



ALTERNATIVES TO CUSTODY FOR YOUNG OFFENDERS

NATIONAL REPORT ON JUVENILE JUSTICE TRENDS

Czech Republic



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A. Juvenile Justice

A.1. Please describe the legal framework and the main characteristics of the juvenile justice system of your country.

A.1.1. Is there a special law or code regarding juvenile justice?

The legislation dealing with juveniles is regulated by the Act 218/2003 of the Legal Code (LC) concerning the juveniles' responsibility for illegal activities as well as juvenile judiciary and changing some of the previous laws; it came into force on 1st January 2004. The act regulates the conditions of juveniles' responsibility for illegal actions as stated by the Czech Republic's Penal Code, court remedies enforced for such illegal activities, procedures, decision-making processes and implementing of these legal decisions in cases of juvenile persons. The aim of this Act is preventative influencing children under 15 years and under-age persons in a way that they would avoid illegal actions in the future and that they would find social application appropriate to their abilities and mental development. A person against whom this Law is applied should use his/her abilities to redress the wrongs caused by the illegal act. The proceedings against a child younger than 15 years must be conducted in such a way as to precede and prevent illegal activities.

Proceedings in criminal matters for juveniles features the following differences (source: Supreme Public Prosecutor's Office):

- The juvenile court - judiciary in juvenile matters and matters of assessment of criminal offenses committed by children under the age of fifteen years engaged in youth courts.
- A specific approach when discussing juvenile criminal cases - proceedings concerning juveniles should be exercised with regard to age, health, mental and moral maturity of

the person against whom the lead to their further development was the least danger, the present actions and their causes of the circumstances that enabled them are well explained and their commission to enforce liability under the law. When dealing with juveniles, their age and intellectual and moral maturity should be taken into account to avoid disruption to their psyche with regard to their age, and not compromise their future mental and social development.

- Specialization of law enforcement and others - judges, prosecutors, law enforcement authorities and officials of the Probation and Mediation Service, working with criminal youth must have enough life experience and special training for dealing with said youth.
- Cooperation with the Social-Legal Protection of Children, interest groups of citizens, persons in probation with the Probation and Mediation Service.
- Local jurisdiction - procedures are undertaken in the juvenile court in whose district the juvenile lives, or when they have no permanent residence, where they reside or work. If no other place can be found or if they are outside the Czech Republic, the proceedings of the juvenile court are held in the jurisdiction where the offense was committed, if not the scene to find a sitting juvenile court in whose jurisdiction the offense came to light.
- Joint management – everything related to juvenile transgressions and against all juveniles whose offense is related, hold joint management responsibility. Only in exceptional cases can joint proceedings be held against a juvenile and an adult, if it is necessary for all-purpose and objective to clarify the matter and not to the detriment of the juvenile. Such joint management is held in the juvenile court, and as a young person, shall be used in joint management provisions of the Law on Juvenile Justice.
- The right of defense of the juvenile – the juvenile has a right to treatment appropriate to their age, maturity and mental health.
- Teens must have a defense counsel from the moment they have charges against them by the Law for Juvenile Justice or acts performed by the Code of Criminal Procedure, including urgent acts and non-recurring acts, unless the execution of the act cannot be postponed and nor can they advocate notification about it to ensure a necessary defense. Minors must have a defense counsel, even if the representation had been expressly rejected.
- Law enforcement under the Act on Juvenile Courts is bound to each young person to inform them of their rights and give them the full opportunity to exercise them.
- Privacy for juveniles and public management - Special interest in protecting the privacy and integrity of the juveniles warrants prioritization of confidentiality of information relating to their guilt before the constitutionally protected principle of public criminal proceedings, owing to maximize the removal of harmful effects on juvenile proceedings, and on the basis of constitutional principles of the presumption of innocence.

- Disclosure of Prosecuted Juvenile Offenders, the authorities dealing with proceedings under this Act to disclose only the information about the proceedings against a juvenile, which will not jeopardize the achievement of the purpose of criminal proceedings, which do not contradict the need for the protection of the juvenile personality and personal data, and to other persons participating in the proceedings.
- Generally, it is prohibited, unless the law provides otherwise, prior to the final decision in the matter, to disclose in any way (in the media or otherwise) information indicating the name and surname of the juvenile, or information that contains data that would allow this youth to be identified. The publication is meant by such conduct which is capable of making the content of the information accessible to more people.
- Publish information about the trial, a public meeting, which would lead to the identification of a juvenile in the media or otherwise, is prohibited. Likewise, it is forbidden to publish any text or illustrations relating to the identity of the juvenile.
- Judgment is announced publicly at the trial in the presence of the juvenile. A final judgment of conviction may be published in the media just without the name, or names and surname of the juvenile, the juvenile with adequate protection against the adverse effects of its publication. President of the Chamber, having regard for the nature and character of the offense and adequate protection of the interests of the juvenile decides on another method of publication of the conviction. So how to tighten the conditions for publication of the judgment in the public media (i.e. narrow range of information, as well as to relax these conditions (e.g. allow publication of the judgment in the media with the name and surname of the juvenile, or other personal information of the juvenile)).
- Binding juvenile - juvenile at the extraordinary bond surety. The Law on Juvenile Justice is based on the fact that custody of the juvenile can be replaced by a guarantee, supervision, promise or placing them in the care of a trusted person.
- Binding of a juvenile can also replace a financial guarantee.
- Maximum limit of detention in pre-trial proceedings with the least serious offense is four months. In the proceedings before the court there can then be in control of these wrongdoings a binding extension for a further two months, so the total maximum permissible period of detention is six months.
- Maximum limit of detention in pre-trial for particularly serious offenses is one year. In the proceedings before the court there can then be in control of these wrongdoings a binding extension for a further six months, so the total maximum permissible period of detention, the case of a particularly serious violation, is eighteen months.
- The legal guardian of a juvenile – a juvenile legal representative is authorized to represent the juvenile, especially to choose his defense counsel for him to make suggestions, submit an application for him and remedies, they are also entitled to participate in those

