



Study on children's involvement in judicial proceedings – contextual overview for the criminal justice phase – Czech Republic

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Executive summary

Overview of the general elements of child-friendly justice in criminal proceedings

The main source of the juvenile justice procedure is the Juvenile Justice Act (JJA) – [Zákon o soudnictví ve věcech mládeže](#). This act regulates the terms and conditions of the criminal responsibility of children above 15 years of age for unlawful acts stipulated in the Criminal Code, the measures imposed for such unlawful acts, as well as the procedure and execution of juvenile justice. The Juvenile Justice Act also applies to children below 15 years of age who have no criminal responsibility but who can be subjected to certain measures aiming at their re-education. In general, judicial structures and proceedings focus on re-educating rather than punishing the child.

Competent authorities for Juvenile Justice include: judges specialised in dealing with children, established within the existing system of general courts; public prosecutors specialised in unlawful acts of children, as well as offences committed against children within the scope of the Public Prosecutor's Office; judges and public prosecutors within the existing system of general courts without a criminal specialisation tasked to ensure the social and legal protection of children under 15 (who have no criminal responsibility) involved in judicial proceedings; police officers specially trained in handling children.

The services of juvenile justice include: officers of the Probation and Mediation Service; the Social and Legal Protection Authority; institutions for protective care; and attorneys.

Overview of children's involvement before, during and after judicial proceedings

The legislative framework focuses mainly on the child defendant. There are only a few rules which apply specifically to child victims and witnesses.

There are no specific provisions on a child's capacity to report a crime; however since investigating bodies act *ex officio* it follows that the police have to investigate any crime they become aware of regardless of the source of the information. A child victim is a party to criminal proceedings and as such has the same rights as any other victim of a criminal offence. However, since considered immature, the child's procedural rights are fully administered by their legal representatives, i.e. in most cases parents or a legal guardian. There are no special rules requiring the investigating and prosecuting bodies to also provide the information directly to the child and not only to a legal representative or guardian.

Protection of the child victim's/witness's privacy is regulated mainly through the prohibition to reveal the identity of the child before, during and after the court proceedings.

Specific measures are in place to protect child victims from secondary victimisation. However, the existing measures allow protection of the victim from bodily harm or intimidation rather than from further psychological harm. Children up to 15 years old should be confronted with the offender only exceptionally, when it is considered necessary for the criminal proceedings. Identification of the offender during reconstruction should be carried out in such a way as to avoid the child meeting the offender in person. Since 1 January 2012 the Criminal Procedure Code allows for the wide use of video recording whenever it is in the victim's best interest; but such a decision falls to the discretion of the investigating bodies. The police also launched a project on building child-friendly interview rooms for interviewing children. The interview of children must always take place in the presence of a pedagogue or other expert on children and eventually also the child's parents. Before the criminal court, the protection of the victim from secondary victimisation may be ensured by the presiding judge, who has the power to interview the victim/witness outside the hearings or to hold the hearings privately.

With respect to child suspects/offenders, within the Czech legal order children are criminally responsible at the age of 15 if they are intellectually mature enough to understand the unlawfulness of the crime and to control their own actions. Children up to 15 years of age and children between 15 and 18 years of age who are not mature enough to be held criminally responsible, can be found liable for an 'unlawful act'. Unlawful acts are dealt with in civil proceedings before the juvenile court. Nevertheless, the sanctions that may be imposed in response to an unlawful act are criminal in nature.

Note that child suspects enjoy different protection of their rights depending on the age group to which they belong.

Several provisions are in place to ensure that a child suspect is informed of their rights when in contact with the police or the prosecuting authorities. Children over 15 may be held in pre-trial custody if certain conditions are met, while this is not possible for children below this age. The protection of a child suspect's private and family life is safeguarded through various provisions (e.g., prohibition to disclose the child's name, privately held trials); however child suspects below the age of 15 seem to receive weaker protection in this regard. In criminal proceedings against children above 15 years of age, both mediation as well as diversion from formal criminal proceedings may be applicable while there is no way to divert a child below 15 years of age from judicial proceedings. The Czech legislator has introduced some measures to minimise the burden of the proceedings on child suspects (e.g. through support by specialised institutions) and to ensure a child friendly environment (e.g., through the possibility to use child-friendly interview rooms). Child suspects over 15 years old must be provided with a defence counsel from the very beginning of the criminal proceedings, even before charges are brought against them as they are not mature enough to defend themselves appropriately in person. Child suspects below 15 years of age do not have the right to a defence counsel, but must be represented by an attorney during the judicial proceedings.

As the justice system acts on the basis of the fundamental right to education, the provisions governing the sentencing are aimed at allowing the child to leave the criminal proceedings circuit as soon as possible and there are many measures in place to achieve this aim. Child offenders above 15 years of age may be subject to educational, protective or criminal measures whereas child offenders below 15 years of age to measures of an educational or protective nature as well as measures which essentially entail the deprivation of their liberty. Regarding the deprivation of liberty for juveniles, under Czech legislation detention is considered an extreme measure, justified only if there is a danger to society.

Promotion and monitoring of a child-friendly approach to criminal justice, with an overview of strengths and potential gaps

The Juvenile Justice Act introduced considerable safeguards for children above 15 years of age involved in criminal proceedings. Mandatory legal assistance from the very beginning of criminal proceedings offers strong protection to children above 15 years of age in conflict with the law. There is also a wide range of alternatives to judicial proceedings. There are thus many possibilities to end criminal proceeding, when deemed reasonable. Also, if the child is convicted, there is a wide range of sanctions to promote their education and develop their sense of responsibility.

For child victims, protection is rather insufficient, especially considering that a victim has no procedural rights unless acting as a witness or claiming compensation. However, video-recording equipment for the examination of all witnesses/victims was introduced in January 2012 and 32 child-friendly interview rooms have been established in police stations throughout the Czech territory.

The most significant shortfall concerns safeguards for children below 15 years of age. First, they do not have the same rights as suspects above 15 years of age as they have no criminal responsibility. This means that mandatory legal assistance does not apply to them. If a child below 15 is interviewed by the police, the law mandates only the presence of a social worker. The police can inform the parents before the interview but they are not required to allow the parents to participate in the interview.

Civil proceedings against a child below 15 years of age are not flexible enough to allow a cessation. In compliance with the law, the prosecutor is obliged to bring the case to court, even if there is no benefit to this and the child is unlikely to relapse into unlawful activity. Neither are child offenders below 15 years of age entitled to appeal against a verdict of 'guilty'. They can only bring an appeal against the measure imposed upon them by the court.

Abbreviations

| | |
|-----|---------------------------------|
| CA | Competent Authority |
| CoE | Council of Europe |
| EC | European Commission |
| EU | European Union |
| JJA | Juvenile Justice Act |
| PMS | Probation and Mediation Service |

1 Overview of Member State's approach to children in criminal proceedings and specialised services dealing with such children

The institutional framework relevant to children in criminal proceedings is a mix of criminal, public and private law provisions.

The Youth Justice system in the Czech Republic was overhauled in 2003 through the Juvenile Justice Act (JJA) – *Zákon o soudnictví ve věcech mládeže*¹. This act regulates the terms and conditions of the criminal responsibility of children above 15 years of age² for unlawful acts stipulated by the Criminal Code – *Trestní zákoník*³, the measures imposed for such unlawful acts, as well as the procedure and execution of juvenile justice. However, children below the age of 15 can also be brought before the Youth Justice System, as specified in the JJA, which is based on the principle of restorative justice (education of the child) rather than retributive (punishment of the child). It seeks to achieve this by using measures, which would efficiently prevent the offender from committing unlawful acts in the future; this is expected to help the offender find a social role corresponding to his/her abilities and mental development, and encourage him/her to contribute to society, according to his/her powers and abilities and compensate for the damage caused by his/her unlawful act. One of the key principles of the JJA is the quick adjudication of the relevant cases. Since children and adolescents are not fully developed in their intellectual, moral and social spheres, it is hoped that a swift, clear and fair response to their offence will be the best prevention mechanism.

Specialist institutions dealing with children

In the Czech Republic, the Youth Justice system is not overseen by a single authority⁴. Competencies are spread amongst several institutions. Major roles are played by the Ministry of Justice – *Ministerstvo spravedlnosti* (courts, state prosecutors, Probation and Mediation Service), and the Ministry of the Interior – *Ministerstvo vnitra* (police). Of importance are also the Ministry of Social Affairs – *Ministerstvo práce a sociálních věcí* (Social and Legal Protection Authority – *orgán sociálně právní ochrany dětí*) and the Ministry of Education, Youth and Sports – *Ministerstvo školství, mládeže a tělovýchovy* (Institutions for protective care). Therefore, there is no institution to coordinate actions of the competent bodies.

Police

Within the police there are special units which deal with children. These specialists should be established according to a binding instruction⁵ at all levels of hierarchical structure of police, i.e. at the Police Presidium, Regional Police Directorates and District Police Directorates. Special units should usually be present in proceedings against children, especially during the preparatory proceedings. However, if it is not possible to ensure the presence of specialised police officers and the investigatory act cannot be deferred⁶, it is possible to carry out the act

¹ Act No. 218/2003 Coll. on Juvenile Liability for Unlawful Acts and on Juvenile Justice and on the Amendment of Several Laws (Juvenile Justice Act).

² Juveniles are persons who at the time of committing an offence have reached the age of fifteen and are not over the age of eighteen.

³ Act No. 40/2009 Coll. of 8 January 2009, Criminal Code.

⁴ As, for example, in England and Wales where the Youth Justice Board oversees the operation of the youth justice system.

⁵ Article 2 of Binding Instruction of Police President regulating the system of police work shelves in detecting and documenting youth crime and crime against youth No. 8/2002 from 21 January 2002.

⁶ The act cannot be deferred if the act is clearly in danger of defeat, if there is the risk of loss of evidence or risk of reduction of its value.

in the absence of the special unit⁷. Nevertheless those cases should be the exception rather than the rule.

According to JJA, these special police units have to undergo special training⁸. The training should not only focus on the interpretation of the Juvenile Justice Act, the Family Act and other legislative acts, but also educate them on criminology, developmental psychology, child psychiatry, special education and social work.

- Special police units have to closely cooperate with local Social and Legal Protection Authorities. The cooperation consists mainly of the exchange of information, participation in special local committees for social and legal protection of children (*komise sociálně-právní ochrany dětí*)⁹, monitoring of harmful conduct of children, and cooperation in preventive and educational events.
- Special police units should, according to the binding instruction, cooperate with schools (mainly with school educational consultants, school prevention methodologists of prevention¹⁰) (*metodik prevence*) and Pedagogical and Psychological Consultation Centres (*pedagogicko-psychologická poradna*)¹¹. The focus is on preventing and detecting child bullying, truancy, drug abuse, and property crime.

Social and Legal Protection Authority

Social and Legal Protection Authorities play an important role in the Czech Juvenile Justice System. Within this institution there is a special unit called 'Curator for Youth' (*kurátor pro mládež*)¹². This unit conducts the social investigation of the child's family, participates in the preliminary proceedings and the trial, coordinates consultations with other professionals (psychologist etc.), visits children who are placed in institutions and prisons, analyses pathological phenomena faced by children and suggests preventive measures, etc.

There is a potential overlap between the competencies and activities of the Probation and Mediation Service PMS.

Prosecution Service

Special units within the Prosecution Service (*státní zastupitelství*) are responsible for interacting with children¹³. Such units exist within the District Public Prosecutor's Offices (*okresní státní zastupitelství*), the Regional Public Prosecutor's Offices (*krajské státní zastupitelství*) and the High Public Prosecutor's Offices (*vrchní státní zastupitelství*)¹⁴.

⁷ The [Juvenile Justice Act](#), section 41 (2).

⁸ The [Juvenile Justice Act](#), section 3(2).

⁹ The committee is according to section 38 Act No. 359/1999 Coll., Act on Social and Legal Protection of Children, established by the mayor of municipality with extended powers (municipality of 3rd grade). One of the tasks of the committee is to recommend measures that should be implemented to protect children from socially pathological phenomena, and to prepare programmes of care for vulnerable groups of children. The effectiveness of the committee, however, differs in different communities; some of them have a good experience, while in others, the commission does not work at all.

¹⁰ School prevention methodologists provide advisory services at school concerning the prevention of socially undesirable phenomena (truancy prevention, addictions, violence, vandalism, sexual abuse, sect abuse, precriminal and criminal behavior, self-destruction and other socio-pathological phenomena).

¹¹ Article 11(2) of Binding Instruction of Police President regulating the system of police work shelves in detecting and documenting youth crime and crime against youth No. 8/2002 from 21 January 2002.

¹² Competencies of Curators for Youth is regulated by section 31 – 34 Act No. 359/1999 Coll., Act on Social and Legal Protection of Children.

¹³ The role of these specialised units at the prosecution service is regulated by the General Instruction No. 8/2009 from 8 September 2009.

¹⁴ General Instruction of Supreme Public Prosecutor about Model Organizational Rules No. 4/2009 from 27 July 2009.

According to the JJA, prosecutors dealing with children have to undertake special training¹⁵. However, there are no statutory provisions providing details of such training. Also, regular vetting is not regulated by law.

Juvenile courts

There are four tiers of Czech courts: District Courts, Regional Courts, High Courts and the Supreme Court. At each abovementioned court there should be a specialised panel of judges or a specialised judge who presides over such a panel or at least one specialised judge for proceedings against child offenders. These specialised judges form the juvenile courts; however, this does not mean that they remain outside the general court structure. It only means that there should be judges specialised in dealing with child offenders.

The best interests of the child should be a primary consideration for the court¹⁶.

Judges of juvenile courts should have special training on how to treat children¹⁷; however, there are no details on what this training should entail. Judges are obliged to ensure continuous training to enhance their professional, legal and other knowledge necessary for the proper performance of their function¹⁸. There is no provision on vetting and, in practice, no vetting takes place.

Probation and Mediation Service

The Probation and Mediation Service of the Czech Republic (PMS) is the centralised body responsible for mediation in criminal matters. Special units have also been established within the PMS entrusted with working with children in conflict with the law. However, there are no statutory provisions on details of the training of the professionals working with children. Also the regular vetting of such professionals is not regulated by law. PMS is one of the few institutions to publish their methodology for working with children¹⁹.

PMS oversees the execution of many educational and penal correction measures that can be imposed upon children (especially supervision by probation officers). In addition, PMS ensures that the child offenders, their families and the victim collaborate successfully. The principal objectives of the PMS are prompt intervention, attainment of a settlement between the child offender and the victim and provision of compensation to the victim²⁰. Thus, the PMS helps to mitigate the consequences of crime for the victims, guides child offenders so that they understand all consequences of their behaviour and urges children to accept responsibility for the damages caused by such behaviour.

As mentioned above, in the Czech Republic there is no single body which oversees the juvenile justice system as a whole. No common assessment framework or protocols of cooperation have been established.

However, there is an attempt to introduce a multidisciplinary approach called System of Early Intervention (*Systém včasné intervence*)²¹, established in 2004 by the Department of Crime of the Ministry of Interior. The System of Early Intervention makes use of existing legislation and of structures of the public administration for the protection of vulnerable children and their families and tries to ensure that these institutions cooperate successfully. One of its most important features is that it constitutes a single information environment. Currently, 38 out of 601 municipalities participate in the programme.

¹⁵ The [Juvenile Justice Act](#), section 3(2).

¹⁶ Article 3 of the Convention on the Rights of the Child.

¹⁷ The [Juvenile Justice Act](#), section 3(8).

¹⁸ Section 82 (2) of Act on Courts and Judges (Act No. 6/2002 Coll.).

¹⁹ The methodology can be found here: https://www.pmscr.cz/download/Metodicky_standard_PMS_-_mladistvi_a_nezletili_2.zip (in Czech only).

²⁰ For more information about the activities of PMS please see https://www.pmscr.cz/images/clanky/PMS_letak_MLADEZ_en.pdf and https://www.pmscr.cz/images/clanky/PMS_letak_DETI_en.pdf.

²¹ For more information on the System of Early Intervention please see <http://www.sviportal.cz/Default.aspx>.

The system is based on 3 pillars.

1. methodical cooperation between institutions – Teams for Youth;
2. single information system;
3. measures imposed on children in conflict with the law.

