

**Implementation of the Views of the Committee on the Rights of the Child
in case no. 139/2021 – B.J. and P.J. v. the Czech Republic
Report submitted by the Government of the Czech Republic on 15 December 2023**

In its Views of 15 May 2023, the Committee on the Rights of the Child (“the Committee”) held that there was a violation of articles 3 (1), 9 (1–3), 12 and 37(b) of the Convention on the Rights of the Child (“the Convention”).

First, the Committee concluded that the authors’ separation from their parents and limiting the contacts with their parents resulted in a violation of their rights under articles 3(1) and 9 (1–3) of the Convention. *Second*, according to the Committee, failure to have heard the authors during the domestic proceedings leading to their placement in institutional care amounted to a violation of article 12 of the Convention. *Third*, the Committee considered that such placement was an unlawful or arbitrary deprivation of their liberty in violation of article 37(b) of the Convention.

The present report is intended to inform the Committee of individual and general measures that has been or are planned to be adopted to give effect to the present Views.

I. INDIVIDUAL MEASURES

The Committee considers that the Government of the Czech Republic (“the Government”) are obliged to provide the authors with effective reparation for the violations suffered.

The Government state that according to Article 12 of the new Statute of the Government Agent for the Representation of the Czech Republic before International Human Rights Bodies, approved by the Czech Government on 14 June 2023 (see [Annex to Government Resolution No. 420 of 14 June 2023](#)), it is possible to provide monetary compensation to an individual if a UN Committee found a violation of his or her rights and freedoms and, at the same time, it appears to be an appropriate form of reparation or mitigation in view of the circumstances. However, according to the transitional provisions, compensation can only be granted if the decision of the UN Committee was issued after the entry into force of the Statute (which entered into force on the date of its approval by the Government). Thus, unfortunately, Article 12 of the Statute cannot be applied to the Views in question.

II. GENERAL MEASURES

The Committee considers that the Government are under an obligation to prevent similar violations in the future. In particular, the Committee requests the Government to:

Firstly, publish the present Views and to disseminate them widely;

Secondly, ensure that all proceedings aiming at removing children from their parents, including decisions on interim measures, are in conformity with the Convention and the findings contained in the present Views and, in particular: (i) that a best-interests assessment is conducted; (ii) that the children’s views are considered and given due weight, including in relation to the type of placement under consideration, to the medical treatments and access to education to be provided, and to contact with their parents during their placement; and (iii) that procedural safeguards are established to ensure the protection of the rights of children under the Convention;

Thirdly, ensure that removal orders are a measure of last resort after having tried other child-friendly, less invasive measures, in consultation with the children and their parents, on the advice of a multidisciplinary team of professionals. They should be issued for the shortest period of time, should be subject to regular review and appeal and should be discontinued as soon as possible. Regular contact between the children and their parents during the placement should be ensured. The Government should take measures to ensure the reunification of the child with his or her family as soon as it is deemed in their best interests;

Fourthly, ensure that the child always has appropriate legal representation during the proceedings. The child should be provided with a legal representative, in addition to a guardian or representative of his or her views, when there is a potential conflict between the parties in the decision;

Fifthly, provide training to staff of social service entities, members of the public prosecution service, judges and other relevant professionals on the rights of the children subjected to a removal order from their parents, including on the grounds of access to health services and, in particular, on the Committee's general comments no. 12 (2009), no. 14 (2013), no. 15 (2013) and no. 20 (2016).

A. RAISING AWARENESS AND ANALYSIS OF THE VIEWS

Firstly, the Ministry of Justice translated the Views into Czech language and published [them](#) together with their [summaries](#) on its website. Moreover, the summaries of the views were published in the Government Agent's Newsletter no. 3/2023 (<https://t.ly/ZuJUR>). At the same time, both the translation of the Views and their summaries were sent to the Constitutional Court and other competent authorities involved in the case.