activities, which by law, the youth can participate in. In favor of the juvenile legal representative may exercise these rights even against his will. In cases which the legal representative of the juvenile cannot exercise their rights and there is a danger of delay, the President of the Chamber and the pre-trial prosecutor will appoint a juvenile guardian to exercise these rights.

A.1.2. Which courts and other special authorities are responsible for the reactions of juvenile offending (criminal courts, specialised juvenile criminal courts, family courts, special prosecutors, police etc.)?

The legislature in the cases of juveniles and in assessing otherwise criminal cases committed by children under fifteen years of age are the responsibility of the criminal courts. Judges, public prosecutors, members of police forces and officials of the Probation and Mediation Service acting in the juvenile criminal cases are required to have special training for dealing with youth.

The legal regulation of the Act No. 218/2003 LC only forms a criminal framework concerning the juvenile criminality. Asocial behaviour of children and juveniles is regulated by the Act No. 359/1999 LC about social and legal protection of children, as stipulated in later legal measures.

A.1.3. What is the scope (only criminal or also antisocial behaviour) of juvenile justice? How is the age of criminal responsibility regulated (please refer to the different age groups and include the legal definitions on “child”, “youth” and “young person”)?

Definition of terms a child, juvenile and youth as defined by the law concerning youth.

A child

A child younger than 15 years of age is somebody who, by the time of committing an otherwise criminal action, didn't reach the age of 15 years.

Juvenile

A juvenile is somebody who at the time of committing the offence is over fifteen and not over eighteen years of age.

Youth

Youth encompasses both children and juveniles, i.e. persons under 18 years of age.

A young adult

Normally, a person that had committed a criminal offence between his/her 18th and 21st year of age, is considered a young adult. That person has a special position especially in the area of sanctions, and under certain circumstances, the special measures normally applied to juveniles could apply to them. This age category is applied to them as –

according to the research into psychology and sociology – it is evident that a general average limit of adulthood is hard to define.

In a larger sense this age category could be filed under the “youth” term. The jurisdiction doesn’t acknowledge the category of young adults, but the Legal Code speaks of the term “a perpetrator close to the juvenile age”. Nevertheless, the law doesn’t define this term in the terms of age. Generally, a perpetrator up to 20 years is meant, exceptionally up to 21.

Juveniles’ penal responsibility

Juvenile person’s age period is regulated by the concept of the so-called relative responsibility. (Šámal, Válková, 2007) For a juvenile to be marked as criminally responsible for the offence committed, not only must he/she be at least fifteen years of age, but they must also have achieved the required level of mental and moral maturity and be of sound mind according to general conditions as stipulated in the Penal Code. (Večerka, 2009).

A.1.4. Are there specific procedural rules for young persons and how do they differ from those for adults? Are due process guarantees respected?

The Act about legal dealing with young persons includes principles that are attempting to renew the damaged social links, reintegrate the juveniles back into the social world, and prevent the committing of crimes and thus fulfil the Act’s aim (Šámal, Válková, 2007).

One of the principles consists in a consistent application of restorative approach aimed mainly at the restoration of the perpetrator’s social functioning.

That leads to the application of the proceedings preventing juveniles’ relapse and which cater for their individual personalities. When ordering such procedures, the personal circumstances of the young person are also taken into account in order to influence healthy development of the individual for the future. That is seen as the main difference from the regulations for adult perpetrators that are more oriented towards the past actions. Moreover, restorative justice strives to make the culpable aware of the seriousness of his/her action, its implication for society, and make him/her make an effort to repair its consequences. These elements prove to be effective with teenagers especially thanks to the application of educational influence as opposed to mere stigmatization which is typical of retributive criminal law (Kratochvíl, 2012).

Other principles defining the specifics of criminal proceedings against juveniles include the preference for alternative procedures and orders in criminal proceedings before criminal punishment. Criminal punishments are to be used last, only in the most serious cases where the aim of the legislation would not be fulfilled and for incorrigible individuals (Kynclová, 2007).

Another important element is taking into account the individual personality of the adolescent perpetrator, environment he/she was brought up in and the seriousness

of the crime perpetrated so that an adequate measure can be taken (Jelínek, 2004). Such measures are applied that correspond to the character and dangerousness of the act perpetrated as well as to the perpetrator's mental and moral maturity and to the environment he/she lives in.

The Act on judiciary questions concerning juveniles also defines the basic principles of trial procedures against the under-age perpetrators. Of course, it maintains the principles of trial procedures as defined in the Penal Code, but it adjusts and modifies these principles for the use of dealing with juveniles. It mainly stresses the need to prevent the negative impact of criminal proceedings on the adolescent person, also stressing the need for the protection of his/her privacy and personal data. The proceedings against juveniles are not public and only persons defined by law have the right to attend, and these are bound by the promise of silence. Only the proclamation of the final decision is public.

During the proceeding itself, it is necessary to act without unnecessary delays in order to ensure a timely and just reaction to the criminal act. This appears to be the best form of prevention against recidivism.