Main objectives of the system are:

- reduction of the rate and severity of youth delinquency;
- reduction of crime against children;
- preventing child offenders from committing crimes in the future
- swift response to delinquent child conduct or conduct that threatens children;
- rapid transmission of information to child offenders, victims of crime, the measures taken, suspected abuse, child abuse, etc.

Nowadays, the System of Early Intervention is under the responsibility of the Ministry of Labour and Social Affairs (instead of the Ministry of the Interior). According to the National Strategy on the Right to Childhood²², the system will spread throughout the country by 2015.

General Approach towards children: definition of the child, participation, age and maturity, discrimination

Definition of the term 'child' in the Czech legal order

Persons below 18 years of age are considered as children in the Czech legal order²³. This definition is in compliance with the UN Convention on the Rights of the Child. Children are subject to special treatment not only under the UN Convention on the Rights of the Child but also under the Charter of Fundamental Rights and Freedoms (*Listina základních práv a svobod*)²⁴. The Juvenile Justice Act provides that children involved in criminal judicial proceedings should enjoy special treatment and be subject to special measures.

There is no age limit on when children may express their views or provide evidence with respect to an offence; this depends rather on the intellectual and moral maturity²⁵ of the child which is assessed personally by each person examining them (e.g., the social worker of the Social and Legal Protection Authority, the Curator for Youth, the police officer, the judge, etc). There are no measures which set a legal minimum age below which the principle of children's evolving capacity cannot be applied.

The role of children as victims and witnesses in the criminal justice system is quite limited. Significant protective measures have been adopted for these children; however, there are limited possibilities for them to participate in the criminal proceedings. It is usually the parents, guardians or legal representatives of the children who make all the decisions for child victims and witnesses. Further details are provided in the following sections of this report.

Child suspects play a more active role in the whole judicial process. However some legal acts (e.g. appeals) can be brought by their attorneys even against the child's will if it is considered to be in their best interest. Nevertheless, the State approach towards children below the age of criminal responsibility who are suspected of committing a crime is very paternalistic. This issue is further examined in [Section 2.3](#).

²² National Strategy Right to Childhood 2012 – 2015 was approved by the government on 8 January 2012, page 24, available at http://www.mpsv.cz/files/clanky/13085/NS_ochrany_deti.pdf.

²³ Section 8 (1) of Act No. 40/1964 Coll., Civil Code.

²⁴ Constitutional Act No. 2/1993 Coll.

²⁵ This principle is contained in section 8 (1) of Act No. 40/1964 Coll., Civil Code.

Protection from discrimination

Discrimination against children involved in criminal proceedings on the basis of their political, national, social or religious beliefs or those of their parents or extended family, or on the basis of their upbringing, is expressly prohibited by the JJA²⁶.

Children are also protected from direct or indirect discrimination by the Antidiscrimination Act. The national equality body is the Public Defender of Rights (*veřejný ochránce práv*). To comply with the statutory requirements for the protection of persons against discrimination and to promote the right to equal treatment, the Department of Equal Treatment has been established within the Office of the Public Defender of Rights.

There are no special statutory provisions providing specific protection and assistance for more vulnerable children, such as very young children, migrant children, refugees, asylum seeking children etc.

²⁶ The [Juvenile Justice Act](#), section 3(3).

2 Child-friendly justice before and during criminal judicial proceedings

2.1 The child as a victim

2.1.1 Reporting a crime

There are no specific provisions on a child's capacity to report a crime. Indeed, a crime may be reported by anyone, regardless of his/her age or mental capacity.

In general, a child can report a crime either to the police or to the District Prosecutor's Office (*okresní státní zastupitelství*) in writing, by fax and by e-mail. A child can also go to the police station and report a crime in person. In such cases he/she would be immediately questioned at greater detail by the police or the prosecutor about the crime²⁷. Under serious circumstances a child may also report a crime to the Regional (*krajské státní zastupitelství*), High (*vrchní státní zastupitelství*) or Supreme Prosecutor's Office (*Nejvyšší státní zastupitelství*).

A child can report a crime even by telephone, but in that case the police and the prosecutor do not take it as official. Nevertheless, they shall still examine whether the facts reported raise suspicion that a crime has been committed²⁸.

A child can report a crime anonymously. Such a report is governed by the same rules as a crime report made by telephone.

A child can also report a crime through another person, e.g. his/her parents, guardians or legal representatives. They could also have recourse to teachers, doctors etc. who must contact the administrative body for social and legal protection of the child (*organ sociálně-právní ochrany dětí*)²⁹ – social workers. The social worker should then immediately report the crime to the police or the District Prosecutor's Office³⁰. Teachers, doctors or any other person can contact the police directly and report a crime on behalf of the child.

In addition, a child can contact a non-governmental organisation providing victims with appropriate help, including assistance in reporting a crime. The primary national support organisation designated for victims is the association [Bílý kruh bezpečí](#) (White Ring of Safety) that helps through personal appointments and non-stop help-lines. In fact *Bílý kruh bezpečí* runs two telephone lines – one dedicated to all victims of criminal offences (*BKB Helpline*) and one specialised in helping victims of domestic violence (*Dona Helpline*). Other helplines focus solely on children and young people, e.g. [Linka bezpečí](#) (Safety Line) which is free, operated nationwide, 24 hours a day throughout the week, and the [Modrá linka](#) (*Blue Line*) which provides counselling by telephone, email, Skype or chat and runs a psychological counselling centre for free.

2.1.2 Provision of information

A child victim is a party to criminal proceedings and as such has the same rights as any other victim of a criminal offence. However, since he/she is considered immature due to being a child, procedural rights are fully administered by their legal representatives³¹, i.e. in most cases parents. If one or both of the child's legal representatives are the alleged perpetrators, the child should be represented by guardian *ad litem* appointed during the pre-

²⁷ Act No. 141/1961 Coll., Criminal Procedure Code, section 59. (hereinafter 'Criminal Procedure Code').

²⁸ [The Binding Instruction Of the Police President No. 30/2009, on Závazný pokyn policejního prezidenta č. 30/2009, on the Role of the Police in the Criminal Proceedings](#), Article 30.

²⁹ Act No. 359/1999 Coll., on Social and Legal Protection of Children, section 10 (4).

³⁰ Criminal Procedure Code, section 8.

³¹ Šámal, P. et al., Criminal Procedure Code. Commentary (*Trestní řád. Komentář*), 6th edition. Prague : C. H. Beck, 2008. p. 334.

trial stage by the prosecutor and during the judicial stage by the presiding judge³². The guardian *ad litem* should also be appointed in case the child's legal representatives are not able to administer his/her procedural rights, e.g. they are hospitalised, and there is an urgent need to go on with the criminal proceedings. The guardianship is in most cases carried out by the administrative body for social and legal protection of the child (social workers)³³.

The legality of the appointment of the child's guardian *ad litem* can be challenged by filing a complaint within three days from the decision appointing the guardian. According to the law, the person entitled to file the complaint is the person whose rights are directly affected by the decision on guardianship *ad litem* including the child³⁴. However, neither the law nor the directions make it clear whether the child can file the complaint on his/her own, i.e. without an adult representative. Some argue that a child can submit such a complaint but in practice this must be very rare³⁵; others claim that submission of such a complaint would be declared inadmissible for formal reasons³⁶.

If the child reaches majority during the criminal proceedings, either by turning 18 years old or by concluding a marriage at the minimum age of 16³⁷, they can administer their procedural rights.

The Criminal Procedure Code does not explicitly require the police, the prosecutor or the criminal court to inform the child directly rather than the legal representatives or guardian *ad litem*. The police, the prosecutor or the criminal court must inform the child's legal representatives or the guardian *ad litem*, while the provision of information to the child remains at their discretion, taking into consideration age and mental capacity.

There are no specific provisions on information provided to child victims. Nor is there any regulation on how the information should be provided to the child. The police, the public prosecutor and the criminal court should inform child victims about their right to claim damages or compensation in criminal proceedings until the court begins to examine the evidence. Indeed, if a crime is reported in person, the information about this right should be provided to the victim immediately³⁸. The police and the prosecutor are required to provide the same information at every questioning of the victim during the pre-trial stage of criminal proceedings³⁹. The criminal court should inform the victim about this right at the very beginning of the trial⁴⁰.

The child victim also has the right to ask for information about the criminal proceedings at any stage⁴¹, to propose evidence to be examined by the police, the prosecutor or the criminal court, to consult the investigation records and to participate in the judicial hearings⁴². At judicial hearings the child can, if the presiding judge consents, directly question the accused as well as witnesses and experts. However, there are no explicit provisions requiring the police, the prosecutor or the criminal court to inform the child victim of these procedural rights. Nevertheless, these authorities do so in practice since the obligation to

³² Šámal, P. et al., Criminal Procedure Code. Commentary (*Trestní řád. Komentář*), 6th edition. Prague : C. H. Beck, 2008. p. 334.; Act No. 94/1963 Coll., The Family Act, section 37(1) (*hereinafter* the Family Act).

³³ Šámal, P. et al., Criminal Procedure Code. Commentary (*Trestní řád. Komentář*), 6th edition. Prague : C. H. Beck, 2008. p. 334.

³⁴ Criminal Procedure Code, section 142(1).

³⁵ Information based on an interview with a police officer. The officer noted that such a complaint would be accepted but in more than 30 years she has never experienced a situation where a child filed a complaint on his/her own.

³⁶ Information based on an interview with the District Prosecutor's Office in Ostrava.

³⁷ Act No. 40/1964 Coll, the Civil Code, section 8(2) in commention with the Family Act, section 13(1).

³⁸ Criminal Procedure Code, section 59(5).

³⁹ Information based on an interview with a police officer of the Prague Regional Directorate of the Police.

⁴⁰ Criminal Procedure Code, section 206(2).

⁴¹ The Probation and Mediation Service of the Czech Republic. *The Crime Victim's Guide*. Available at: https://www.pmscr.cz/images/clanky/PMS_letak_OBETI_en.pdf.

⁴² Criminal Procedure Code, section 43.

inform is viewed as one of the principles of criminal procedure. Legal representatives of child victims are informed about all procedural rights. The child is informed only before being interviewed by the police when so required in a way which is appropriate to the age and maturity of the child concerned⁴³.

If the child victim is in danger from the perpetrator, the police, the prosecutor or criminal court must inform him/her of their right to request information about whether:

- the accused has been released or has escaped from custody;
- the convict has been released or has escaped from prison;
- the convict has been released or has escaped from a medical facility;
- the convict has been released or has escaped from a detention facility⁴⁴.

However, with respect to this obligation there are no specific provisions on how to inform a child.

There are no specific obligations on authorities to inform child victims on existing support mechanisms. Indeed, all victims are primarily supported by the [Probation and Mediation Service of the Czech Republic](#) (PMS) who may contact the victim either on the basis of an application from the police, the prosecutor or the criminal court or on its own initiative. Furthermore, the victim can contact the PMS himself/herself⁴⁵. However, there is no obligation of the police, the prosecutor or the criminal court to inform the victim about the PMS services. The PMS can provide the victim with necessary counselling on how to claim remedy from the offender and if needed it can arrange psychological counselling for the victim. If appropriate, the PMS can suggest that the child victim take part in victim-offender mediation⁴⁶. Participation in the victim-offender mediation is voluntary⁴⁷.

The child victim (like adult victims) should receive information on the time and place of court proceedings at least three days in advance. However, it is not explicitly stated in law that besides the child's legal representatives or guardian *ad litem*, the child shall also be informed and neither is it done in practice⁴⁸. The same is also true with respect to information on existing mechanisms for review of decisions affecting the child. The law does not expect the child to review a decision on their own. If this happens, an additional appeal made by the legal representatives would be required⁴⁹.

If the child is represented by an agent, all the information except for that relating to mediation and agreement on remedy is provided exclusively to the agent⁵⁰. For more information see [Section 2.1.7](#).

⁴³ Information based on an interview with a prosecutor of the District Prosecutor's Office in Ostrava.

⁴⁴ Criminal Procedure Code, section 44a. Contrary to prison, the detention facility is used to detain and treat insane perpetrators who are significantly dangerous to public safety. Similar to prison, it is provided with bars on windows, camera systems etc, and supervised by the prison service. However, the detainees are treated by doctors, psychiatrists and psychologists.

⁴⁵ [The Probation and Mediation Service of the Czech Republic. The Crime Victim's Guide.](#)

⁴⁶ *ibid.*

⁴⁷ *ibid.*

⁴⁸ Information obtained from an interview with a judge of the District Court in Ostrava.

⁴⁹ Information obtained from an interview with a judge of the District Court in Ostrava.

⁵⁰ Criminal Procedure Code, sections 45a, 62(2) and 130 *a contrario*; Šámal, P. et al., Criminal Procedure Code. Commentary (*Trestní řád. Komentář*), 6th edition. Prague : C. H. Beck, 2008. p. 428.

2.1.3 Protection from harm and protection of private and family life

Protection from harm

Concealment of the victim's identity and appearance

The domestic legal order does not set forth any specific protective measures with respect to children. Indeed, the same protective measures apply regardless of the victim's age.

When a child victim serves as a witness for the offence and their life, health or other fundamental rights are therefore endangered, the police, the prosecutor or the criminal court must inform him/her about their right to apply to have their identity and image kept confidential. The child victim has the same right even if there is reasonable probability that their testimony would endanger relatives or close friends.

Since the first questioning takes place at the pre-trial stage of criminal proceedings, applications are in most cases dealt with by the police or the prosecutor. In case the child victim (as any adult victim) wishes to conceal their identity and image, and the police reject their application, the child can still refer to the prosecutor and ask for a review of the decision. In that case, the police should postpone the child victim's questioning if there is no emergency, until the prosecutor decides on the application. In the meantime, the police should ensure that the victim's identity and appearance remain confidential⁵¹.

The concealment of the victim's identity and appearance lasts as long as necessary, even during the judicial and post-judicial stage of the proceedings. The name of the child victim as well as their personal data shall therefore not be contained in the police or judicial records and the victim is provided with a pseudonym⁵². The child should be questioned in the absence of the offender, even at the judicial hearings⁵³. The law then requires the presiding judge to hold the hearings behind closed doors whenever the personal safety or other important interests of the child (or adult) witness could be endangered by publicity⁵⁴.

However, the law does not contain any specific provisions on the child's capacity to apply for concealment of his/her identity and appearance or express his/her own views on the issue. Therefore, these rights are exercised by the child's parents, guardians or legal representatives on his/her behalf.

An internal police directive on the acts of the police relating to ensuring the concealment of the victim's identity and appearance has been issued. However the Police *Presidium* did not provide it for the purposes of this study⁵⁵.

Special protection of the victim

No specifically adapted provisions exist for children. If the child victim (like adult victims) or relatives or close friends are endangered in relation to the victim's testimony, they may apply for special protection from the police⁵⁶. Children are deemed not capable of approving these measures themselves but must be represented by their legal representatives or guardians *ad litem*. Furthermore children do not have the right to be notified of any aspects of special protection since, according to the law, the police have to notify only the child's legal representatives⁵⁷. In addition, there is no specific provision allowing the child to express

⁵¹ Fryšták, M., Žatecká, E., Options for Protection of a Person in the Czech Criminal Proceedings (*Možnosti ochrany osoby v českém trestním řízení*), COFOLA 2010 : the Conference Proceedings. 1st edition. Brno : Masaryk university, 2010. ISBN 978-80-210-5151-5.

⁵² Criminal Procedure Code, section 55(2).

⁵³ Criminal Procedure Code, section 209(1).

⁵⁴ Criminal Procedure Code, section 200(2).

⁵⁵ The Binding Instruction of the Police President No. 201/2008.

⁵⁶ Act No. 137/2001 Coll., on the Special Protection of Witnesses and Other Persons in relation to Criminal Proceedings.

⁵⁷ Act No. 137/2001 Coll., on the Special Protection of Witnesses and Other Persons in relation to Criminal Proceedings, section 5.

his/her views. Therefore the general provision of the Family Act⁵⁸ must be applied. In practice, the child concerned can express his/her opinion but the interest on protection of their life and health prevails. If the child disapproves of special protection, the police officers will re-explain its importance⁵⁹. Assessment of the reasons for special protection falls within the discretion of the police⁶⁰. The victim/witness has no legal right to special protection⁶¹. Indeed, the Minister of Interior decides on the award of the special protection measures.