In addition, the Government Agent's Office organised under the auspices of the President of the Republic Mr Petr Pavel an international conference called "*Making Human Rights a Reality: Implementation on International Human Rights Obligations at the National Level*" in November 2023 (<https://konference.mezisoudy.cz/en/>). The objectives of the conference were to present the outputs of the project funded by the Norway grants called "*Awareness Raising on the case-law of the European Court of Human Rights and other international obligations of the Czech Republic*" (new case-law database, factsheets, human rights compatibility guide for legislators, etc.) as well as the role and activities of the Office of the Government Agent in the implementation process of human rights obligations including obligations under the Convention. Moreover, the aim of the conference was to connect legal experts from different spheres who are dedicated to protection of human rights and to share their experiences and to lead a discussion on the importance of the implementation of the European Court of Human Rights ("the Court") judgments and other international human rights obligations at the national level and the challenges associated with it from the perspective of various actors. The representative of the Government Agent's Office spoke among others about the implementation of the present Views of the Committee. Speakers at the conference included Kateřina Šimáčková, judge of the Court elected in respect of the Czech Republic; Věra Jourová, Vice President of the European Commission for Values and Transparency; Henrik Kristensen, Deputy Executive Secretary of the European Committee of Social Rights Clare Ovey, Head of the Department for the Execution of Judgments of the Court; and judges of Czech Constitutional and Supreme Administrative Court. About 150 participants attended the conference, among others, judges, legal counsels and representatives of various ministries, the Office of the Czech Government, the Office of the Public Defender of Rights and NGOs. The recording of the conference in Czech or English is available [online](#).

Besides that, the above-mentioned project funded by the Norway grants aims at creating and expanding the information system about international human rights obligations of the Czech Republic among legal professionals and the general public. The core of the system is a web portal containing information on the case-law of the European Court of Human Rights and decisions, recommendations and other materials of international human rights bodies from the United Nations and the Council of Europe. One of the important parts of the web portal, that will be completed within a few months, will be dedicated to the jurisprudence of the United Nations Treaty bodies and will contain translations of 22 general comments of the Committee in Czech language, including above-mentioned general comments nos. 12, 14, 15 and 20.

Finally, the implementation of the Views was further discussed at the 9th meeting of the Committee of Experts for the Execution of Judgments of the Court and the Implementation of the Convention¹ held on 5 September 2023 (<https://justice.cz/web/msp/kolegoum-expertu-k-vykonu-rozsudku-eslp-podrobnosti?clanek=jednani-kolegia-dne-5-zari-2023>). The Committee of Experts identified that the Views require the adoption of general measures in respect of effective legal representation of children during the proceedings and subsequently, an expert group was set up to resolve this matter (see chapter D. below). The expert group first met on 23 October 2023. The next meeting is planned for January 2024. The Committee of Experts will consider the outputs and proposals for general measures of the expert group on its upcoming plenary meeting next year.

B. REMOVING CHILDREN FROM THEIR PARENTS

Firstly, as to the interim measures, according to the amendment to the Act on Special Judicial Proceedings effective from 1 January 2022, a child may be placed outside the care of his or her parents only on the basis of an ‘urgent’ interim measure under Article 452 (1). At the same time, the amendment enshrines a regular review of both an ‘urgent’ and ‘regular’ interim measures pursuant to Article 74 et seq. in connection with Article 102 of the Code of Civil Procedure. Finally, it sets a maximum annual time limit for both interim measures. Therefore, the amendment to the Act on Special Judicial Proceedings effective from 1 January 2022 sets out clear distinguishing criteria between the two types of interim measures and limits their maximum duration (including possible prolongment) to one year. Therefore, the problem with issuing interim measures for an indefinite period of time is solved (see also [Hýbkovi v. the Czech Republic](#), no. 30879/17, judgment of the European Court of Human Rights of 13 October 2022, in which the Court found no violation of article 8 of the European Convention on Human Rights).

Secondly, in October 2023, the Government Agent’s Office in cooperation with the Judicial Academy, a training institution for judges and prosecutors, organized a roundtable on the reasons for removing children from their families. The findings of the round table will be followed up, in particular the available case studies will be elaborated in order to analyse the current judicial practice.

¹ Established as a follow-up to the obligation to reinforce the implementation of the European Convention on Human Rights at the national level agreed by and between the Contracting Parties to the Convention at the High-level Conference on the “Implementation of the European Convention on Human Rights, our shared responsibility” of 27 March 2015, it is the Government Agent’s advisory body which serves as a forum for analysing and formulating recommendations to the authorities in terms of suitable measures to be adopted for the purpose of implementing the Court’s judgments and also views of UN committees. It is composed of representatives of all ministries, both Chambers of Parliament, highest courts, Office of the Supreme Public Prosecutor, Office of the Public Defender of Rights, academic staff and members of various NGOs operating in the field of fundamental human rights.