Both during the proceedings and during the implementation of measures, it is necessary that the adolescent perpetrators are dealt with by persons with expert specialisation in youth problematics, who can respect the unique character of the adolescent's age group and who would not further damage his/her personality through unqualified interventions. These persons are required to have enough life experience and specialised schooling and training. Only the specialised juveniles' courts have the right to deal with juveniles' criminal actions.

The educational effect and understanding one's responsibility for the action committed is to be facilitated by the principle of redressing the damage. A juvenile perpetrator has the obligation to remove the consequences of the criminal action. According to his/her abilities and possibilities, he/she is to redress the error and to indemnify the victim (Šámal, Válková, 2007).

A.2. Please describe the sanctioning system regarding juvenile justice in your country.

A.2.1. Please give an overview on the sanctions/reactions on youth offending at the different levels of criminal proceedings.

The Act regulating judiciary for Juveniles (AJJ) enumerates the types of measures that it is possible to apply to the juvenile perpetrators. No other measures can be applied against them. These include:

- Educational measures
- Protective measures
- Penal measures

These three types combine into an interlinked system within which the legislation defines by the given order which sanctions it prefers and these should be – according to circumstances – used before applying the criminal/penal measures considered to be the harshest.

Educational measures are destined to direct the juvenile person's way of life. They include supervision by a probation officer, probation programme, educational duties, educational limitations and the reprimand with warning. These educational measures can be ordered during the whole of the criminal proceedings, or combined with a separate measure (Šámal, Válková, 2007). As the educational measures are very important within the context of this work, they will be dealt in more detail in the next chapter.

Protective measures represent a type of criminal legal sanctions aimed mostly at crime prevention. They are a specific form of protection of society from the danger of repeated criminal activities, especially in cases of the perpetrator's addiction to habit-forming substances connected to a mental disability, where isolation and therapy for the perpetrator are necessary. Protective measures can also be applied to the criminally unanswerable juveniles. Only the courts, both criminal and civilian, can order them. (Černíková, 2002).

In the framework of protective measures, a protective therapy, safeguarding detention, confiscation of an object or other possession, and protective education can be ordered.

Protective therapy makes it possible therapeutically to influence dangerous perpetrators of an offence or otherwise criminal act who suffers from a mental disability, or else addiction to habit-creating substances. It aims to protect the society from these perpetrators and their reintroduction into the everyday life. It can be implemented by institutionalizing them in a medical institution, or on an ambulatory basis (Šámal, Válková, 2007). In cases where the aim of the Act cannot be achieved by ordering protective therapy, especially with perpetrators with a negative prognosis, a **safeguarding detention** can

be ordered to isolate the perpetrator in a detention institution with special security. This measure should be only applied in exceptional cases, mostly against the perpetrators of especially grave crimes who are not criminally responsible because of a mental disability. In practice, such a case would be quite unique in a case of a juvenile, witness to this is, among other things, the fact that it has never been ordered against a juvenile perpetrator (Hulmáková, 2001). The aim of **confiscation of an object or other possession** is to remove the ownership to things or values that are somehow linked to the illegal act committed, and/or to remove the means to commit or support such acts. The last of the protective measures is **protective education** which means changing the family or other environment of the juvenile when this environment is unable to ensure his/her proper education and when it is replaced by collective education with a stricter regime. It is applied when there it is not possible to achieve prevention, educational influence on the adolescents by any other means, and to eliminate recidivism. Protective education takes place in special schooling institutions such as diagnostic institutes, children's homes, children's homes with a school and educational institutions (Act No. 109/2002 LC).

Penal Measure, within the system of measures as defined by AJJ, represents the strictest sanction for an offence committed. That is why it should only be applied in cases where the aim of the Act cannot be reached by using any other types of measure or alternative types of proceeding. When ordering a penal measure, it is important to keep in mind it is not only the matter of repression – it plays only a supportive role here; the measures ordered have also to create conditions for the juvenile person's further development. The harm caused to the juvenile through this measure must not be the aim of the measure, just a means to achieve the goal.

The nature of the offence permitting, **alternative penal measures not linked to immediate loss of freedom** is preferred in case of juvenile perpetrators, either with application of the institution of probation or without it. Alternative punishments can be seen as sanctions carried out outside a prison but that fulfil the aims of the punishment in the same way as if the jail sentence had been ordered. It cannot be seen as improvement of the perpetrator's position (Válková, Kuchta, 2012).

Alternative sanctions represent a way that allows for a more individual reaction both to the perpetrator's personality and to nature of the crime perpetrated. The great advantage of alternative sanctions is that they eliminate the costs of implementation, do not affect the perpetrator as negatively as a prison term, the perpetrator is not torn away from his environment and keeps his/her relationship with it; the sanctions take into consideration the personality and attempt to achieve a faster solving of the criminal case. Since the intellectual development of the perpetrator is still not completed, one could think of applying alternative sanctions with a juvenile to be necessary as it prevents negative stigmatisation of the juvenile and their exposition to negative influence by people even more disturbed (Osmančík, 1996).

In case of penal measures, a juvenile can be ordered alternative sanctions such as publicly useful work or community service, financial measures, confiscation of an object or other

property of value, ban on an activity, expulsion, ban on attending sports, cultural or other social events, house arrest and suspended prison sentence. These measures can be combined with each other, or complemented with an appropriate educational measure.

A.2.2. Which possibilities exist to divert a juvenile from a trial? (Diversion structures/schemes, alternative authorities like special community councils which can impose certain measures)?