Short-term protection of the victim

If the victim/witness does not fulfil the legal conditions to be provided with special protection, the police can still provide him/her with so-called 'short-term' protection instead⁶².

The 'short-term protection' may usually last up to 60 days, but it may be repeatedly prolonged⁶³. Even though this 'short-term protection' is conditional on approval by the victim/witness, in cases of children, such approval is rendered on their behalf by their legal representatives or guardians *ad litem*. The children's right to express their views is not explicitly provided for and therefore the general rule of the Family Act should apply. However, in this regard the same rule applies as in the case of special protection⁶⁴, i.e., in practice, the child concerned can express his/her opinion but the interest of protecting his/her life and health prevails. If the child disapproves of such special protection, the police officers will re-explain its importance. Assessment of the reasons for special protection falls within the discretion of the police.

Leave orders and civil law restraining orders

In cases of domestic violence, a child, like an adult, may report the case to the police, either on their own or through various social services such as helplines or intervention centres. Once a case of domestic violence is reported, the police may order the perpetrator to leave the household for 10 days, regardless of the opinion of the child victim. The police shall inform the child victim of existing psychological, social and other services for victims of domestic violence⁶⁵. Furthermore, the police shall inform an intervention centre within 24 hours of having issued a leave order⁶⁶. The intervention centre shall then contact the child victim within the next 48 hours and offer him/her its services including legal and social counselling⁶⁷.

The leave order issued by the police cannot be prolonged. Nevertheless, the child victim may file a motion for a preliminary restraining order before the civil courts. The court shall decide within 48 hours⁶⁸. If the preliminary restraining order is issued, the perpetrator shall leave a household and refrain from contacting the child victim. The preliminary restraining order is effective for a period of one month but it may be prolonged for up to one year. There is no minimum age at which the child is capable to file the motion without any representative. Indeed, the child's capacity to refer a civil claim to court depends on the degree of his/her

⁵⁸ The Family Act, section 31(3).

⁵⁹ Information obtained from an interview with a police officer of the Prague Regional Directorate of the Police.

⁶⁰ Information obtained from an interview with a prosecutor of the District Prosecutor's Office in Ostrava.

⁶¹ Act No. 137/2001 Coll., on the Special Protection of Witnesses and Other Persons in relation to Criminal Proceedings, section 1(4).

⁶² Act No. 273/2008 Coll., on the Police of the Czech Republic, section 50.

⁶³ Fryšták, M., Žatecká, E., Options for Protection of a Person in the Czech Criminal Proceedings (*Možnosti ochrany osoby v českém trestním řízení*), COFOLA 2010 : the Conference Proceedings. 1st edition. Brno : Masaryk university, 2010. ISBN 978-80-210-5151-5.

⁶⁴ Information based on interview with a police officer of the Prague Regional Directorate of the Police.

⁶⁵ Act on the Police of the Czech Republic, section 46(b).

⁶⁶ Act on the Police of the Czech Republic, section 47(3).

⁶⁷ Act No. 108/2006 Coll., on Social Services, section 60a(1).

⁶⁸ Act No. 99/1963 Coll., the Civil Procedure Code, section 75c(2).

intellectual maturity. This situation hardly ever happens so there is no practice of civil courts in accepting motions filed by children⁶⁹.

Protection of private and family life

Every person is prohibited from publishing any information which can allow identification of the child victim (e.g. name, address, photograph, picture, photograph of his/her family, friends, place where he/she lives etc.⁷⁰) regardless of the nature of the crime⁷¹. This rule applies before, during and after the court proceedings. The prohibition covers also all the videos or audios recorded during the hearings and all the photographs of the trial if these may lead to identification of the child victim⁷². The judgment may be published only after erasing the name and the address of the child⁷³.

Information about the identity of the child victim may be published with due regard to the protection of the child's interests only:

1. for the purpose of searching for missing persons;
2. if needed for further investigation,
3. if explicitly provided for by the Criminal Procedure Code⁷⁴;
4. if necessary for the protection of public interest, which in certain cases may prevail over the child's right to protect his/her privacy.

Furthermore the child's parents or other legal representatives may consent to publish the child's identity unless they are the alleged offenders⁷⁵. However, there are no specific provisions on the child's capacity to contest his/her parents' decision.

A violation of the cited provisions can be sanctioned by a fine of either up to 1,000,000 CZK (approximately €39,506) or up to 5,000,000 CZK (approximately €197,529) if the relevant provisions are violated by newspapers, TV, radio or internet⁷⁶. Depending on the gravity of the harm caused, the person infringing the cited provisions may be sanctioned under the Criminal Code⁷⁷.

2.1.4 Protection from secondary victimisation and ensuring a child-friendly environment

The domestic legal order provides few measures which protect victims from secondary victimisation except for children up to 15 years old (see [Section 2.1.5.](#)) The majority of existing measures aim at achieving the best evidence rather than protecting the victim's welfare⁷⁸.

Indeed, the existing measures allow protection of the victim from bodily harm or intimidation (see also [Section 2.1.3](#)) not from further psychological trauma⁷⁹. The Criminal Procedure

⁶⁹ See interview with a judge of the District Court in Ostrava.

⁷⁰ Herczeg, J. *Novela náhubkového zákona: korektiv veřejného zájmu*, *Trestněprávní revue* 10/2011, section 285.

⁷¹ Criminal Procedure Code, section 8b (2).

⁷² Criminal Procedure Code, section 8b (3).

⁷³ Criminal Procedure Code, section 8b (4).

⁷⁴ Criminal Procedure Code, section 8d.

⁷⁵ Criminal Procedure Code, section 8d(2) and (3).

⁷⁶ Act No. 101/2000 Coll., the Personal Data Protection Act (101/2000 Coll.), sections 44a and § 45a.

⁷⁷ Act No. 40/2009 Coll., Criminal Code, section 180.

⁷⁸ League of Human Rights (*Liga lidských práv*), Legislative Protection of Victims from Secondary Victimisation and Rights of Victims to privacy during Criminal Proceedings (*Legislativní ochrana obětí trestných činů před druhotnou viktimizací a práva obětí na soukromí během trestního řízení. Právní analýza a návrhy systémových změn*). Brno, 2007. Available in Czech at: http://www.google.cz/url?sa=t&rct=j&q=&esrc=s&frm=1&source=web&cd=1&sqj=2&ved=0CC4QFjAA&url=http%3A%2F%2Fllp.cz%2Fwp-content%2Fuploads%2FLegislativni_ochrana_obeti_trestnych_cinu_pred_druhotnou_viktimizaci_a_prava_obeti_na_soukromi_behem_trestniho_rizeni.pdf&ei=Qc21UOWNGs_Msgbfz4DIBA&usq=AFQjCNFsi_6RSgTb6uJ7uUj_GaOcJm2RIA&sig2=UtGtXF59fHf4bWLggbfIA.

⁷⁹ *ibid.*

Code does not entitle the victim to apply for restraining orders prohibiting the accused from contacting the victim as well as staying in his/her vicinity. The victim has thus to refer to the civil court but in such a case he/she bears the whole burden of proof.

If the victim does not claim remedy in criminal proceedings, he/she is not entitled to apply to the police, the prosecutor or the criminal court for assignment of a lawyer for free or at a reduced cost⁸⁰.

Furthermore, if there is a close relationship between the victim and the offender, the Criminal Procedure Code lists several offences with respect to which the criminal proceedings are conditional upon the child (or adult) victim's consent, including, e.g. intentional bodily harm or stalking. The responsibility for sanctioning the offender is thus transferred to the victim and experts point out that this may further traumatise him/her⁸¹. However, the child victim's consent is not required if he/she is 15 years old or under. In addition, the most serious offences such as murder, manslaughter, serious bodily harm, sexual abuse and offences related to domestic violence are not a part of the list and shall be therefore prosecuted even without the victim's consent.

Concerning mediation in criminal cases, there is no methodology on how to identify cases suitable for using such mechanism. Nor are there any specific provisions regulating mediation if the victim is a child. Therefore it is not clear whether the consent in victim-offender mediation should be expressed solely by the child or by his/her legal representatives or guardian *ad litem* or jointly by the child and his/her legal representatives or guardian *ad litem*. Nor is it clear who is entitled to withdraw the consent in victim-offender mediation.

Since 1 January 2012 the Criminal Procedure Code enables wide use of video recording whenever it is in the victim's best interest, particularly regarding his/her age or health condition⁸². However, the cited provision still does not provide the victim with the right to request a video recording. Whether a part of proceedings will be video recorded is at the full discretion of the police, the prosecutor or the criminal court.

With respect to children up to 15 years old, specific provisions on the procedure followed by the police, the prosecutor and the criminal court shall be applied. Children up to 15 years old should be confronted with the offender only exceptionally, when it is necessary for the criminal proceedings. In such a case, the confrontation shall obligatorily take place in the presence of a pedagogue or other expert on children and eventually also the child's parents⁸³. Reconstruction (an investigatory technique where the police simulate the scene of the offence and course of events to verify the statements of the suspect or a witness) can take place only if it is certain that it would not endanger the child's mental welfare⁸⁴. Identification of the offender should be carried out in such a way that the child would not have to meet the offender in person⁸⁵. When participating in an investigative experiment/re-enactment of the crime that could endanger the child's mental welfare, the police, the

⁸⁰ *ibid.*

⁸¹ *ibid.*

⁸² Criminal Procedure Code, section 52a.

⁸³ Criminal Procedure Code, section 104a. The Binding Instruction Of the Police President No. 30/2009, on the Role of the Police in the Criminal Proceedings, Article 77(4). Available in Czech at: <http://www.pecina.cz/files/pokyn2.pdf>.

⁸⁴ The Binding Instruction Of the Police President No. 30/2009, on Závazný pokyn policejního prezidenta č. 30/2009, on the Role of the Police in the Criminal Proceedings, Article 80(2). Available in Czech at: <http://www.pecina.cz/files/pokyn2.pdf>.

⁸⁵ The Binding Instruction Of the Police President No. 30/2009, on Závazný pokyn policejního prezidenta č. 30/2009, on the Role of the Police in the Criminal Proceedings, Article 78(6). Available in Czech at: <http://www.pecina.cz/files/pokyn2.pdf>.

prosecutor or the Criminal Court shall ensure the presence of a pedagogue, a psychologist or a social worker and eventually also the presence of the child's parents⁸⁶.

There are no specific legal provisions on child-friendly settings. Nevertheless, the police introduced a project on building child-friendly interview rooms – for more information see [Section 2.1.5](#). Apart from police interview rooms, there are no methodologies on how the court room should appear or whether it is necessary to assure separate waiting rooms for the child victim and the offender. There are some courts where separate waiting rooms exist. However, these are not very common. The judicial hearings are held in traditional courtrooms with magistrates as well as defence counsel required to wear their gowns.

Before the criminal court, the protection of the child victim (like adult victims) from secondary victimisation may be ensured by the presiding judge who has the power to interview the victim/witness outside of the hearings or to hold the hearings in private. However, these measures are aimed more at protecting the child victim/witness from bodily harm or intimidation rather than ensuring his/her psychological welfare. Furthermore, the child victim/witness is not entitled to claim application of these measures since they fall fully within the presiding judge's discretion⁸⁷,

There are no specific provisions on preparing the child for interview or court sessions. Nor is the child victim entitled to have support from his/her friends or other trusted persons when being interviewed or when participating in judicial hearings. Only in cases where the hearings are held in public, shall the presence of the child's friends and trusted persons not be excluded. However, this still does not ensure that the child is supported when appearing before the court.

The Czech legal order does not provide for any specific provisions on preventing undue delay in the criminal proceedings whenever there is a child victim.

As regards support services for the child, as well as restorative mechanisms see [Section 2.1.2](#).

2.1.5 Protecting the child during interviews and when giving testimony

There are specific legal provisions on interviewing children during the criminal proceedings, but these relate only to children up to 15 years old. Interviews of children over 15 years of age follow the same rules as those applicable to adults even if at the time of the commission of the offence the child victim was younger than 15 years old.

First, it is necessary to point out that children may be interviewed during the pre-trial stage of criminal proceedings either as persons providing a statement⁸⁸ or as witnesses.

When the police interview children as persons providing a statement, the police shall notify their parents, guardians and legal representatives beforehand⁸⁹. It is necessary to point out

⁸⁶ The Binding Instruction Of the Police President No. 30/2009, on Závazný pokyn policejního prezidenta č. 30/2009, on the Role of the Police in the Criminal Proceedings, Article 79(2). Available in Czech at: <http://www.pecina.cz/files/pokyn2.pdf>; The Criminal Procedure Code, section 104c(3).

⁸⁷ League of Human Rights (*Liga lidských práv*). Legislative Protection of Victims from Secondary Victimisation and Rights of Victims to privacy during Criminal Proceedings (*Legislativní ochrana obětí trestných činů před druhotnou viktimizací a práva obětí na soukromí během trestního řízení. Právní analýza a návrhy systémových změn*), Brno, 2007. Available in Czech at: http://www.google.cz/url?sa=t&rct=j&q=&esrc=s&frm=1&source=web&cd=1&sqj=2&ved=0CC4QFjAA&url=http%3A%2F%2Fllp.cz%2Fwp-content%2Fuploads%2FLegislativni_ochrana_obeti_trestnych_cinu_pred_druhotnou_viktimizaci_a_prava_obeti_na_soukromi_behem_trestniho_rizeni.pdf&ei=Qc21UOWNGs_Msgbfz4DIBA&usq=AFQjCNFsi_6RSgTb6uJ7uUjGaOcJm2RIA&sig2=UtGtXF59fHf4bWLGqbfIA.

⁸⁸ Under the Czech legal order persons in general should not be interviewed as witnesses before the charges are brought against the suspect. Those persons may not provide a testimony, but they still may be heard as persons providing a statement. Contrary to when providing a testimony, the record of the explanation should not be used before the criminal court unless the accused and the public prosecutor agree so. Even the suspect may be interviewed only as a person providing explanation before the charges are brought against him/her.

⁸⁹ Criminal Procedure Code, section 158(5).

that in most cases the interview will have to be repeated before the criminal court unless the public prosecutor and the accused agree on reading the written record of the explanation. With regard to children up to 15 years old, the police internal directive⁹⁰ provides that they should be summoned through their legal representatives, social workers or their school. The interview can take place at the police station as well as at school or at the child's home as this is to the child's benefit. Nevertheless in practice most interviews are preferably held at police stations; the police try to avoid interviewing children at school because it causes a lot of rumours or at home as this is not suitable for certain offences (e.g., sexual abuse)⁹¹. The police shall not interview the child during the hours of 10 pm to 6 am⁹².

With respect to children up to 15 years old, the police shall always assess whether the interview could potentially have a negative impact on the child's mental wellbeing. If so, they have to ensure the presence of a psychologist, a social worker or a pedagogue. They may also allow the child's parents to participate in the interview⁹³. The police shall inform the child on his/her right to legal assistance. However, they do not have to appoint a lawyer to the child if he/she wishes so. In other words, if the child wants to have legal assistance, he/she has to contact a lawyer himself/herself and pay for him/her.

According to the police internal directive, toys (for instance dolls named *Jája* and *Pája* representing a girl and a boy) may be used when interviewing child victims of sexual abuse. In such a case, the interview should be video recorded⁹⁴. However, both the written record and the video record may be used as evidence at the judicial stage of criminal proceedings only on the condition that both the prosecutor and the accused agree so⁹⁵. Otherwise the interview must be repeated.

The police may interview all children up to 15 years old as witnesses at the pre-trial stage of criminal proceedings even before the charges are laid against the suspect⁹⁶. The law does not necessarily require police to video-record the interview when the interviewed person is a child⁹⁷. However it allows video recording whenever the vulnerability of the interviewed person requires so. Although not legally binding, police methodologies recommend video recording all the interviews of children. The written record as well as the video record can be read or replayed at judicial hearings either if the prosecutor as well as the accused agree so or if the child has been intimidated or otherwise influenced before or during the hearings, particularly by the accused or by the presence of the public.