Thirdly, the respective case law of the Constitutional Court was summarised in a recent judgment of the Constitutional Court no. II. ÚS 2225/23 of 1 November 2023. The case in question concerned a child who was removed from his biological family for similar reasons as the children in the case of *B.J. and P.J.* The Constitutional Court made it clear that it must always be examined whether there is an alternative to institutional care.

Fourthly, the Ministry of Labour and Social Affairs, in cooperation with experts, is preparing a new law on child protection and family support, which will reflect the Views of the Committee on removing children from their parents.

Finally, the analysis of the Views will be subject to further expert reflection, although in the light of the settled case law of the Constitutional Court it appears that no general measures are needed in respect to removing children from their parents.

C. RIGHT OF THE CHILD TO BE HEARD

Firstly, in general, the Constitutional Court's settled case law refers to Article 12 of the Convention. Domestic case law clearly establishes a child's right to participate. The Constitutional Court points out that, in proceedings directly affecting the rights of minor children, the child cannot be regarded as a mere object on which others take decisions, nor can he or she be placed in the role of a passive observer of events (e.g. the Constitutional Court's judgment no. II. ÚS 1945/08 of 2 April 2009). Section 867 of the Civil Code implies an obligation to ascertain and give due consideration to the child's opinion. The child's opinion may be ascertained by the judge or, in exceptional cases, by other persons or an expert opinion.

Secondly, the case law of the Constitutional Court was summarised in a recent judgment of the Constitutional Court no. II. ÚS 2225/23 of 1 November 2023. The case in question, similar to the case of *B.J. and P.J.*, concerned a child who was close to the age of majority. In that judgment concerning as in the case of *B.J. and P.J.* the proceedings on interim measure, the Constitutional Court also referred to the part of the Concluding observations on the combined fifth and sixth periodic reports of 2021 that the Committee addressed to the Czech Republic concerning respect for the views of the child. The Constitutional Court made it clear that the right of the child to be heard must be respected.

Thirdly, there are a number of national projects on the right of the child to be heard. As an example, the Judicial Academy held a symposium on children's participation rights in family law proceedings. The symposium produced extensive expert material which was disseminated to legal professionals and is published on the Supreme Court's website (https://www.nsoud.cz/Judikatura/ns_web.nsf/web/Sympozia,seminare~OdbornasympozianadjudikaturouNS~5_rodinnepravni_symposium_Justicni_akademie_na_tema_Participace_deti_v_opatrovnickem_soudnim_rizeni~?openDocument&lng=CZ).

Fourthly, the Ministry of Labour and Social Affairs, in cooperation with experts, is preparing a new law on child protection and family support, which will reflect the Views of the Committee on the right of the child to be heard.

Finally, the analysis of the Views will be subject of further expert reflection, however, in the light of the settled case law of the Constitutional Court it appears that no general measures are needed in respect to the right of the child to be heard.

D. EFFECTIVE LEGAL REPRESENTATION OF THE CHILD

As stated above, the lack of effective legal representation of the child where there is a potential conflict of interest between the parties has been identified as a general problem.

As a part of remedial measures, *firstly*, in October 2023, the Government Agent's Office organized an expert roundtable on the matter. The findings of the round table will be followed up in the coming year. Further analysis will be made and further discussions will be held with the competent domestic authorities to propose changes to the current system.

Secondly, the Ministry of Labour and Social Affairs, in cooperation with experts, is preparing a new law on child protection and family support, which will reflect the Views of the Committee on effective legal representation of the child.

E. TRAINING TO PROFESSIONALS

Firstly, the family law judges were informed of the Views at a Judicial Academy seminar in June 2023.

Secondly, the members of the governmental Committee on the Rights of the Child were also informed about the Views at its meeting held on 13 September 2023 (<https://vlada.gov.cz/cz/ppov/rlp/vybory/pro-prava-ditete/ze-zasedani-vyboru/zasedani-vyboru-dne-13--zari-2023-209560/>).

Thirdly, the Government Agent's Office is planning further training to relevant professionals next year. In particular, in January 2024, the family law judges will be informed of the implementation process at a Judicial Academy seminar, and in April 2024, the family law judges of Regional Court in Brno will be informed of the Views at a gremial meeting.

Finally, the Government are convinced that the new website mezisoudy.cz will help raise awareness of the Views.

III. CONCLUSION

The Government will continue their efforts to implement the Views and are ready to maintain a follow up dialogue with the Committee in order to discuss implementation of the Views. Moreover, the Government are ready to provide the Committee with regular updates on the status of implementation of the Views.