The trial alternatives to criminal proceedings

Besides ordering a measure, the aim of the Act can also be achieved by using different ways in the process of penal proceedings. The so-called **diversions** are part of AJJ, Part 10, Heading II, and they demand special cases of proceedings. In penal legislation, they are understood to be diversions from the standard flow of criminal proceedings under which a criminal case is solved by non-judicial means (Ščerba, 2011). The special case of proceedings include the shortened preparatory procedure. Excluded is the application of a criminal order¹ in the case of juvenile perpetrators.

The first answer to illegal acts by juvenile perpetrators are the so-called diversions from the classical prosecution. These diversions can be regulated both in preliminary hearings and in the court proceedings itself. One can use the results of possible mediation activities that would lead to the settlement of a situation and at the same time solve the life circumstances of the juvenile. These can be combined with an appropriate educational measure. In the case of diversions, one can apply the institution of settlement, a conditional stopping of prosecution, adjourning the criminal prosecution, or stopping the criminal prosecution altogether (Kratochvíl, 2012).

Diversions are rooted in the principles of restorative justice, where their use in a widest possible measure meets the interests of the damaged parties, the focus of AJJ. With diversions during a prosecution, it is important that the victim gets actively involved in the solution of the criminal case and that they give their assent to the chosen solution to the case without which the implementation of the diversion would not be feasible.

Diversions can only be applied in appropriate cases and they have to fulfil the conditions stipulated by law. They can be used on the condition that the facts of the case were proven to the extent that the suspicion of the offence committed appears to be completely substantiated, the accused person is ready to take responsibility for the offence committed and is ready to remove its consequences and solve its causes. At the same time, such a solution to the case is considered sufficient in respect to the person and circumstances of

¹ A criminal order is a decision by a single judge who can issue it without discussing the case in the main hearing as long as the cause is proved by the evidence provided. The criminal order can only relate to the enumerated punishments as defined in the Penal Code, Act No. 141/1961 Sb

the offence committed (Hulmáková, 2013).

During the shortened preparation procedure, the device of delayed suspension of the proposal for punishment can be used. The application of these diversions is linked to the fulfilment of several conditions as defined by appropriate regulations. (Šámal, Válková, 2011). It is exactly the fulfilment of these strict conditions for their application that might get in the way of a broader practical use in the cases of young offenders. The least used method is settlement; its ordering can be prevented by the time constraints and/or by the inability of the juvenile to reimburse the damage caused. In the future, it would be advantageous to rethink the legislation of the penal code and the ordering of these alternative procedures to make them more widely applicable (Hulmáková, 2013).

Linked to diversions, individual educational measures can be applied that can broaden the space for solving criminal cases out of court, and at the same time fulfil the aims of the AJJ. A successful application of an educational measure during prosecution can raise the chances for the use of diversion. Nevertheless, in the case of applying an educational measure, the criminal case itself is not finished.

The proceedings continue and are only concluded by the final decision in which, together with the diversion order, the educational measure can also be ordered, should its use during the proceedings prove effectual. Using the educational measures makes the approach to individual cases more personal and thus, easier to fulfil the aims of the AJJ (Sotolář, 2004).

Two basic procedures of the activities of the Probation and Mediation Service (PMS) of the Czech Republic in case of the juveniles

Beside the alternative processes within criminal proceedings, it is possible to use some alternative procedures running outside the framework of the criminal prosecution process for solving juveniles' offences. It is not the case of solving the matter outside the criminal proceeding, but the agreement achieved can play a role in the decision-making process in a given case.

Mediation is one of the alternative methods that are used to solve criminal cases out of court in the preparatory stage, before the decision has been taken by the appropriate authority. Mediation activities are carried out by the staff at PMS, the so-called mediators, who try to achieve the solution to the conflict situation together with both parties of the criminal offence and to agree on the ways to redress the damage that offence had caused (Štern, Ouředníčková, 2010).

To start the mediation activities, consent from both participators is needed, and it has to be carried out in an unbiased way while taking into account both the wishes and demands of the parties involved. The agreement the mediation arrives at must be voluntary from both parties. In the case of juvenile offenders, their legal protection within the mediation process has to be respected. Both the juvenile's and victim's families' cooperation is used for organizing family group conferences. The mediator presents a report about

the mediation process and its result to the appropriate officials involved in the criminal proceedings; these can be taken into account in the follow up criminal proceedings. Nevertheless, the result of mediation cannot be taken as corroborative evidence material. Another specific method that – unlike mediation – can be used in connection with a penal measure and its alternatives is **probation**. This is the method based on positively influencing the offender that uses the factors of help, leadership and control. It represents, in fact, the perpetrator's obligation to remain under the supervision of the probation officer.

Through probation, the offenders can be led to ordered life, contribute to limiting their unsuitable behaviour, and, in this way, influence their future life within society. (Osmančík, 1996). In this way, an alternative is implemented that can sensibly replace an unconditional prison sentence (Válková, Kuchta, 2012).

Probation in the case of juveniles can be applied separately as an independent institution in the form of an educational measure, or it can be ordered alongside other protective and criminal measures, possibly already during the proceedings connected to diversion in criminal proceedings. The elements of probation cannot be combined with protective education, safeguarding detention, unconditional prison term and institutional protective therapy.

When ordering supervision to an offender, a probationary period is decided on; in this framework it is possible to draw consequences in case of the conditions of the supervision are not being met. In that way, the supervision can be ordered in case of a conditional abandon of the criminal prosecution, in case of a financial measure with a conditional delay of its implementation, of a criminal order of carrying out publicly useful work, a suspended abandon of ordering a criminal measure, a suspended sentencing and house arrest.