Specific rules apply if there is a serious risk that the interview of a child up to 15 year old would cause harm to his/her mental welfare. Those are in fact the same as apply to interviews of children as persons providing explanation. The police have to ensure the presence of a psychologist, a social worker or a pedagogue. Optionally, the police may allow the child's parents to participate in the interview. The participating persons have the right to apply to suspend or terminate the interview. With respect to these cases, the law explicitly sets forth that the interview should be held in a way so that it does not have to be repeated. The record can then be read or replayed before the criminal court. In addition, the court can then interview the participating person about the way the police interviewed the child and the way the child responded to the questions.

⁹⁰ The Binding Instruction of the Police President No. 8/2002, on the Role of the Police When Investigating Children Offenders and Offences Committed Against Children, Article 8.

⁹¹ Information obtained from an interview with a police officer of the Prague Regional Directorate of the Police.

⁹² The Binding Instruction of the Police President No. 8/2002, on the Role of the Police When Investigating Children Offenders and Offences Committed Against Children, Article 8.

⁹³ The Binding Instruction of the Police President No. 8/2002, on the Role of the Police When Investigating Children Offenders and Offences Committed Against Children, Article 8.

⁹⁴ The Binding Instruction of the Police President No. 8/2002, on the Role of the Police When Investigating Children Offenders and Offences Committed Against Children, Article 8(9).

⁹⁵ Criminal Procedure Code, section 211(6).

⁹⁶ Criminal Procedure Code, section 158(9).

⁹⁷ Criminal Procedure Code, section 52a.

Nevertheless if the child reaches the age of 15 during the criminal proceedings, the cited provisions do not apply and the interview of the child shall be repeated at trial⁹⁸. Such a provision makes children particularly vulnerable especially whenever the proceedings are not held without undue delay.

As stated above, interviews of children over 15 are regulated by the same provisions that apply to adults. Before laying charges against the suspect, they may be interviewed as witnesses only under very restrictive conditions. With respect to offences dealt with by the District Criminal Court, it is not possible to interview the child over 15 years of age as a witness during the whole pre-trial stage unless the same restrictive conditions are fulfilled. Otherwise the child is, at first, interviewed as a person providing explanation and then has to appear before the criminal court where he/she is interviewed again, this time as a witness. The interview of the child is repeated regardless of its impact on his/her well-being. There are no specific provisions on which persons should be present at the interview of a child over 15. Nor is it clear that these children are considered as vulnerable and their interviews should be thus video recorded.

The Czech criminal provisions do not regulate the assistance that a lawyer can provide to the child victim either in relation to children up to 15 or with regard to children over 15.

There are no specific legal provisions with regard to a child-friendly environment for interviews of children. Nonetheless, in 2007 the Minister of Interior introduced the Programme on Building Special Interview Rooms for Child Victims and Witnesses by the Police of the Czech Republic (*Program Zřizování speciálních výslechových místností pro dětské oběti a svědky Policií ČR*)⁹⁹. In 2011 there were 32 special interview rooms for children¹⁰⁰. According to the official standard, the rooms have to be useable both for younger and older children. They are obligatorily equipped with toys – dolls named ‘Jája’ (girl-doll) and ‘Pája’ (boy-doll), which make it easier for children to describe the crime as well as the relations between the members of his/her family. The rooms are provided with two video cameras so that both the interviewer as well as the child could be recorded including their gestures and other non-verbal expressions. There is also a microphone recording for very low voices and badly articulated speeches. Apart from the interview room there shall be a separate monitoring room and technological room¹⁰¹.

There are no specific provisions on admissibility of evidence gathered from children. Indeed, those should be assessed by the criminal court following the same rules as applicable to evidence gathered from adults.

2.1.6 Right to be heard and to participate in criminal proceedings

As stated above, all child victims regardless of their age have to be represented in the criminal proceedings by their parents or other legal representatives (i.e. guardians appointed by civil courts) and, in case they are unable to carry out their rights and duties, by a guardian *ad litem*¹⁰² (see also [Section 2.1.2](#)).

It is not clear whether the child is entitled to consult the police and judicial records, to apply for review of the decisions issued by the police, the prosecutor or the criminal court or to be informed by the police, the prosecutor or by the criminal court on all his/her procedural rights by himself/herself. Only the Family Act provides for the child’s right to be heard in any proceedings he/she is subjected to¹⁰³, i.e. even in criminal proceedings.

⁹⁸ Šámal, P. et al., Criminal Procedure Code. Commentary (*Trestní řád. Komentář*), 6th edition. Prague : C. H. Beck, 2008. p. 901-907.

⁹⁹ <http://aplikace.mvcr.cz/archiv2008/zpravy/2007/opk0625d.html>.

¹⁰⁰ The official list is available at: <http://www.mvcr.cz/clanek/seznam-specialnich-vyslechovych-mistnosti.aspx>.

¹⁰¹ For more information please see <http://www.mvcr.cz/clanek/standard-vybaveni-specialni-vyslechove-mistnosti-pro-detskeho-ucastnika-trestniho-rizeni.aspx>.

¹⁰² Criminal Procedure Code, section 45.

¹⁰³ The Family Act, section 31(3).

Children may claim their rights on their own only when being interviewed as witnesses. Without a legal representative or guardian *ad litem* they do not even have the capacity to claim remedy from the offender in the criminal proceedings¹⁰⁴ even if they are mature enough to claim damages or compensation before the civil court on their own.

In addition, the law does not require either the language or reasoning of the decisions issued by the police, the prosecutor or the criminal court, including the judgment, to be adapted in such a way so that the child victim could understand it.

The moment the child victim reaches the age of majority either by turning 18 or by concluding a marriage at the minimum age of 16, the procedural rights of the child's legal representatives or guardian *ad litem* automatically cease to exist.

The Criminal Code sets forth that in relation to the offence of human trafficking and sexual offences the period between the offence and the 18th birthday of the child is not included within the statute of limitations. However as regards other offences against children, there are no specific provisions relating to the statute of limitations. Nor are there any legislative changes planned.

2.1.7 Right to legal counsel, legal assistance and representation

The child's right to legal counsel, legal assistance and representation is regulated by the same rules which apply to adults.

The child does not necessarily have to be represented in the criminal proceedings by a lawyer. Nor does he/she have the right to obligatory legal assistance.

Indeed, as every victim, the child has the right to an agent, i.e. any adult with full legal capacity. Agents do not necessarily have to be lawyers. Whether the child will have an agent depends completely on his/her legal representatives or guardian *ad litem*. It is not clear if the child may choose the agent on his/her own since the provisions of the Civil Code differ in this regard from those of the Criminal Procedure Code and it is ambiguous which ones should apply. It is very probable that none of the competent authorities, i.e. the police, the prosecutor and the criminal court, would accept an agent authorised by the child without the consent of his/her legal representatives or guardian *ad litem*. In addition, there are no specific provisions regulating the potential conflict between the agent authorised by the child and that one authorised by his/her legal representatives or guardian *ad litem*.

The right to free legal aid or to legal aid at a reduced cost in criminal proceedings arises only if the child claimed remedy, through his/her legal representatives or guardian *ad litem*. In such a case and under the condition that the child cannot afford a lawyer, he/she may apply to a magistrate of the criminal court so that a lawyer is assigned to him/her who would be paid fully or partially by the state, even for the pre-trial stage of criminal proceedings¹⁰⁵. However it is not clear whether the child is entitled to file the application without any representation. According to the current practice, such applications would be considered by the magistrates as inadmissible as filed by an incompetent person¹⁰⁶. In such a case, the child does not have any legal instrument to force his/her legal representatives or guardian *ad litem* to get a lawyer for him/her.

Furthermore, even if the child cannot pay for a lawyer, the magistrate would not appoint one if he/she finds that the nature of the remedy claimed does not require legal representation.

In addition, there are no specific rules on the relationship between a child and a lawyer that represents him/her regarding whether the lawyer should respect the child's views rather than the views of the child's parents.

¹⁰⁴ Vantuch, P., The Right of the Victim to Consult the Police Record Before the Charges Are Laid (*Koprávnění poškozeného nahlížet do spisů ve stadiu postupu před zahájením trestního stíhání*), *Trestněprávní revue* 6/2005, p. 144.

¹⁰⁵ Criminal Procedure Code, section 51a.

¹⁰⁶ Information obtained from an interview with a prosecutor of the District Prosecutor's Office in Ostrava.

2.1.8 Remedies or compensation exist for violation of rights and failure to act

There are no specific provisions on children with respect to remedies or compensation for violation of rights and failure to act.

As for adult victims, children have the right to challenge the decision of the police not to investigate before the prosecutor. If the decision not to prosecute was issued by the prosecutor, children may initiate its review before a higher instance. However, as stated above, it is not clear that children are allowed to exercise this right on their own, i.e. without any legal representative. It is very probable that legal representation would be required; otherwise the application for review would not be dealt with by the competent authorities. Nor is it clear that apart from the children's parents, children themselves would receive the decision. The child victim can claim damages in criminal proceedings only through his/her parents, other legal representatives or guardian *ad litem*. On the contrary, in civil proceedings held irrespective of the criminal proceedings the child may claim damages or compensation without the need of any representation under the sole condition that s/he is mature enough to understand the proceedings and to deal with the claim. However, in civil proceedings the child would bear the whole burden of proof and would also have to pay for the proceedings.

After the criminal proceedings, the steps that need to be taken to claim damages or compensation fall fully within the civil law. Therefore the mandate of the child's parents, legal representatives or guardian *ad litem* based on the criminal law ceases to exist. The child would need to bring a civil action either through legal representation or without any representation if he/she is mature enough.

The costs of the criminal proceedings are covered by the state. However, for example the costs paid to the child's legal counsel and similar 'personal' costs have to be reimbursed by the child and his/her legal representatives if they were not awarded free legal assistance (see [Section 2.1.7](#)).

Within one year following the conviction of the accused, the child may, through his/her legal representatives, claim recovery of the costs from the convicted offender. The criminal court would award the child with the recovery on condition that the child has been at least partially awarded damages or other compensation in the criminal proceedings or that other aspects of the case justify this.

The child, as any other person, has the right to claim remedy for any material or immaterial harm caused to him/her either by an unlawful decision or by violation of the legal procedure¹⁰⁷. However, such a claim falls within the civil law with the burden of proof being fully born by the child without any specific support provided to him/her. The child's capacity to raise the claim without need of any legal representative depends on his/her age as well as on his/her mental maturity.

There is also a possibility for a victim to apply for financial support to the Ministry of Justice. However this support is only aimed at those victims whose social situation was impaired due to health damage caused by a crime¹⁰⁸.

2.2 The child as a witness

2.2.1 Reporting a crime

Since the domestic legal order provides every person regardless of his/her age or mental condition with the capacity to report a crime, a child may do so without the need for any representation. For more details as well as measures facilitating the child to report a crime see [Section 2.1.1](#).

¹⁰⁷ Act No. 82/1998 Coll., on Liability of the State for Harm Caused in Connection With Exercising the State Power.

¹⁰⁸ Act No. 209/1997 Coll., on providing financial support to victims of crimes and on supplementing some acts.

2.2.2 Provision of information

The Criminal Procedure Act does not provide for any specific rules on informing the child witness on the place, day and time where the interview will take place. Only the police internal directive sets forth that children providing explanation shall be informed through their parents, other legal representatives, school or administrative body for social and legal protection of the child¹⁰⁹.

According to the Criminal Procedure Act whenever a witness does not appear at the interview despite having been summoned in advance, the police may bring him/her to the police station. With respect to children, there are no specific provisions on this issue except for a police internal directive which sets forth that in such a case the police shall not wear a uniform or use a police car. When the child is being brought to the police station from school, the presence of an independent person, in most cases a social worker from the administrative body for social and legal protection of the child, is necessary from the very beginning. The independent person should supervise the child and ensure that the child would not be subjected to inappropriate treatment by the police. Otherwise such a person would join the child at the police station and look after him/her whenever the child is left alone¹¹⁰.

With respect to the information on the right not to testify about offences committed either by the witness himself/herself or by his/her relatives, the Criminal Procedure Act only requires the interviewer, i.e. the police, the prosecutor or the criminal court, to adapt questioning to the age of the child whenever the child is younger than 15 years old. Children up to 15 years old shall not be informed of criminal liability for false testimony since they cannot be held criminally responsible. In practice an interview of a child (no matter whether below or above 15 years of age) is done in such a way that the any legal statements which are used for adults are transformed into words suitable for the particular child. The responsible police officer has to check that the child understands the information. This 'adjusted' explanation must also be part of the official form. If the child is not informed in an appropriate way the supervising body would consider this interview as an imperfect act.

With respect to child witnesses there are no specific rules on providing the information to his/her parents or other legal representatives. Such a rule applies only to children providing explanation at the police station or prosecutor according to the Criminal Procedure Act.

2.2.3 Protection from harm and protection of private and family life

For detailed information on the protection of witnesses from harm and protection of their private and family life see [Section 2.1.3](#).

During the pre-trial stage of criminal proceedings, the police, the prosecutor and the criminal court shall not publish any information enabling the identification of a child witness. At the judicial stage of criminal proceedings, the police, the prosecutor and the criminal court are required not to publish any information unrelated to the offence whilst having due regard to the protection of the child's privacy¹¹¹.

Every person informed by the police, the prosecutor or the criminal court about the victim's identity for the purpose of the criminal proceedings, e.g. the accused, his/her defence counsel or other witnesses, is prohibited from dispersing it further¹¹² under the sanction of a fine either up to 1,000,000 CZK (approximately €39,506) or up to 5,000,000 CZK (approximately €197,529) if the relevant provisions are violated by newspapers, TV, radio or

¹⁰⁹ The Binding Instruction of the Police President No. 8/2002, on the Role of the Police When Investigating Children Offenders and Offences Committed Against Children, Article 8.

¹¹⁰ The Binding Instruction of the Police President No. 8/2002, on the Role of the Police When Investigating Children Offenders and Offences Committed Against Children, Article 8(10).

¹¹¹ Criminal Procedure Code, section 8a(1),(2).

¹¹² Criminal Procedure Code, section 8b.

the internet¹¹³. Depending on the gravity of the harm caused, the person infringing the cited provisions may be sanctioned under the Criminal Code¹¹⁴.

2.2.4 Minimising the burden of proceedings and ensuring a child-friendly environment

See [Section 2.1.4](#).

2.2.5 Protecting the child during interviews and when giving testimony

See [Section 2.1.5](#).

2.2.6 Right to be heard and to participate in criminal proceedings

The child witness like any adult witness is not a party to criminal proceedings unless he/she is the victim as well. Thus, he/she does not have the procedural rights relating to effective participation in criminal proceedings including the right to be informed of progress of proceedings, the right to be heard and to express his/her views, the right to be summoned to the court session unless he/she should provide testimony, etc.

The only procedural rights the child witness has in criminal proceedings relate to testifying, i.e. the right to be informed at the beginning of the interview, the right not to testify, etc. (for more information see [Section 2.1.5](#)).

Since the child witness is not a party to criminal proceedings he/she does not have the right to apply to testify. If he/she wishes to provide testimony, he/she has to inform either the competent authorities, i.e. the police, the prosecutor or the criminal court, or the parties to criminal proceedings, i.e. the accused and the victim about the evidence he/she could provide. The competent authorities are then required to interview the witness whenever the witness's testimony could contribute to the investigation. The parties, on the other hand, have the right to apply to the competent authorities for interviewing the witness. If during the pre-trial stage of the criminal proceedings the police or the prosecutor rejects such an application, the party may file it again before the criminal court during the judicial stage of criminal proceedings. If the criminal court rejects such an application, it must justify its decision and the party may subject this refusal to review by a higher court.

With respect to whether the child witnesses have the right to be assisted in criminal proceedings there are no specific provisions other than those relating to interviewing children up to 15 and cited in [Section 2.1.5](#).

2.2.7 Right to legal counsel, legal assistance and representation

The child witness, like any adult witness, does not have the right to legal counsel, legal assistance and representation. Indeed, the right to legal assistance exists during the pre-trial stage of criminal proceedings but only if the child provides a statement rather than being interviewed as a witness. According to the Criminal Procedure Act the child providing a statement may claim legal assistance. Nevertheless in such a case, the child or his/her legal representatives have to hire the lawyer on their own as well as pay for him/her. When providing testimony, the child witness does not have such a right.

