOSED ON A CHILD UNDER 15

The amendment also supplements the approach that may be taken by the State Prosecutor's Office when the criminal stage of the proceedings has ended. At the stage of proceedings before the State Prosecutor's Office having jurisdiction in non-criminal cases, the competent 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 if:

- 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;
- 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;
- 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
- 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.

4. THE POSSIBILITY FOR A COURT TO DECIDE TO REFRAIN FROM IMPOSING A MEASURE WITHOUT A HEARING

It is also proposed, as a further possible diversion from the formal handling of a case in court, to enshrine a juvenile court's authority to decide to refrain from imposing a measure without the need for a hearing to be ordered. This approach will be possible if a case can be decided solely on the basis of documentary evidence submitted by the parties and the child under 15 and the State Prosecutor's Office agree for the case to be decided without a hearing. It is also possible if the parties waive their right to be present at a hearing.

III. CONCLUSION

Even before the Committee's decision, the Czech Republic was aware of certain weaknesses in the procedural rights of children under 15 in proceedings for an otherwise criminal act. By analysing and applying the conclusions of the Committee's decision and the recommendation of the Committee of Ministers of the Council of Europe, it was thus able to build on discussions that had already taken place.

To implement the Committee's decision, the Ministry of Justice worked with experts from the judiciary and representatives of the non-profit sector to prepare an amendment to the Juvenile Justice Act. The amendment has reached an advanced stage of the legislative process. Once it has been approved by the Chamber of Deputies, it will be debated by the Senate and submitted to the President of the Republic for signature. The amendment is expected to enter into effect in the second half of 2024.

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