Probation institutions represent several advantages to the offender. The perpetrator is not exposed to negative elements included in serving a prison term, they stay with their family, are not isolated from the society, and the probation officer offers him leadership, counselling and help.

A.2.3. What types of interventions can a competent court impose?

A.2.4. What types of residential and custodial institutions exist for juvenile criminal offenders?

Institute of Protective and Institutional Education

The two paths that lead to our system of institutional care are determined by our legal system. They are constitutional institutions and protective care.

Constitutional Education

Law No. 94/1963 Coll. the family in § 46, paragraph 1 provides that the court shall order institutional care when the raising of a child is endangered or seriously impaired. In cases that fail before the child reaches the legal age of maturity (18 years of age) to meet the educational objectives, it is possible to extend institutional care judicially by one year after the age of maturity (i.e. 19 years of age). In practice, the extended institutional care is mainly due to the fulfillment of the educational goals of institutional care.

Protective Care

The Institute of Protective Custody is governed by Act No. 218/2003 Coll. The Juvenile Justice. The purpose is to positively influence the mental, moral and social development of young people and to protect society from youth crime. Protective care may be imposed after being charged (i.e. of an offense), committed by a juvenile. They may be committed if the person is between twelve and fifteen years of age, protective care for any offense may be rendered for which the law has a special section allowing the imposition of an exceptional sentence by the court in civil proceedings. Protective and institutional education is implemented in diagnostic institutions, children's homes, schools and reformatories for youth.

Types and Characteristics of Institutions

Every child, ranging from those with a family to those in the institutional care system needs a different type of care, a different approach, and thus the system offers a total of four types of facilities for institutional care. Each of these facilities has a different type of educational approach and their work as a result may differ slightly.

Diagnostic Institute

This is an important component in the system of institutional care. It is usually the first facility in which children are placed. Diagnostic Institutes have a system of school facilities for institutional care or special education status and accept children for short periods of time, generally for a term of eight weeks. There, comprehensive diagnosis is performed which is used to implement and form a basis for decisions about further education. Based on the comprehensive diagnostics for each child, the processing of a complex message that specifies educational needs and then a program of personality development is designed. The report then goes into detail for each child client as well as regarding the selection of the most appropriate diagnostic facility for his education.

Children's Home

Children's Homes are designed for children from 3 to 18 years of age, or until graduation. The government educates children with regard to their individual needs through institutional education in Children's Homes that have severe behavioral disorders.

Children's Home and School

Children are placed in these facilities - institutional or, exceptionally, protective care and

are there for both the traditional educational component and for other training. Children included in this type of care already have behavioral problems and their education requires and takes these certain specificities into account. They are usually taught in the home, but it is not unusual that children may attend a school nearby. It is a practice from which to recruit clients, often reformatories for youth. Children's Home and School is designed for children who have not completed the compulsory nine-year schooling.

Educational Institution for Youth

It is these establishments that are concentrated on children with serious behavioral problems that could not be addressed by staying with their family. These facilities require a high quality teaching occupation, an elaborate system of rehabilitation measures and high quality care. These educational institutions are classified for children older than 15 years with severe behavioral problems, who have been ordered to have institutional or protective care by the court. Children may be enrolled here who are older than 12 years of age if they have in-house protective care and are showing such a serious disorder that they cannot be placed in a foster home and school. The care for these children is centered on educational and social tasks especially.

Juvenile Prisons

Performance measures of criminal imprisonment are separate from adults in special prisons or at least in special departments in conventional prisons.

A.2.5. Which forms of liberty depriving sanctions are provided? What is the minimum and what is the maximum length for liberty depriving measures?

The last, and at the same time the harshest reaction to criminal acts by young perpetrators, are the court decisions for **unconditional prison terms**. When applying this penal measure, one has to consider it in combination with the perpetrator's personality, his circumstances, the gravity of the offence and previous measures applied. The limit of the prison term for the juveniles is halved compared to that of adult perpetrators, but the higher limit should not be more than five years and the lower more than one year. In a case where the juvenile committed a criminal action for which the Penal Code in its special section allows for exceptional punishment, and the dangerousness of such a criminal action impacts society due to the exceptionally despicable way of committing the crime, or an exceptionally despicable motive, the court could order a prison term of five to ten years. A life sentence is not available for juvenile perpetrators.

The law expects the young perpetrators to be given the required support and help within the framework both while serving the measure ordered and afterwards. Serving a prison sentence has to fulfil an educational and social function to create conditions for the further positive development of a juvenile perpetrator.

A.2.6. What really happens in practice with most juvenile offenders? Are they regularly subjected to alternative measures or to court trials? Do you have any reliable data about the diversionary and sentencing practice?

Alternative measures versus Court Ordered

Court ordered alternative measures are used primarily for first-time adolescent offenders, as well as for all adolescents where a particular type of measure is sufficient for the purpose of educational impact on the child. Reliable data on the practice relating to alternative measures and criminal measures are not available. Every institution that is interested in the process has statistics that cannot reliably be used for comparison with international data.

B. Restorative approach within juvenile justice

B.1. Where do you see a restorative approach within the juvenile justice system?

Proceedings in criminal matters for adolescents in the Czech Republic are regulated by Act No. 218/2003 Coll. Liability for wrongful acts by juveniles, juvenile justice and amending some laws (Act for Juvenile Courts). The law is designed so that it defines the differences in special laws regarding liability for acts committed and the juvenile justice compared to the general arrangements contained in the criminal law and related legislation.