In addition, the law does not set forth whether the child providing a statement has the right to choose the lawyer himself/herself or whether the lawyer shall be appointed to him/her by his/her legal representatives. The criminal law only provides for obligatory representation through parents, other legal representatives or guardian *ad litem* for the child victim (see particularly [Section 2.1.7](#)). It is not clear whether these provisions should apply to the child witness as well or whether the civil law concerning the child's capacity on the degree of his/her intellectual maturity should apply. However in practice, the police and the prosecutor require the child to act through his/her parents or other legal representatives when applying for legal assistance.

¹¹³ Act No. 101/2000 Coll., the Personal Data Protection Act (101/2000 Coll.), sections 44a and § 45a.

¹¹⁴ Act No. 40/2009 Coll., Criminal Code, section 180.

2.2.8 Remedies or compensation for violation of rights and failure to act

There are no specific provisions on the right to remedy or compensation for violation of rights and failure to act regarding children.

Since a child witness is not a party to criminal proceedings unless he/she is, at the same time, the victim of the offence, he/she is not entitled to file any complaint, legal appeal or judicial review except for when claiming recovery of costs paid in connection with his/her interview from the State¹¹⁵.

Otherwise the child - as is the case for any other person - has the right to claim remedy for any material or immaterial harm caused to him/her either by unlawful decision or by violation of the legal procedure¹¹⁶. However, such a claim falls within civil law and the burden of proof is fully born by the child without any specific support provided to him/her. The child's capacity to raise a claim without the need of any legal representative depends on his/her age as well as on his/her mental maturity.

2.3 The child as a suspect/ defendant

2.3.1 Age of criminal responsibility

Within the Czech legal order a child is criminally responsible after reaching the age of 15. However, the criminal responsibility of children (from 15 to 18 years old) differs from that of adults since a child can be held responsible for a crime only if he/she is intellectually mature enough to understand the unlawfulness of the crime and to control his/her own actions. The sufficient maturity of a child above 15 years of age is assessed by experts whenever the police, the prosecutor or the criminal court have reasonable doubts on this issue.

The Czech juvenile justice system does not depend on the age of criminal responsibility on the gravity of the criminal offence.

The applicability of the Juvenile Justice Act (JJA) is dependent on the age of the child at the time when he/she committed the offence. In other words, even a person over 18 may be subject to criminal proceedings under the JJA if he/she was below 18 at the time of the commission of the offence¹¹⁷. However, adult criminal proceedings shall apply to a child that reaches the age of 18 if:

5. he/she continues infringing the criminal legislation and the offences committed after his/her 18th birthday are as or even more serious than the offences committed when he/she was a child, or
6. the charges are brought after the 19th birthday.

When remaining in custody, the child should be held separately from adults until he/she reaches the age of 18. Then according to the law¹¹⁸ he/she automatically joins the adults while the duration of the custody may be still regulated under the JJA.

With respect to imprisonment, convicted children up to 19 years of age are mandatorily placed either in juvenile prisons (so far there are none) or separately from adults in prisons used both for children and for adults (there are currently two juvenile departments in Czech prisons – in prison in *Světlá nad Sázavou* and in *Všehrdy*)¹¹⁹. If the juvenile court imposes the sanction of imprisonment on a person who has already reached the age of 19, it may place such a person in adult prison if the length of the sanction and the mental disorder of the person so justify. In addition, when an imprisoned person reaches the age of 19, the

¹¹⁵ Criminal Procedure Code, section 104.

¹¹⁶ Act No. 82/1998 Coll., on Liability of the State for Harm Caused in Connection With Exercising the State Power.

¹¹⁷ Šámal, P. et al., The Juvenile Justice Act. Commentary (*Zákon o soudnictví ve věcech mládeže. Komentář*), 3th edition. Prague: C. H. Beck. p. 398.

¹¹⁸ Act No. 293/1993 Coll., on Execution of Custody, section 25 in connection with section 26 (1).

¹¹⁹ The [Juvenile Justice Act](#), section 31(4).

director of the facility may file a motion to the court to move the person to an adult prison. The law only requires the director to have due regard to the length of the imprisonment left and the degree of rehabilitation completed.

Children up to 15 and children between 15 and 18, who are not mature enough to be held criminally responsible, can be found liable for an 'unlawful act'. The 'unlawful act' differs from the criminal offence only as regards the age of the perpetrator (children up to 15) or the maturity of the perpetrator (children from 15 to 18). Unlawful acts are dealt with in civil proceedings before the juvenile court. Nevertheless the sanctions that may be imposed as a reaction to an unlawful act are criminal in nature, including protective upbringing in a specialised educational facility or protective treatment in a medical facility.

The domestic legal order does not grant any exceptions or derogations for children with specific needs, for instance children with disabilities. If they are over 15 and mature enough, they are held criminally responsible for the offences committed. Nonetheless, their specific needs should be considered by the juvenile court when imposing the sanction since the sanction should be rehabilitative and restorative.

2.3.2 Provision of information

Children between 15 and 18 years old

With respect to children who committed an offence at the age between 15 and 18, the police, the prosecutor and the juvenile court they first come into contact with are required to provide them with information on:

- the right to be treated appropriately to their age, health condition and degree of intellectual maturity;
- the right to comment on all the acts they are suspected of and the evidence on them;
- the right to remain silent;
- the right to present all the facts and evidence in his/her defence;
- the right to choose a defence counsel; if the child does not choose a defence counsel, his/her legal representatives may do so on his/her behalf; otherwise the police or the prosecutor shall appoint one since the child has the right to mandatory legal assistance from the very beginning of the criminal proceedings, even before charges are laid against him/her;
- the right to consult with his/her defence counsel at any time, even during the interview except for replying to a question already asked;
- the right to have the defence counsel participate in every part of the investigation, e.g. interviews of witnesses etc.

If the police, the prosecutor or the juvenile court find it appropriate, they shall also provide the child with information on diversions from criminal proceedings and the conditions under which they may be applied¹²⁰.

However, apart from the general obligation of the police, the prosecutor and the juvenile court to inform the child considering his age and maturity, there are neither any detailed rules, nor any methodologies on this issue. Therefore the practice may significantly vary depending on the competent authority.

Nevertheless, the child should be provided with defence counsel from the very beginning of the criminal proceedings, even before charges are brought against him/her. The child is guaranteed with this right since he/she is not mature enough to defend himself/herself appropriately in person¹²¹. The presence of the defence counsel may ensure that the police,

¹²⁰ Section 42 of [JJA](#) and Section 33(1) of Criminal Procedure Code.

¹²¹ Commentary note to Juvenile Justice Act. Available in Czech at: <http://www.psp.cz/sqw/text/tiskt.sqw?O=4&CT=210&CT1=0>.

the prosecutor and the juvenile court take into account the age and maturity of the child when providing him/her with information on his/her procedural rights.

As regards the provision of information to parents, guardians and legal representatives concerning all aspects of pre-trial and judicial proceedings, no such requirement has been identified except for the arrest of the child (see [Section 2.3.6](#)). However, parents, guardians and legal representatives of child suspects have several procedural rights, including:

- the right to represent the child;
- the right to choose a defence counsel on behalf of the child if the child does not do so in person;
- the right to file complaints, applications and motions for review on behalf of the child;
- the right to participate in pre-trial and judicial proceedings in the same way as the child.

In addition, parents, guardians and legal representatives are entitled to exercise their procedural rights even contrary to the child's will, on the sole condition that they do so in the child's best interest. The police, the prosecutor and the juvenile court shall thus inform parents, guardians and legal representatives of the above-cited rights as well as on all aspects of pre-trial and judicial proceedings to ensure their effective participation in the proceedings.

Furthermore the Criminal Procedure Code requires police and prosecutor to inform parents, guardians and legal representatives before interviewing the child as the person providing explanation (usually the first contact of the child with police or prosecutor) except for cases of emergency¹²².

Children below 15 years old

First of all it is necessary to point out that as far as children below the age of criminal responsibility are concerned the Juvenile Justice Act regulates only the judicial stage of the proceedings. Indeed, there are no specific provisions regulating the pre-trial stage of the proceedings held against these children so that the general rules of the Criminal Procedure Code have to apply.

With respect to the provision of information to children up to 15 years of age, i.e. children below the age of criminal responsibility, the law is less strict than in relation to children above 15 years of age. Indeed, there are no specific provisions on either what information should be provided to them or at what stage of the proceedings. Only the police internal directive sets forth a general obligation to inform the child before interviewing him/her as a person providing explanation appropriate to his/her age and to inform him/her of his/her right to legal assistance as well¹²³.

The right of the child below the age of criminal responsibility providing explanation to legal assistance should not be confused with the right of children above 15 years of age to a defence counsel since if the child wishes a lawyer to be present at the interview, he/she has to acquire one himself/herself as well as pay for him/her.

During the pre-trial stage of the proceedings, the child's parents, guardians and legal representatives shall be informed by the police or prosecutor only before the child is interviewed as a person providing explanation. The law does not even explicitly require the police or prosecutor to inform these persons of the termination of the pre-trial stage of criminal proceedings. Nor are the police and prosecutor obliged to provide such information to the child. However, they regularly do so in practice. At trial, the child as well as his/her parents, guardians and legal representatives are parties to the proceedings. However, according to the law, the judicial proceedings are held as civil ones and are therefore regulated by both the JJA and the Civil Procedure Code. According to the Civil Procedure

¹²² Criminal Procedure Code, section 158(5).

¹²³ The Binding Instruction of the Police President No. 8/2002, on the Role of the Police When Investigating Children Offenders and Offences Committed Against Children, Article 8(8).

Code the juvenile court is required to inform the parties of the civil proceedings, i.e. including the child, his/her parents, guardians and legal representatives, on all their procedural rights and safeguards¹²⁴.

2.3.3 Immediate actions following first contact with the police or other relevant authority

Children above 15 years of age

As stated in [Section 2.3.2.](#), a child above 15 years of age has the right to obligatory representation by a defence counsel from his/her very first contact with the police or prosecutor regardless of the nature of the offence. On the contrary, adults have the right to obligatory legal representation only after they are officially charged with the offence and only if other legal conditions are fulfilled. The only exception from these children's right to obligatory representation by a defence counsel appears in cases of emergency when it is impossible for the police to ensure the counsel's presence not even by telephone¹²⁵. However in practice, this exception applies very rarely. In addition, any self-incriminating statements shall not be subsequently used against the child in the criminal proceedings.

The early access to a lawyer guarantees that the police immediately caution the child above 15 years of age about his/her right to remain silent.

The arrest of children above 15 years of age is regulated by the same rules as those of adults. They may be arrested even before being charged if they are caught either by the police or by anyone else committing an offence¹²⁶. The child may be also arrested after having been charged if there is a high probability that he/she will subsequently be taken into custody¹²⁷. The police and the prosecutor shall transfer the child to the court or release him/her within 48 hours. The court shall decide on whether to take the child into custody or release him/her within the next 24 hours. Thus the child's arrest shall not exceed 72 hours in total¹²⁸.

Whenever a child is arrested, the police shall always notify his/her parents or other legal representatives, employer, the PMS and the administrative body for social and legal protection of the child¹²⁹.

Children shall be held separately from adults except if the arrested child may endanger other children in the cell or if the police station is not equipped with a child cell and the child cannot be held elsewhere¹³⁰.

Children below 15 years old

The police internal directive provides that except for serious or urgent cases, the child shall be summoned to the interview to provide explanation through his/her parents, guardians or legal representatives, social workers or through his/her school. Otherwise he/she shall be picked up by the police without uniforms or the use of marked police cars¹³¹. In any of these cases, the police are required to notify the child's parents, guardians and legal representatives. However, neither the police internal directive nor the law sets for any specific rules on the child's right to contact his/her parents or other person whom he/she trusts. In practice, parents are always informed about the reason for interviewing the child. It is, however, not obligatory for the police to enable them to meet with the child before the

¹²⁴ Act No. 99/1963 Coll., The Civil Procedure Code, section 5.

¹²⁵ The [Juvenile Justice Act](#), section 42(2a); Šámal, P. et al., The Juvenile Justice Act. Commentary (*Zákon o soudnictví ve věcech mládeže. Komentář*), 3th edition. Prague : C. H. Beck. p. 400.

¹²⁶ Criminal Procedure Code, section 76.

¹²⁷ Criminal Procedure Code, sections 75 and 76.

¹²⁸ Criminal Procedure Code, section 77.

¹²⁹ The [Juvenile Justice Act](#), section 46(2).

¹³⁰ The [Juvenile Justice Act](#), section 51(2).

¹³¹ The Binding Instruction of the Police President No. 8/2002, on the Role of the Police When Investigating Children Offenders and Offences Committed Against Children, Article 8.

interview¹³². If a child below the age of criminal responsibility is caught committing an unlawful act and it is reasonably probable that he/she will continue infringing the law or jeopardise the investigation, the police have the right to arrest him/her for up to 24 hours (the maximum length of the police arrest does not differ from that applied to adults). In such cases the police have to immediately inform his/her parents, guardians or legal representatives who should then pick up the child from the police station as soon as possible¹³³. Nevertheless it is probable that the police would require the arrested child to provide an explanation. The law sets forth no specific rules on interviewing a child under arrest. Therefore the above-cited provisions shall apply.

There are no specific provisions on cautioning a child suspect below 15 years of age as well as informing him/her of the right to remain silent. Indeed, the child suspect shall be cautioned as any adult suspect providing explanation.

As stated above, when the police or prosecutor interviews a child suspect, neither the presence of parents nor the assistance of a lawyer is required by the law. However, the self-incriminating statements made by the child during the pre-trial interview are used against him/her even before the juvenile court. Furthermore, since the proceedings before the juvenile court are said to be civil, a lower standard of proof applies and the child may be finally sanctioned solely on the grounds of such statements.

2.3.4 Conditions for pre-trial detention/ custody

Children above 15 years of age

The material conditions to determine whether a child in conflict with the law may be detained in custody do not differ from those applied to adults and are:

- a reasonable probability that he/she could run away and hide; or
- a reasonable probability that he/she could intimidate witnesses; or
- a reasonable probability that he/she could continue infringing the penal law¹³⁴.

However, as far as children are concerned, the Juvenile Justice Act explicitly sets forth that pre-trial detention should be used as a measure of last resort. Furthermore, the police, the prosecutor and the juvenile court are required to review, at any stage of the criminal proceedings, the legitimacy of extending the custody as well as to examine any option to substitute it with another measure¹³⁵. Contrary to adults, the pre-trial detention of children may be substituted not only by the child's written statement, a guarantee provided from a group of citizens or supervision by a probation officer, but also by his placement in the care of a trustworthy person who stipulates to ensure the child's presence at judicial hearings¹³⁶.

The maximum duration of a child's pre-trial detention also significantly differs from an adult's. Children shall not be held in pre-trial detention for more than two months and in the most serious cases for more than six months. Only exceptionally when the case is particularly complicated the maximum duration may be prolonged, but shall still not exceed six months and for the most serious cases, 18 months.¹³⁷

The domestic legal order provides that every child up to 18 years of age shall be placed separately from adults when taken into custody/pre-trial detention¹³⁸ either in cells in a specialised part of the detention facility or in a juvenile department. If possible, the detention facility shall create 'free zones' for children within the facility so that they do not necessarily

¹³² Information obtained through an interview with a police officer of the Prague Regional Directorate of the Police.

¹³³ Act No. 273/2008, on the Police of the Czech Republic, section 26(4).

¹³⁴ Criminal Procedure Act, section 67.

¹³⁵ The [Juvenile Justice Act](#), section 48.

¹³⁶ The [Juvenile Justice Act](#), sections 49 and 50.

¹³⁷ The [Juvenile Justice Act](#), section 47.

¹³⁸ Act No. 293/1993 Coll., on Execution of Custody, section 25 in connection with section 26 (1).

have to be locked in the cells. Contact with adult detainees is not permitted in the 'free zones' either.

Only exceptionally, if the prison service finds it more appropriate for the child, they may decide that the child may share a cell with an adult or adults. However in practice, this only happens due to limited capacity and not very often. Note that there is no methodology on how to identify whether placing a child in a cell with adult detainees is in his/her best interest.