The Act for Juvenile Courts includes principles that seek to restore damaged social relations, incorporate juveniles back into society, try to prevent the commission of crimes and thus fulfill the purpose of the Act. One of the principles is the consistent application of the restorative approach, which aims primarily to restore social functional offenders. This implies the use of such measures to avoid recurrence of youth offenders and take into account their individual personality. Measures also take into account the personal circumstances of the minor that should be corrected in order to appeal to the healthy development of individuals in the future. This is the main difference from the provisions relating to adult offenders, which are orientated towards past. Restorative justice seeks to show that the guilty individual is able to understand the seriousness of their crime, the consequences for society, and exert great effort to undo the consequences. These elements are shown to be effective in adolescents primarily because of the application of educational influences as opposed to simply stigmatisation, which is typical for retributive criminal law. The Act enhances the principle that penal repression should only have a supporting role and significantly expands the range of measures applicable to youths. An interest in punishing them is not the main focus; the main focus is to restore disturbed social relations, the integration of the juvenile within the family, improve the social environment and place the emphasis on prevention of the commission of unlawful acts.

The restorative approach is also contained in Act No. 257/2000 Coll. Regarding the Probation and Mediation Service. Probation and Mediation activity is according to the law, inter alia, to create conditions for a decision on the suspension of criminal proceedings or for approval of settlement, especially negotiation and conclusion of an agreement between the accused and the victim, a damages or settlement agreement, or for other conditions such as procedural penalties or non-custodial. The Probation and Mediation Service also helps to eliminate the consequences of the crime victim and others affected by the crime. The Probation and Mediation Service pays special attention to juveniles accused and the accused aged among adolescents contributes to protecting the rights of those harmed

by crime and to coordinate social and therapeutic programs to work with the accused, particularly in the case of juvenile users of narcotic and psychotropic substances. PMS performs within their scope of operations at the direction of law enforcement authorities in criminal proceedings and, where appropriate, mediation without such instruction especially at the initiative of the accused and the victim.

The restorative approach in the preparatory proceedings for juveniles.

The objective of the PMS in preliminary proceedings is to enhance the educational treatment of the juvenile offender so that cases of minor misconduct can be diverted and prosecution in cases where it is no longer a minor offense implement measures that will strengthen the educational impact and minimize the risk of further recurrence of the juvenile. PMS activities should also aim to remedy the damage and restoring degraded relations. PMS dedicated staff to work with youth offers minors in pre-trial proceedings: the mediation of the conflict, help restore the disturbed interpersonal relationships (mediation), the mediation agreement on compensation, preparation of written materials for the prosecutor/judge for youth, working with victims and offer possibilities and options for educational performance measures.

In order to ensure a long term effect and performance of punitive measures of community service, the restorative approach includes probation officers specializing in youth work to negotiate with the accused/convicted juveniles for further opportunities for cooperation in the field of mediation activities and taking steps towards establishing contact with the victim (if the case is suitable for mediation).

In order to ensure supervision for the restorative approach - an integral part of the activities of the probation officer in the course of supervision is the contact with the victims whose needs and interests are to be in the plan of supervision (probation officer created in collaboration with minors) taken into account.

B.2. What are the types of restorative justice measures provided for juveniles (e.g. victim-offender mediation, family conferencing, circles)? Please also refer to their legal basis.

Working with adolescents and children constitute a specific area of activity of the Probation and Mediation Service. The individual centers PMS have specialists working with youth who are engaged in this agenda. Workers of PMS ensure compliance with Act No. 218/2003 Coll. of Juvenile Justice in the performance of many educational and penal measures, in particular the supervision of a probation officers and socially beneficial activities - but especially seek the earliest possible entry into the case. In the pre-trial phase assistance to juvenile offenders is offered, to their families and the victims, which mainly consist in a non-judicial resolution of the situation (mediation), offer appropriate programs for juveniles and other educational measures that can be

served with the consent of the young person already in pre-trial proceedings . The result of this action is then taken into account and in the course of the proceedings. Objectives of PMS in this area are settlement, rapid intervention, compensation to the victim, and to find a resolution which is chosen wisely and corresponds to the situation of the juvenile.

Probation program for juveniles, i.e. the program in terms of the wording of § 17 of Act No. 218/2003 Coll. Liability for unlawful acts of Youth and Juvenile Justice (hereinafter referred to as Act No. 218/2003 Coll). means a “particular social training program, psychological counseling, therapeutic program, or program that includes charitable activities, training, further training, retraining or other suitable program to develop the social skills and personality of the juvenile, with different types of limitations in the current way of life that they seek to avoid the youthful behavior that would be against the law, and to promote the appropriate social background and the normalization of relations between them and the victim. “ (Act No. 218/2003 Coll., § 17, paragraph 1).

One of the projects implemented by the Probation and Mediation Service of the Czech Republic is the project ‘On the Right Track!’, the content of which is the introduction and development of new probation programs and restorative justice for juvenile offenders. One of the main objectives of the project is to develop a pilot program of restorative justice with family group conferences in the framework of youth crime. The aim of the project is to develop effective tools to deal with juvenile criminal offenses associated with violent and aggressive behavior, prevent reoffending, facilitate the social integration of young offenders and promote effective ways of cooperation and coordination with experts and relevant institutions.

B.3. Do these restorative measures play a role in juvenile justice (sentencing) practice?