The law is not clear about whether children remaining in custody/pre-trial detention shall be automatically removed to cells for adults when reaching the age of 18. The authority competent to ensure that children in custody are kept in conditions that are safe and appropriate to their needs is the prison service¹³⁹. With respect to children, as well as to adults, the prison service is required not to degrade them, not to intimidate them with either corporal or psychological harm¹⁴⁰ and to have regard for their age, personality, habits and their potential mental disorders when placing them in cells¹⁴¹. Although detainees are granted several rights, the law does not explicitly require the prison service to inform them of these, including for example the right to contact the European Committee for the Prevention of Torture, Inhuman or Degrading Treatment or Punishment. Nor is the prison service explicitly obliged to take into account the age of the child except for the right to appropriate nutrition¹⁴².

Children's rights differ from adults' with respect to the right to be visited by their relatives once a week instead of once every two weeks¹⁴³ and the right to receive a parcel up to five kg once every two months instead of once every three months. As regards clothes, books, newspapers and sanitary necessities, these are not limited either for children or for adults. The treatment of child detainees also differs from that of adult detainees concerning the length and other conditions of disciplinary sanctions. Regarding the children's right to education the law only sets forth the obligation of the prison service to ensure that the child completes his/her compulsory school attendance (9 school years unless the child reaches 17 years of age).

Although the law guarantees children with the right to be visited by social workers and to deal with them in the absence of other persons¹⁴⁴, it does not explicitly set forth any provisions on providing children with information on this right so that they may apply for visits by a social worker.

However, as regards the cells children are placed in, these do not really differ from cells for adults. The internal directives of detention facilities may provide for specific rules on the equipment of the children's cells as well as the appropriate decoration¹⁴⁵, but they rarely do so. According to the law, child detainees, like adults, have in general the right to space of 4 m² (6 m² if alone in the cell), a bed, a chair and a locker. Every cell has to be provided with a table, a sink and sanitary facilities separated from the rest of the cell by a curtain. Electricity and alarm systems are obligatory as well¹⁴⁶.

Children below 15 years of age

Children below the age of criminal responsibility cannot be taken into pre-trial custody under the domestic legal order.

¹³⁹ Act No. 293/1993 Coll., on Execution of Custody, section 3(1).

¹⁴⁰ Act No. 293/1993 Coll., on Execution of Custody, section 2.

¹⁴¹ Act No. 293/1993 Coll., on Execution of Custody, section 7(3).

¹⁴² Act No. 293/1993 Coll., on Execution of Custody, section 11.

¹⁴³ Act No. 293/1993 Coll., on Execution of Custody, section 14(1).

¹⁴⁴ Act No. 293/1993 Coll., on Execution of Custody, section 26(6).

¹⁴⁵ The Regulation No. 109/1994 Coll., the Custody Order, section 74(4).

¹⁴⁶ Act No. 293/1993 Coll., on Execution of Custody, sections 14 and 15 and The Regulation No. 109/1994 Coll., the Custody Order, sections 14 and 15.

2.3.5 Protection of private and family life

Children above 15 years of age

Under the Juvenile Justice Act everybody, i.e. not only the police, the prosecutor and the juvenile court, is prohibited from communicating the child's name and surname as well as any information enabling identification of him/her to a considerable number of people. The cited legal prohibition not only covers the acts of publishing the information in newspapers, on television or on the internet, but also the acts of communicating such information to a person who will further spread it (e.g. a journalist). It also applies to communicating the information at meetings, etc.¹⁴⁷.

For the purpose of examining the child's background, a probation officer may divulge the child's personal data for example to his/her school which is then required to treat them as confidential¹⁴⁸.

The trial is held privately unless the child applies for public hearings¹⁴⁹. There are no specific rules on whether the juvenile court is required to comply with such an application under any circumstances. The judgment shall always be pronounced publicly. Nevertheless the persons who are present at trial are still under the obligation of confidentiality.

The judgment may be published only without the name, surname and other personal data of the child. The juvenile court may order further restrictions on publishing the judgment. On the other hand, they may allow the judgment to be published with the child's name but only if the child had committed a very serious offence and it is in the interest of public safety. However, the law does not entitle either the child or his/her legal representatives to subject such a decision to review by a higher court.

The protection of the child's private and family life under the Juvenile Justice Act is not time-limited.

The JJA does not allow the child to refrain from participating in the judicial hearings¹⁵⁰. Nevertheless since 1 January 2012, the juvenile court may ensure the child's presence at the hearings by video-conference¹⁵¹. However, as this is a new measure within the domestic legal order, it may take some time to make the courts, including the juvenile court, use it when appropriate. Furthermore, some current problems with the accessibility of technical equipment may also exist.

Children below 15 years of age

As to the legal prohibition of communicating the name and the identity of the person, children below the age of criminal responsibility are protected in exactly the same way as children above the age of 15.

However, the protection of privacy of children below the age of criminal responsibility is weaker than that of children who are above 15 years of age. Even though trials for children below the age of criminal responsibility should be held privately the juvenile court may order public hearings even without any application of the child. Furthermore, the child is not entitled to challenge the legality of such a decision.

The judgment may be published only without the name of the child and of other parties to the proceedings, including the child's parents, guardians and legal representatives. Contrary to children above 15 years of age to whom the juvenile court's power to allow publication of the judgment with the child's name is limited by the nature of the offence and the public safety interests, with respect to children below the age of criminal responsibility the juvenile court

¹⁴⁷ Šámal, P. et al., The Juvenile Justice Act. Commentary (*Zákon o soudnictví ve věcech mládeže. Komentář*), 3rd edition. Prague : C. H. Beck. p. 475-180.

¹⁴⁸ *ibid.*

¹⁴⁹ The [Juvenile Justice Act](#), section 54(1).

¹⁵⁰ The [Juvenile Justice Act](#), section 64(1).

¹⁵¹ Criminal Procedure Code, section 202(1).

shall merely consider the circumstances of the case. The protection of the child's privacy and family life is therefore made dependent on the juvenile court's discretion since neither the child nor his/her parents have the right to appeal that decision.

According to the law, the child may be absent from the judicial hearings; however, the juvenile courts are not recommended to hold the hearings in the child's absence as this would not comply with the educational purpose of the trial. In addition, it is not possible to ensure the presence of the child by video-conference since the proceedings are regulated under the Civil Procedure Code which, contrary to the Criminal Procedure Code, does not provide for such a measure.

2.3.6 Alternatives to judicial proceedings

Children above 15 years of age

In criminal proceedings against children both mediation as well as diversions may be applicable.

With respect to mediation, the PMS (see [Section 2.1.2.](#)) follows its usual procedure on mediation cases where child offenders are involved. The PMS points out that when assisting the conclusion of settlement between the child offender and the victim where the child is obliged to pay damages, the consent of the child's parents, guardians or other legal representatives may be necessary¹⁵².

As stated in [Section 2.1.2](#) there is no methodology on either which offences or which offenders are suitable for victim-offender mediation as this falls within the probation officer's discretion. The methodology on child offenders only provides that victim-offender mediation should not be limited solely to petty offences. The PMS methodology requires that the probation officer is specialised in child issues¹⁵³.

Whenever the police lay charges against a child above 15 years of age, they should notify the PMS. The probation officer then considers whether it would be useful to assist the child in the criminal proceedings. He/she does not have to be necessarily authorised by the police or the prosecutor. However, when acting on his/her initiative, he/she should notify them¹⁵⁴. Probation officers must assist children in criminal proceedings as much as possible¹⁵⁵.

The first session with clients is held separately with the child offender and with the victim. The probation officer invites the child while his/her legal representatives as well as his/her lawyer are only informed about the fact that the session will take place. Whether they may participate in the session in person depends on circumstances of the case and on the mutual agreement with the probation officer¹⁵⁶.

When dealing with the child during the pre-trial stage of criminal proceedings, the probation officer assesses his/her needs as well as potential risks and, if appropriate, files a motion to the prosecutor to impose educational measures on the child. The prosecutor may do so on the condition that child agrees; however, the child is entitled to withdraw consent at any time during the pre-trial proceedings. Neither the consent nor its withdrawal shall be considered as a plea of guilty. If the child fully complies with an educational measure (probation programme, educational duties, educational restrictions, warning from competent authorities), it is more probable that a diversion would apply.

Like adults, children may be diverted from criminal proceedings by victim-offender settlement approved either by the prosecutor or by the juvenile court and by conditional suspension of criminal proceedings. Furthermore, contrary to adults the prosecutor or the juvenile court may cease from further prosecuting the child.

¹⁵² [The PMS Methodology on Juveniles.](#)

¹⁵³ *ibid.*

¹⁵⁴ *ibid.*

¹⁵⁵ *ibid.*

¹⁵⁶ *ibid.*

Any of the above mentioned diversions is applicable only if there are no reasonable doubts of the child's responsibility for the offence, or if the child pleads guilty and wants to repair the harm caused¹⁵⁷.

The victim-offender settlement approved by the prosecutor or the juvenile court and the conditional suspension of criminal proceedings are applicable to all negligent offences as well as to those intentional offences that are punishable under the Criminal Code with a maximum of five years' imprisonment¹⁵⁸. Application of both measures must be approved by the child. Furthermore, the settlement requires approval by the victim. Since both forms of diversion apply in the same way to children as to adults, some limitations with respect to their use by children may arise. These relate especially to the victim-offender settlement which may be approved by the prosecutor or the juvenile court only if the child pays the State a certain amount of money, used then as financial support for victims. In addition, he/she has to fully compensate the victim.

Prosecutions may be withdrawn for offences punishable by a maximum of three years' imprisonment if the prosecutor or the juvenile court find no public interest in proceeding. However, the child has the right to contest the withdrawal and insist that judicial hearings take place. In such cases, the court session is held and the child may be convicted but will not receive any sanction¹⁵⁹.

As regards the criminal record, the information about offences settled through diversion is held separately and is ordinarily inaccessible. However, they may be used in future in any other criminal proceedings against the person when considering his/her personality as well as in administrative proceedings on application for a gun licence.

Children below 15 years of age

There is no way to divert a child below 15 years of age from formal criminal proceedings. The prosecutor is required to refer every child below the age of criminal responsibility to a juvenile court¹⁶⁰. Although the court hearings may theoretically be held in absence of the child, this is not recommended as it is not deemed to comply with the educational purpose of the proceedings. In addition, the court has the power not to impose a measure only when the child is present in the courtroom¹⁶¹.

2.3.7 Minimising the burden of proceedings and ensuring a child friendly environment

Children above 15 years of age

Although the Juvenile Justice Act sets forth as one of the fundamental principles that criminal proceedings should be held without undue delay, it provides for no specific provisions to this purpose. Indeed, avoiding undue delay in criminal proceedings is required with respect to adults as well.

Similarly to adults, if the child is caught while committing an offence or if the case is so clear that it is suitable to be dealt with within two weeks, the police or the prosecutor may subject the child to so-called 'accelerated criminal proceedings' (*zkrácené přípravné řízení*). Contrary to the standard criminal proceedings, in accelerated criminal proceedings the child and the prosecutor may agree on some facts which are then considered by the juvenile court as proven¹⁶². Accelerated criminal proceedings are applicable only when dealing with petty offences, punishable by a maximum of five years' imprisonment. Accelerated criminal

¹⁵⁷ The [Juvenile Justice Act](#), section 68.

¹⁵⁸ Criminal Procedure Code, sections 307 and 309, in connection with Criminal Code, section 14(2).

¹⁵⁹ The [Juvenile Justice Act](#), section 70.

¹⁶⁰ The [Juvenile Justice Act](#), section 90(1).

¹⁶¹ The Decision of The Supreme Court of the Czech Republic, 26/2/2006, Complaint No. 8 To 185/2006.

¹⁶² Criminal Procedure Code, section 314d(2).

proceedings should be terminated within two weeks. However, the prosecutor may extend the term up to 10 days¹⁶³.

The domestic legal order provides for time limits even with respect to standard proceedings and its stages. However, these do not differentiate between children and adults.

As regards premises and spaces where children are involved in proceedings, there are neither any specific provisions nor methodologies requiring them to be child-friendly. The Minister of the Interior adopted a programme on building special interview rooms for children (for more information see [Section 2.1.5](#)). However, these are dedicated to child victims and witnesses. Child-friendly interview rooms are also used for children who are suspects/defendants. The decision on whether to use child-friendly interview rooms is at the discretion of the responsible police officer and is made on a case-by-case basis. Even before the juvenile court, children are tried in traditional courtrooms since no special, child-friendly courtrooms exist in the Czech Republic. During the pre-trial stage of criminal proceedings the child must be assisted by a defence counsel (see [Section 2.3.10](#)). In every contact of the child with the police, the prosecutor or the juvenile court, he/she may be assisted by his/her parents, guardians and legal representatives. The legal representatives have the right (but not a duty) to be present at all investigatory acts which the child undergoes except for some which take place with a child who is detained in custody. The police have to inform the legal representatives before the child is asked to provide an explanation but in some cases the police explain to the legal representatives that it is more appropriate if they are not present because the child can be influenced by them¹⁶⁴. If there is a conflict of interests between the child and his/her parents, guardians and legal representatives, or if the child does not have any, the prosecutor or the juvenile court should appoint a guardian *ad litem*¹⁶⁵ for him/her.

The law is not clear how the child should be supported by the administrative body for social and judicial protection of the child and by probation officers at interviews during the pre-trial stage of criminal proceedings. The police, the prosecutor and the juvenile court only have a general obligation to cooperate with them but there is no specification of what this cooperation should be¹⁶⁶. As regards the judicial stage of criminal proceedings, social workers from the administrative body for social and legal protection of the child as well as the probation officers are entitled to attend the trial. The administrative body for social and legal protection has, in addition, the right to question the child and witnesses and to file motions relating to the court proceedings. Furthermore, it has the right to have the final word before the court issues the judgment¹⁶⁷.

The judicial hearings are in most cases held privately (see [Section 2.3.5](#)). The Juvenile Justice Act mentions the persons who entitled to attend them, i.e., two persons of the child's choice, the child's parents, guardians or other legal representatives, the child's relatives including the child's siblings, the child's partner or wife/husband, the victim, the victim's agent, the victim's legal representatives, witnesses, experts interpreters, social workers from the administrative body for social and legal protection of the child, the probation officer and a representative of the child's school or institution where the child lives¹⁶⁸.

There are no specific provisions stating that court sessions must be adapted to the child's pace and attention. The Juvenile Justice Act only requires the juvenile court to take into account the child's best interests¹⁶⁹. However, there is no methodology on how to achieve this goal.

¹⁶³ Effective since 1 September 2012, an amendment to the Criminal Procedure Code introduced into the domestic legal order plea bargaining. If plea bargaining takes place, the term may be extended up to 30 days.

¹⁶⁴ The [Juvenile Justice Act](#), section 43(1).

¹⁶⁵ The [Juvenile Justice Act](#), section 43(2).

¹⁶⁶ The [Juvenile Justice Act](#), sections 3(4), 36 and 40(1).

¹⁶⁷ The [Juvenile Justice Act](#), section 64 (2) and (3).

¹⁶⁸ The [Juvenile Justice Act](#), section 54(1).

¹⁶⁹ The [Juvenile Justice Act](#), section 64(4).

During the criminal proceedings the child and his/her family should be provided with support especially from the administrative body for social and legal protection of the child as well as from the PMS. These institutions may provide counselling themselves or may arrange social, psychological or other necessary counselling for the child and his/her family from another specialist. Other significant supportive institutions for the child and his/her family are so-called 'educational care centres' (*střediska výchovné péče*) with competence to provide families with necessary support within their natural environment rather than in a specialised establishment. As of 1 January 2013 these institutions gained more responsibilities¹⁷⁰. However, there are currently only 17 educational care centres in the Czech Republic¹⁷¹. Furthermore, the administrative bodies for the legal and social protection of children are systematically overloaded with cases so that in many cases they do not have time to visit them and their families.

Children below 15 years of age

There are no specific provisions ensuring that proceedings against a child below the age of criminal responsibility shall be held without undue delay even though this is one of fundamental principles of the Juvenile Justice Act. The Juvenile Justice Act only requires the prosecutor to refer the child to the juvenile court immediately after he/she finds that the child has committed an unlawful act¹⁷². However, neither academics nor practitioners agree on the degree of probability necessary to bring the case before the juvenile court. Therefore in practice, the police and the prosecutor proceed in the same way against adults or children above 15 years of age except for laying charges against the child since children below the age of 15 do not have criminal responsibility. This in fact deprives children below 15 years of age from fundamental procedural safeguards, traditionally related to criminal proceedings.