Yes, restorative measures play a role in the juvenile justice and sentencing practices and are actively employed. Working with adolescents and children forms a specific area of activity of the Probation and Mediation Service. The individual PMS centres have specialists working with youth who are engaged in this area. PMS workers ensure compliance with Act No. 218/2003 Coll. of Juvenile Justice in the performance of many educational and penal measures, in particular the supervision of probation officers and socially beneficial activities - but especially seeking the earliest possible entry into the case. As soon as in the pre-trial phase, assistance is offered to juvenile offenders, their families and the victims mainly consisting of non-judicial resolutions of the situation (mediation), offer appropriate programs for juveniles and other educational measures can save with the consent of the young person already in pre-trial proceedings. The results of these actions are then taken into account in the course of the proceedings. The objectives of the PMS in this area are settlement, rapid intervention and compensation for victims, a measure which is widely chosen and corresponds to the situation of the juvenile.

B.4. What are the main actors involved in delivering restorative justice measures (public institutions, NGOs...). Who bears for the costs of restorative justice measures?

The main representative involved in the implementation of restorative justice measures in the Czech Republic is the state. The organizational component of the Probation and Mediation Service carries out criminal acts of probation and mediation services. Supervision of the activities carried out by the Ministry of Justice, the Minister of Justice as its advisory body in this area established the Council for Probation and Mediation. The legislation is contained in Act No. 257/2000 Coll., The Probation and Mediation Service.

The individual PMS centers have multidisciplinary teams which meet regularly. They are called - teams for youth. They consist of the above mentioned workers from PMS - Specialists for Youth, as well as prosecutors, judges, youth, curators and staff of social-legal protection of children, representatives of the Czech police, municipal police, or representatives of other relevant institutions. Together they work to resolve forms of interaction, organizational issues and mainly deal with case work of individually accused juveniles. A youth team influences the activity of the PMS centre and the region.

In the Czech Republic, different providers, mainly from non-governmental organizations, offer programs for juvenile probation. The first accredited probation programs for juveniles in the Czech Republic were implemented in 2004. By 2012, 127 were granted accreditation probation programs for youth in the country. In 2012, 11 accredited probation programs were implemented. One example of a successful probation program is with the non-profit organization RUBIKON Center. They have two accredited probation programs for juveniles - PUNKT and Training Program - Adolescents.

PUNKT – the target group is young offenders of violent or property crimes who commit crimes repeatedly and/or are at increased risk of recurrence. The aim of the program is to reduce the risk of recurrence through structured program participation and strengthen the family as an important source of support for juvenile offenders. The program consists of a group of topics such as crime and its consequences, coping with emotions and provocation, problem solving, successfully dealing with people and the consequences of the crime on the victim. Individual participation of the client, the representative of the family and a youth specialist from PMS, have themes such as family as a source of support, preparing an emergency plan, scheduling, managing risky situations and general evaluation of the success of the program.

Training Program - Adolescents - this is a group probation program for juveniles who repeatedly come into conflict with the law. The target group is also those who were sentenced to a probation program simultaneously with the supervision of a probation officer and also those who were sentenced to supervision by a probation officer, in which the client decides to voluntarily participate in the program. The program is also used for clients who come into conflict with society, the main objective is to reduce the risk of

recurrence of problem behavior. This type of program is designed for the Social-Legal Protection of Children (OSPOD) clients and clients in institutional care. Another use of the program is in prisons for juveniles. The aim of the program is to reduce juvenile recidivism. For offenders, juvenile delinquents create an opportunity to think about the consequences of the offense for themselves, victims and society and with it the risky situation that led to the commission of crime. The program reinforces the strengths of clients and teaches them to manage risky situations in everyday life without conflict with the law. It reduces the risk of recurrence in young offenders and helps their social integration.

C. Foster care within the juvenile justice system

C.1. Does foster care play any role in your juvenile justice system?

If a minor or juvenile is found guilty by the court, they do not receive punishment, but some other measure. The law recognizes three types of measures: educational measures, safeguard measures and criminal measures. The court may also dispense (or conditionally suspend) the imposition of measures.

Educational measures are: supervision of a probation officer, probation program, educational responsibilities, educational limitations, a warning.

Protective measures: safety of treatment, preventive education, confiscation of other assets.

Criminal action: community service, house arrest, banning from the sports, cultural and other social events, financial measures, financial measures with conditional suspension of execution, forfeiture or other assets disqualifications, deportation, imprisonment conditionally suspended for a probationary period of surveillance, imprisonment without probation.

Children under fifteen years of age are not criminally responsible, i.e. they cannot be prosecuted for the offense. If they commit an act that otherwise carries the elements of the offense, proceedings are taken under the Civil Procedure Code (i.e. not under the Criminal Procedure Code). In this procedure a child must have a guardian (usually it is a lawyer). If the court refrains from the imposition of measures, it may save a child by:

- Supervision of a probation officer
- Inclusion in a therapeutic, psychological, or other suitable educational program in an Educational Centre
- Protective care
- Before ordering institutional care, the court shall consider whether the child's upbringing can be provided by foster family care or family care in a facility for children in need of immediate assistance, which takes precedence over constitutional education.

C.2. Under which conditions can foster care be imposed within the juvenile justice system (at pre- or post-sentencing level or in case of diversion?) Can foster care be imposed as an alternative to custody or pre-trial/police detention? If so please describe the regulations for foster care (length, rights of the children/the foster caregivers etc.) If there are possibilities in law, how are they used in practice?

In cases of convicted minors and young adults, court ordered protective care is often in fact used. When it comes to protective care ordered by a court from the conviction of a juvenile or minor, there is training ensured for a period specified by the court in special institutions for juveniles.

However, it often happens that the children they receive in residential care, cannot return to their original families after their visit for various reasons. In these cases, the child seeks regional office for court approval in foster care.

Explanation of terms:

Protective Care - in cases where a young person is not adequately cared for and existing education was neglected by the youth or the environment in which they live, would be no guarantee of proper education. This option is exercised in special institutions for juveniles.

Before ordering institutional care, the court shall consider whether the child's upbringing can provide foster family care or family care in a facility for children in need of immediate assistance, which takes precedence over constitutional education.

First, it is important that the original family was able to ensure proper child upbringing and care, according to their healthy developmental needs. If the court deems so, the child, despite delinquencies, could continue to remain in their family of origin, and determine the level of support and controls to ensure proper education. These include the measures: supervision by a probation officer, probation program, educational responsibilities, educational limitations, a warning, protective treatment, protective education, confiscation of other property, community service, house arrest, a travel ban on sports, cultural and other social events, financial measures, financial measures with conditional suspension of execution, forfeiture or other assets disqualifications, deportation, imprisonment conditionally suspended for a probationary period of surveillance, imprisonment without probation . In the case of children under the age of 15 years, the court may impose guardian supervision by a probation officer, placement in a therapeutic, psychological, or other educational program in an educational care center. The last is in protective care.

C.3. Does your system have any other alternatives to custody like alternative care in case of pre-trial detention (e.g. in closed juvenile welfare institutions instead of prisons) or in case of juveniles sentenced to youth prison or comparable forms of custody? If there are possibilities in law, how are they used in practice?

Alternatives to detention for juveniles and minors in the Czech Republic Act No. 218/2003 Coll. of the Juvenile Justice and Criminal Code.

§ 49 of Act No. 218/2003 Coll. - Substitution of another binding measure. (1) States the juvenile can be replaced by a guarantee, supervision, promise or placing them in the care of a trusted person.

(2) States the juvenile can also substitute a financial guarantee. Exact replacement methods are covered in the Penal Code.

§ 50 of Act No. 218/2003 Coll. - Replacement of custody of the juvenile's placement in the care of a trusted person

(1) The juvenile, in which there are grounds, may be placed in custody to the care of a trusted person, if

- a) such person is willing and able to take care of them and provide supervision, is undertaken in writing to be a juvenile care provider and take responsibility for the juvenile summons to appear before the authority responsible under the law and meet other conditions designated by the court,
- b) the juvenile agrees to be entrusted to their care, and undertake in writing that they will behave under the stated terms and meet other conditions set by the court for the youth.

(2) The juvenile fails to comply if a trustworthy person or youth with its obligations under paragraph 1, the authority deciding on custody of the juvenile to the proposal, a trusted person in whose care the juvenile is found, or of their own volition that

- a) the person and the young person exempt from obligations they have undertaken under paragraph 1, and
- b) simultaneously designate another trusted person under paragraph 1 or take other action to replace the link, or if this is not possible, decide on the custody or issue an order for the arrest of a juvenile.

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STATISTICS

Criminality in the Czech Republic in 2012

Note: statistics from 2013 are not available yet

Criminality Individuals prosecuted	Adults from 18 yrs incl.	Juveniles 0 – 17 yrs	Total
Totally	113 024	4 857	117 881

In 2012 totally 113 024 individuals were prosecuted, out of them were 4 857 juveniles up to 18 years of age.

Percentage of prosecuted juveniles (up to 18 years of age) was approximately 4%.

Imposed sentences and criminal measures in Czech Republic in 2012

Imposed sentences/criminal measures	Adults from 18 yrs incl.	Juveniles 0 – 17 yrs	Total
Totally	102 409	2039	104 448

Evidence of juveniles cases – Probation and Mediation Service Czech Republic in 2012

Evidence of new cases PMS CR	Adults from 18 yrs incl.	Juveniles 0 – 17 yrs	Total
Totally	27 636	3493	31 129

Evidence of juveniles cases – Probation and Mediation Service Czech Republic in 2012

Cases	Evidence of new PMS CR Juveniles 0 – 17 yrs	Total	under the preparatory proceedings and court proceedings	Under the execution proceedings
Totally		3493	2019	1474

Acts under the preparatory proceedings and court proceedings

Juveniles 0 – 17 yrs	Mediation mediation of conflict solution (PMS CR)	Abandonment of criminal prosecution
Totally	1696	6

Acts under the execution proceedings

Acts PMS CR under the execution proceedings Juveniles 0 - 17 yrs	Total
Totally	1708

Prison population in Czech Republic – January 2014 (Source: Prison Service of the Czech Republic)

Prisoners		
	Female	Male
Adults	963	15 690
Juveniles	5	108
Inmates*	3	33
Total	16 802	

* Detention Facility

Accused persons - custody (Remand Prisoners)

	Female	Male
Adults	141	2 098
Juveniles	2	31
Total	2 272	

Convicted persons - imprisonment (Sentenced Prisoners)		
	Female	Male
Adults	822	13 592
Juveniles	3	77
Total	14 494	

In January 2014 there were 80 convicted juveniles and 33 accused juveniles in total in prisons in the Czech Republic.

**European Project ‘Alternatives
to Custody for Young Offenders -
Developing Intensive and Remand
Fostering Programmes’**

JUST/2011-2012/DAP/AG/3054



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