Although the Criminal Procedure Act sets forth that the maximum duration of this stage is from two to six months depending of the gravity of the unlawful act, it is fully at the discretion of the prosecutor to extend it whilst the child and his/her parents, guardians and other legal representatives only have the right to file a general application for review of the prosecutor's practice by higher prosecutor office¹⁷³. According to the Juvenile Justice Act the juvenile court may begin the proceedings even without the motion filed by the prosecutor¹⁷⁴, nevertheless in practice this occurs very rarely.

There are no time limits as regards judicial proceedings.

With respect to the premises where children are involved in the criminal proceedings the law does not differentiate between the child offenders above and below 15 years of age.

With respect to judicial hearings, these are usually held privately and, contrary to children above 15 years of age, the Juvenile Justice Act does not explicitly allow the presence of the child's relatives or other persons whom the child trusts except for his/her parents, guardians or other legal representatives. Whether these persons could attend the hearings would depend on the juvenile court's decision.

As for children above 15 years of age, there are no specific rules on adapting the judicial sessions to the child's pace and attention. Furthermore, contrary to children above 15 years of age, the Juvenile Justice Act does not explicitly require the juvenile court to take the child's best interests into account.

Regarding the existing support services, the same provisions apply to children below and above the age of criminal responsibility. Note however that the role of the PMS in

¹⁷⁰ Act No. 109/2002 Coll., on Institutional and Protective Upbringing and on Preventive Education In Educational Care Centres, section 16(3d).

¹⁷¹ See the official list of the Minister of Education, Youth and Sports available at: <http://rejskol.msmt.cz/>. To obtain the list of educational care centres it is necessary to fill in the box 'Druhy škol/zařízení' with 'J21, Středisko vých. péče'.

¹⁷² The [Juvenile Justice Act](#), section 90(1). 'fd'

¹⁷³ Criminal Procedure Code, section 157a.

¹⁷⁴ The [Juvenile Justice Act](#), section 90(2).

proceedings against a child below the age of criminal responsibility is less important than in criminal proceedings against children above 15 years of age. The PMS is not notified by the prosecutor about all the children below 15 years of age who are in conflict with the law, but only about those where the prosecutor finds it appropriate¹⁷⁵. Thus, the involvement of the PMS in these proceedings in fact depends on the decision of the prosecutor and eventually of the juvenile court rather than a decision of the PMS itself.

2.3.8 Protecting the child during interviews and when giving testimony

Children above 15 years of age

During the pre-trial stage of criminal proceedings, children above 15 years of age may be interviewed either as suspects providing statements or as defendants. The child, regardless of status during interview, has the right to be obligatorily assisted by defence counsel from the very first contact with the police or the prosecutor (see [Section 2.3.10](#)).

According to the law, even the child's parents, guardians or other legal representatives are entitled to participate in the same investigatory acts as children¹⁷⁶. Therefore they have the right to assist the child when interviewed or giving a statement.

There are no detailed provisions on using child-friendly interview methods. Nevertheless, the Juvenile Justice Act requires the police, the prosecutor and the juvenile court to take into account the child's age, health condition and intellectual and moral maturity when involved in criminal proceedings. Therefore, even the interview of the child must be adapted to his/her age, health condition and intellectual and moral maturity. Furthermore, the law sets out the obligation to interview the child considerately and to have regard for protection of their personality.

Cross-examination of the child should be carried out only exceptionally and exclusively during the judicial stage of criminal proceedings.

In addition, the Juvenile Justice Act provides for policemen, prosecutors and judges dealing with children in conflict with the law to have special qualifications or education. Furthermore, they should cooperate with social workers from the administrative body for social and legal protection of the child and with the PMS¹⁷⁷.

There are no specific provisions requiring the child to be interviewed in a child-friendly environment. Indeed, children are interviewed in the same places as adults, i.e. at police stations and in traditional court rooms.

The information gathered through interviewing a child is admissible in court in the same way as adults. Before the court, children, like adults, must be interviewed again even though they have already been interviewed during the pre-trial proceedings. The child's statements from the pre-trial stage may be read before the juvenile court only if the child refuses to describe the facts again or if statements significantly differ from those made at the pre-trial stage¹⁷⁸. The law does not weigh the value of the child's statements lower because of age. Indeed, the child's statements have the same evidentiary power as if made by an adult.

There are no specific rules on assistance to the child when being interviewed.

Children below the age of criminal responsibility

During the pre-trial proceedings, a child below the age of criminal responsibility can be interviewed only as a person assisting authorities through the provision of an explanation or statement. In this regard there are neither specific legal provisions nor methodologies on

¹⁷⁵ The Probation and Mediation Service of the Czech Republic. Methodology On How To Work With Juveniles And Children Below the Age of Criminal Responsibility. Available in Czech (MLADISTVÍ A DĚTI – metodika) at: https://www.pmscr.cz/scripts/index.php?id_nad=56 .

¹⁷⁶ The [Juvenile Justice Act](#), section 43(1).

¹⁷⁷ The [Juvenile Justice Act](#), section 36.

¹⁷⁸ Criminal Procedure Code, section 207(2).

interviewing children in conflict with the law, except for the police internal directive cited in [Section 2.1.5](#) which should apply to child victims and witnesses as well as to child offenders.

With respect to children in conflict with the law, the police in most cases ensure the presence of a social worker or an employee of the administrative body for the social and legal protection of the child. Nonetheless, such practice does not take into account whether these social workers are sufficiently qualified, both in child psychology as well as in criminal law, to provide the child with effective protection and support. Furthermore, it is not uncommon that a social worker specialised in children in conflict with the law, a so called ‘youth curator’ (*kurátor mládeže*), is not available. Another colleague, specialised for instance in alternative family care, may then participate in the interview instead.

The practice of allowing the parents or other legal representatives of the child to be present at the interview varies depending on the district.

In addition, children below the age of criminal responsibility are deprived of the right to obligatory representation by a defence counsel (see [Section 2.3.10](#)).

Although the Juvenile Justice Act requires police, prosecutors and judges to have special qualifications in dealing with children, children below the age of criminal responsibility usually provide statements at police district departments, while child specialists operate at regional police directorates. In other words, contrary to children above 15 years of age who are interviewed at police regional directorates, policemen interviewing children up to 15 years of age are not sufficiently qualified to ensure the child’s best interests.

According to the police’s internal directive, when interviewing a child up to 15, even as a suspect, the police may use toys depending on the child’s mental capacity (see [Section 2.1.5](#))¹⁷⁹.

Before interviewing the child, the police have to notify parents, guardians and legal representatives except in an emergency¹⁸⁰ (for more information see [Section 2.3.2](#)).

The subsequent judicial proceedings are viewed under the domestic legal order as civil and thus governed by less strict procedural rules as regards collecting and examining evidence. Therefore, even the child’s self-incriminating statements made at the police station, in the absence of parents, lawyer and experts on children, are used as evidence before the juvenile court. According to the Juvenile Justice Act, the child does not necessarily have to be interviewed again before the court on the condition that the child’s responsibility for the unlawful act can be proven on the balance of probability by the other evidence collected. The Juvenile Justice Act only sets forth that even if the child is not interviewed, the juvenile court should still ascertain their views on the matter¹⁸¹.

2.3.9 Right to be heard and to participate in criminal proceedings

Children above 15 years of age

Children above 15 years of age alleged or accused of having committed an offence have the same procedural rights as adults in criminal proceedings (for more information see [Section 2.3.2](#)).

The police, the prosecutor and the juvenile court shall proceed considering the child’s age and mental capacity so that they do not cause harm to his/her psychological and social welfare and further development¹⁸². Furthermore, the prosecutor should ensure that the

¹⁷⁹ Since the 1 January 2012 the Criminal Procedure Code explicitly enables video-recording whenever it seems appropriate regarding the age and the health condition of the interviewee. However, this provision still does not establish an obligation for the police or the prosecutor to video record interviews of children below the age of criminal responsibility, not even when such interviews take place without any other person present.

¹⁸⁰ Criminal Procedure Code, section 158(5).

¹⁸¹ The [Juvenile Justice Act](#), section 92(2).

¹⁸² The [Juvenile Justice Act](#), section 41(2).

police hold the proceedings with due respect for the child's well-being and that diversions apply wherever appropriate¹⁸³.

- Before the juvenile court issues the final judgment, the police or the prosecutor at the pre-trial stage and the juvenile court at the judicial stage may impose on the child one or more so-called educational measures (*výchovná opatření*). Educational measures include:
 - Supervision by a probation officer (*dohled probačního úředníka*);
 - Probation programme (*probační program*);
 - Educational obligations (*výchovné povinnosti*), including social beneficial activities or remedying the harm done to the victim;
 - Educational limitations (*výchovná omezení*), including refraining from alcohol and drug abuse, from gambling, from contacting certain persons or visiting certain places;
 - Admonition with warning (*napomenutí s výstrahou*), e.g. from parents, school etc. (see also [Section 2.3.6](#)).

Application of educational measures before the final judgement requires the child's approval¹⁸⁴ while no legal representation, either by the child's parents or his/her defence counsel may be accepted in this regard. In addition, the child has the right to withdraw the approval at any time of the proceedings and without any reason. The withdrawal should not then constitute an aggravating circumstance. On the other hand, successful completion of an educational measure during the criminal proceedings may favour the application of diversions or the refraining from imposing criminal measures (*trestní opatření*) on the child.

Children above 15 years of age must be mandatorily assisted by a defence counsel until reaching the age of 18 (see [Section 2.3.10](#))¹⁸⁵. The child's defence counsel has the right to file all the motions and applications, including those for review of a decision and to consult the police and judicial files on behalf of the accused child. Furthermore he/she has the right to participate in all acts of investigation as well as in judicial sessions¹⁸⁶. Indeed, whenever the accused is represented by a defence counsel, the police or the prosecutor inform only the counsel about the progress of the proceedings during its pre-trial stage except for acts which require the personal participation of the accused child (e.g. the interview of the accused) and for decisions which the accused child may subject to review¹⁸⁷. In other words, since the accused child is obligatorily represented by a defence counsel, he/she is never notified by the police or the prosecutor about the progress of investigation except in the mentioned occasions.

In addition, under the Criminal Procedure Code, the accused is entitled to apply to the police or the prosecutor to allow them to participate in person in the investigation, e.g. at interviews of witnesses although the final decision falls completely at the police's or the prosecutor's discretion. However, according to the law, if the accused is represented by a defence counsel, like children above 15 years of age, the participation in investigation should be ensured primarily by the defence counsel¹⁸⁸. It is therefore very probable that in most cases the police bring into the investigation only the child's defence counsel since contrary to the accused, the defence counsel personally assists in the investigation except in emergencies¹⁸⁹.

¹⁸³ The [Juvenile Justice Act](#), section 59.

¹⁸⁴ The [Juvenile Justice Act](#), section 15(3).

¹⁸⁵ The [Juvenile Justice Act](#), section 42(2).

¹⁸⁶ Criminal Procedure Code, section 41(2).

¹⁸⁷ Criminal Procedure Code, section 62(2).

¹⁸⁸ Criminal Procedure Code, section 165(1).

¹⁸⁹ Šámal, P. et al., Criminal Procedure Code. Commentary (*Trestní řád. Komentář*), 6th edition. Prague : C. H. Beck, 2008. p. 303.

Only then does the child have the right to request that his/her defence counsel is present at any interrogatory act¹⁹⁰. Nevertheless, such a right, if exercised, only creates an obligation on the police and the prosecutor to inform the child's counsel in advance of the time and place of every hearing but not an obligation to ensure that the counsel actually participates in it. In addition, the law explicitly entitles the defence counsel of both children and adults to carry out all their procedural rights regardless of the views or wishes of the accused¹⁹¹. Counsel does not even need the consent of the child's parents, guardians or other legal representatives. The law only obliges them to act with regard to the child's best interests¹⁹². In addition, the law sets forth in general that the defence counsel shall provide the accused with necessary legal assistance and shall ensure that all the facts of the case will be appropriately investigated and proven¹⁹³.

As regards the child's parents, guardians or other legal representatives, their rights have already been mentioned in [Section 2.3.2](#). Nevertheless it is necessary to add that they may exercise their procedural rights against the child's will¹⁹⁴, e.g. file an appeal against the judgment, on the sole condition that they do so in the child's best interests.

In addition, the child's parents, guardians or other legal representatives as well as relatives have the right to choose the juvenile's defence counsel on the child's behalf, even if the child disagrees with their choice¹⁹⁵. However, the child is entitled to choose a defence counsel on their own at any stage of criminal proceedings¹⁹⁶. When doing so, the former one automatically loses the right to represent the child.

Under the domestic legal order, every person accused of an offence, including children, has the right to comment on all the facts he/she is considered responsible for as well as all the evidence, without need of any representation, either by a defence counsel or by his/her parents, guardians or other legal representatives. The accused child is also entitled, as any adult, to request to be interviewed¹⁹⁷. In such cases the presence of legal counsel is obligatory.

Before the case is referred to the juvenile court the child as well as his/her legal counsel have to be informed about the right to consult the police file and to request further evidence to be collected. The police will reject such an application if they find it groundless¹⁹⁸.

The judicial hearings shall not take place in the child's absence (see [Section 2.3.5](#)). Before the court the child not only has the right to be interviewed¹⁹⁹, but after every piece of evidence presented he/she has to be asked by the juvenile court whether he/she wants to comment upon it²⁰⁰. As a party to the proceedings the child also has the right to request the juvenile court to interview a witness or an expert on his/her own (as, normally, it is the presiding judge who interviews these persons)²⁰¹. The child may exercise these rights either in person or through a defence counsel. Before the juvenile court takes the final decision the child, like adults, has the right to a closing speech just after his/her defence counsel. Furthermore, the accused child, as any adult, has the right to the so-called 'final word' (*poslední slovo*). The right to the 'final word' entitles the child to say anything he/she wishes

¹⁹⁰ Criminal Procedure Code, section 33(1).

¹⁹¹ Criminal Procedure Code, section 41(3).

¹⁹² Šámal, P. et al., *The Criminal Procedure Code. Commentary (Trestní řád. Komentář)*, 6th edition. Prague : C. H. Beck, 2008. p. 303.

¹⁹³ Criminal Procedure Code, section 41(1).

¹⁹⁴ The [Juvenile Justice Act](#), section 43(1).

¹⁹⁵ The [Juvenile Justice Act](#), section 43(1) and section 44(1).

¹⁹⁶ The [Juvenile Justice Act](#), section 44(3).

¹⁹⁷ Criminal Procedure Code, section 33(1).

¹⁹⁸ Criminal Procedure Code, section 166(1).

¹⁹⁹ Criminal Procedure Code, section 207(1).

²⁰⁰ Criminal Procedure Code, section 214.

²⁰¹ Criminal Procedure Code, section 215(2).

while neither the juvenile court nor anybody else is allowed to subsequently question them on that²⁰². The right to the 'final word' should not be exercised by anybody other than the accused, i.e. the child.

The law does not provide for any specific rules requiring the judgment and its reasoning to be adapted to the child's age and mental capacity.

Children below 15 years of age

Children below the age of criminal responsibility are provided with far fewer procedural safeguards than children above 15 years of age as regards their rights to participate in the proceedings and to be heard²⁰³.

The law does not explicitly set forth the child's right to be informed on the progress of the proceedings. Nor does the law guarantee the child or his/her parents with the right to consult the police file²⁰⁴. In addition, according to the law, neither the child nor his/her parents, guardians or other legal representatives have the right to be informed of the termination of the pre-trial stage of the proceedings²⁰⁵. However, in practice the police or the prosecutor enable the child's parents to consult the records while this practice may vary depending on the police department. Furthermore, the parents, guardians and legal representatives are generally informed on the cessation of the pre-trial stage.

As regards the judicial hearings, according to the law these may take place even in the child's absence²⁰⁶. Nevertheless, with respect to petty acts where the prosecutor or the juvenile court find it appropriate to refrain from imposing a measure, the presence of the child in the hearings is obligatory²⁰⁷. The child does not necessarily have to be interviewed again before the court on the condition that all the facts of the case have been sufficiently proven by other evidence. As any other party to civil proceedings the child has the right to apply to be interviewed by the court. However, contrary to the Criminal Procedure Code, the Civil Procedure Code allows the juvenile court to reject such an application if it finds it unnecessary. The child is entitled to contest the rejection by requesting a review before a higher court. Nevertheless, to be able to do so, he/she will need to be represented by his/her parents, guardians or other legal representatives.

The juvenile court should consider the child's views²⁰⁸. The child's views should be determined primarily through interview, but their determination through parents, guardians or other legal representatives or through the administrative body for social and legal protection of the child, may also be acceptable²⁰⁹. Furthermore, according to the law, the juvenile court is entitled when ascertaining the child's views, to interview the child in the absence of any other person, including a lawyer or the child's parents, guardians or other legal representatives, if there is a high probability that their presence would influence the child's

²⁰² Criminal Procedure Code, section 217.

²⁰³ It is necessary to point out that, contrary to children above 15 years of age, with respect to children below the age of criminal responsibility there are no specific legal provisions regulating the pre-trial stage of criminal proceedings. Therefore the general provisions of the Criminal Procedure Code have to apply. However, these are not well adapted to the specific situation of child suspects since many interrogatory acts, including interviews of witnesses, can take place only after the suspect is officially charged with the offence. Nonetheless children below the age of criminal responsibility can never be charged because of their age. Therefore during the pre-trial stage of criminal proceedings, all the 'witnesses' are interviewed as person providing explanation. Not even the juvenile or his/her defence counsel would have the right to participate in such an interrogatory act (see above).

²⁰⁴ See Criminal Procedure Code, section 65(1).

²⁰⁵ Criminal Procedure Code, section 159a(2) in connection with section 64(1).

²⁰⁶ Act No. 99/1963 Coll., the Civil Procedure Code, section 101(3).

²⁰⁷ Regional Court of Hradec Králové, decision of 18 May 2005, No. 12 Rodo 7/2005.

²⁰⁸ The Juvenile Justice Act requires the juvenile court to determine the child's views in all proceedings for unlawful acts. Nevertheless, since the Juvenile Justice Act does not provide for more detailed provisions, the general rules of the Civil Procedure Code have to apply.

²⁰⁹ The Civil Procedure Code, section 100(4).

views²¹⁰. Although the child should not be interviewed on the facts of the case, there are no specific provisions adapting the legal provision for the purpose of juvenile justice and protecting the child from any potentially suggestive questions asked by the court in absolute privacy.

As for children above 15 years of age, the law does not provide for any specific rules requiring the judgment and its reasoning to be adapted to the child's age and mental capacity.

2.3.10 Right to legal counsel, legal assistance and representation

Children above 15 years of age

All child suspects shall be mandatorily represented by a defence counsel from their first contact with the police or the prosecutor, i.e. from the very beginning of the criminal proceedings, regardless the nature of the offence. Children's right to mandatory legal assistance is thus broader than that of adults since, as regards adults, it applies only after the charges are brought against them and only if there are additional conditions fulfilled. The right to mandatory legal assistance lasts until the child reaches the age of 18. Furthermore the child is not allowed, under any circumstances, to resign from this right.

The defence counsel should be chosen primarily by the child. However, if he/she does not use his/her right, the parents or other legal representatives as well as his/her relatives have the right to choose a counsel instead of the child and even against the child's will²¹¹. However, the child is entitled at any time of the proceedings to choose a defence counsel on his/her own and thus deprive the former counsel of his/her authorisation to represent him/her²¹².

If neither the child nor other entitled persons choose a defence counsel, the police or eventually the prosecutor shall appoint one from the list kept by district court²¹³. However, the child is still entitled to replace the appointed counsel by one he subsequently chooses himself.

The child as well as his/her legal representatives and relatives have the right to choose two or more counsels²¹⁴.

In case the child cannot afford counsel, they may apply for free counsel or for a reduced fee. The application may be filed also by the child's legal representatives, relatives and even by the defence counsel. The juvenile court must accept such application on the sole condition that the applicant has sufficiently proven the child's poor financial situation. Furthermore, the juvenile court may award the child with counsel for free or for a reduced fee even without any application needed on the sole condition that the evidence collected in criminal proceedings makes it clear that the child is unable to pay for a counsel himself/herself. If the child is awarded with the right to a defence counsel for free or for a reduced fee, the State will pay for the counsel. A negative decision on the application may be brought by the applicant for review before a higher court.

With respect to appointed defence counsels, those are paid for by the State during the pre-trial as well as the judicial stage of the proceedings²¹⁵. However, if the child is found guilty, he/she will be required to reimburse the legal aid provided by the state unless he/she has already been awarded the right to counsel for free or for a reduced fee²¹⁶.

²¹⁰ The Civil Procedure Code, section 100(4).

²¹¹ The [Juvenile Justice Act](#), section 43(1) and section 44(2).

²¹² The [Juvenile Justice Act](#), section 44(3).

²¹³ Criminal Procedure Code, sections 38 and 39.

²¹⁴ Criminal Procedure Code, section 37(3).

²¹⁵ Criminal Procedure Code, section 151(1) and (2).

²¹⁶ Criminal Procedure Code, section 152(1b).

The role of the defence counsel in criminal proceedings against a child is the same as in criminal proceedings against adults. However, the defence counsel representing the child does not have, under any circumstances, to respect the child's views. For more information see [Section 2.3.9](#).

Children below the age of criminal responsibility

During the pre-trial stage of criminal proceedings children below the age of criminal responsibility do not have the right to a defence counsel, neither chosen nor mandatorily appointed. They are only entitled to be provided with assistance by a lawyer when being interviewed. However, the child has to find a lawyer himself or herself (eventually through his/her legal representatives) and also pay for them. Neither the police nor the prosecutor has to offer the child a list of lawyers or otherwise provide them with contact information of a lawyer. The police or the prosecutor shall only let the child use their phone to contact a lawyer etc.²¹⁷.

Furthermore, legal assistance provided to the child when being interviewed during the pre-trial stage of criminal proceedings should not be compared to the legal representation provided by a defence counsel²¹⁸. The lawyer is not entitled to ask the child any questions, consult the police file or raise objections against the interview record. In addition, he/she cannot apply to take part in further investigation. He/she should only inform the child of procedural rights at the interview and on the role of the interview in further proceedings²¹⁹.

Before the juvenile court, the child shall be obligatorily represented by a lawyer²²⁰. However, the lawyer does not have the status of defence counsel but the status of guardian *ad litem*. According to the authors of the Juvenile Justice Act, a lawyer representing the child should not concentrate on proving the child's innocence at all cost or on ensuring that the least restrictive sanction possible is imposed upon the child²²¹. They should rather try to help the juvenile court find out whether the child really committed the unlawful act, to determine why the child committed that act and what measures would contribute best to the rehabilitation of the child²²².

The lawyer representing the child before the juvenile court is always appointed by the juvenile court²²³. Therefore neither the child nor his/her parents or other legal representatives can influence who the lawyer will be.

Regarding the role of the lawyer in the judicial proceedings, he/she is not necessarily bound by the child's wishes. Nor is he/she required under the domestic legal order to ascertain the child's views on the matter.

The costs of the lawyer are fully covered by the State.

However, the Juvenile Justice Act does not exclude the right of the child's legal representatives to get a lawyer for the child on his/her behalf. If the child is mature enough, they can get a lawyer even on their own. Such a lawyer does not become guardian *ad litem* from having the status of attorney in civil proceedings. Therefore, in such a case, the child is represented before the court by two lawyers – a guardian *ad litem* appointed by the juvenile court and the attorney chosen by the child or legal representatives. However, the child or their legal representatives have to pay for the attorney themselves.

²¹⁷ Šámal, P. et al., The Criminal Procedure Code. Commentary (*Trestní řád. Komentář*), 6th edition. Prague : C. H. Beck, 2008. p. 1211.

²¹⁸ *ibid.*

²¹⁹ *ibid.*

²²⁰ The [Juvenile Justice Act](#), section 91(2).

²²¹ Šámal, P. et al., The Juvenile Justice Act. Commentary (*Zákon o soudnictví ve věcech mládeže. Komentář*), 3th edition. Prague : C. H. Beck. p. 724.

²²² *ibid.*, p. 724.

²²³ The [Juvenile Justice Act](#), section 91(2).

2.3.11 Remedies or compensation for violation of rights and failure to act

Children above 15 years of age

There are no specific provisions regulating the access of the child to complaints, legal appeal or judicial review mechanisms. Indeed, this should be ensured primarily through the obligatorily appointed defence counsel (see [Section 2.3.10](#)). However, the child has the right to file complaints, appeals etc. on his/her own, but in such a case the general provisions are to apply.

Furthermore, there are no specific provisions on remedies or compensation applicable to children. General rules therefore have to apply.

During the pre-trial stage proceedings the child, either in person or through defence counsel or parents or guardians, may subject any decision issued by the police, including the accusation, to review by the prosecutor²²⁴. With respect to the decisions issued by the prosecutor, the child may file a complaint against them so that they are reviewed either by the prosecutor of higher instance or the criminal court depending on the nature of the offence, if the law explicitly allows so²²⁵.

During the judicial stage of criminal proceedings, the child is entitled to file complaints against decisions relating to the procedure (e.g., rejection to examine a piece of evidence because of redundancy) and to appeal against the judgment within 8 days following the day the child or his/her defence counsel was delivered the judgment by mail. If new circumstances arise, he may claim for retrial²²⁶.

Legal faults of the judgment may be challenged before the Supreme Court of the Czech Republic on the condition that the child first submits an appeal. However, to bring the case before the Supreme Court, the child has to be represented by a lawyer, i.e. defence counsel.

After the decision becomes final, the child may address a motion to the Minister of Justice who is then entitled to file a complaint before the Supreme Court for violation of the law.

Children below 15 years of age

During the pre-trial stage of criminal proceedings, children below the age of criminal responsibility are not entitled to file any complaint or legal appeal except an application to review the procedure before the police or the prosecutor, including review of undue delay. However, children below the age of criminal responsibility should file such an application through their parents, guardians or other legal representatives.

During the judicial proceedings, the child as a party to the proceedings is entitled to appeal decisions on the procedure, except for those where it is explicitly excluded by the law, i.e., decisions relating to the procedure before the juvenile court as, for example, setting the deadline as well as against the judgment. However, it is not clear whether the child has the legal capacity to administer this right on his/her own without being represented either by his/her guardian *ad litem* or his/her parents.

Even children below the age of criminal responsibility are entitled to refer the case before the Supreme Court to deal with the legal faults of the judgment or procedural failure. However, contrary to children above 15 years of age, if the decision is approved by the juvenile courts of both first and second instance, the Supreme Court will deal with the case only if it finds that it is of substantial legal significance. To bring a case before the Supreme Court, the child has to be represented by a lawyer.

If new circumstances arise, the child may claim for retrial. Procedural failings may be separately reviewed through action for nullity. Nevertheless as with respect to appeal, the

²²⁴ Criminal Procedure Code, section 141(2).

²²⁵ Criminal Procedure Code, section 141(2).

²²⁶ Criminal procedure Code, section 248 (1) and (2).



law is not clear as to whether the child may act on his/her own or whether he/she needs to be represented either by his/her guardian *ad litem* or his/her parents.

3 Child-friendly justice after judicial proceedings

3.1 The child as a victim or offender

3.1.1 Provision of information

Child victims

There are no specific provisions on providing the child victim with information after judicial proceedings. Indeed, if the child victim is not awarded compensation in criminal proceedings, the criminal court only refers the child to civil proceedings. However, it is argued that in order not to risk the principle of equality of arms, the criminal court does not provide the child victim with any additional information.

If the child victim is not compensated in the criminal proceedings, he/she has the right to appeal against that decision. Nevertheless it is not clear whether they may exercise this right on their own or whether they need to be represented by parents, guardians, legal representatives or guardian *ad litem*. The law does not require the information on appeal contained in the judgment to be adapted to children.

Parents or guardians and legal representatives are informed on all aspects of judicial proceedings only if they represent the child. If the child is represented by a guardian *ad litem*, the criminal court is not required to provide them with any information.

There are no legal obligations requiring the child's lawyer, guardian *ad litem* or legal representative to communicate and explain the decision to the child in a child-friendly way.

Child witnesses

There are no specific provisions on providing child witnesses with appropriate information after the judicial proceedings, not even with respect to remedies and compensation (see [Section 2.2.8](#)).

Child offenders

Children above 15 years of age

There are no specific requirements to provide children above 15 years of age with information after the judicial proceedings in a child-friendly way. Indeed, neither the decision nor the information on remedies is adapted to the child's age and mental capacity. The child's rights should be ensured through the obligatory assistance of the defence counsel.

The child's parents, guardians or legal representatives are informed in the same way as the child, since they are entitled to appeal against the decision in the child's interest even against the child's will. They do not have these procedural rights only if they cannot represent the child in the proceedings and a guardian *ad litem* is appointed to the child.

Children below the age of criminal responsibility

Not even with respect to children below the age of criminal responsibility is there a specific obligation requiring the juvenile court to provide them with information after judicial proceedings in a child-friendly way. Their procedural rights should be ensured through an obligatorily appointed lawyer (see [Section 2.3.10](#)). There are no specific obligations requiring the lawyer to adapt the language he/she uses to the age and mental capacity of his/her client.

As the child's parents, guardians and legal representatives are parties to the judicial proceedings, they are informed on all aspects of the proceedings including remedies.

3.1.2 Sentencing

The Juvenile Justice Act sets forth as one of its fundamental principles that any sanction imposed on a child in conflict with the law should aim at the reparation, resocialisation and

reintegration of the child²²⁷. In addition, the Juvenile Justice Act provides that when imposing a sanction the juvenile court shall take into account:

- the personality of the child in conflict with the law, including;
 - his/her age;
 - intellectual and volitional maturity;
 - health condition
- the personal, family and social circumstances;
- the nature and gravity of the offence, so that the sanction is proportionate to them.²²⁸

Children above 15 years of age

In general, children above 15 years of age are not prosecuted and, if already standing before the court, shall not have any sanction inflicted on them if the offence they are found responsible for is not punishable under the Criminal Code with more than five years of imprisonment, if they regret the offence, if they remedied the harm or tried to do so and the harm caused by the offence is not permanent²²⁹. As regards adults, the legal conditions are much stricter.

If the child is found guilty, he/she may be subject to educational, protective or criminal measures (*výchovná, ochranná, trestní opatření*) under the Juvenile Justice Act²³⁰. Every measure should aim at promoting the child's mental and social development²³¹. The Juvenile Justice Act explicitly provides that criminal measures (which include, *inter alia*, unconditional imprisonment) shall be used as sanctions of last resort and in cases where diversions and other sanctions according to the Juvenile Justice Act would be obviously unsuitable to achieve the aim of restoration, resocialisation and reintegration of the child as well as the protection of public safety²³².

Under the Juvenile Justice Act, the juvenile court may refrain from imposing criminal measures on the condition that the offence is not punishable under the Criminal Code with more than five years of imprisonment, the child regrets the offence and demonstrates effective effort to remedy it and:

- considering the nature of the offence and the child's way of life, the juvenile court finds that the mere fact that the case is dealt with by the court would sufficiently ensure the child's rehabilitation; or
- the child committed the offence because he/she was not aware of the law and such ignorance is excusable due to his/her age, intellectual maturity and social and family environments; or
- the juvenile court accepts a guarantee for the rehabilitation of the child²³³.

When refraining from inflicting criminal measures, the juvenile court may warn the child or refer sanctioning of the child to his/her parents or other legal representatives, to the school etc. They are then required to notify the juvenile court about the measures adopted and their result²³⁴.

²²⁷ The [Juvenile Justice Act](#), section 3(1).

²²⁸ The [Juvenile Justice Act](#), section 3(4).

²²⁹ The [Juvenile Justice Act](#), section 7.

²³⁰ The [Juvenile Justice Act](#), section 10(1).

²³¹ The [Juvenile Justice Act](#), section 9(1).

²³² The [Juvenile Justice Act](#), section 3(2).

²³³ The [Juvenile Justice Act](#), section 11.

²³⁴ The [Juvenile Justice Act](#), section 11(2).

In addition, the juvenile court may also refrain from imposing criminal measures if either educational or protective measures are also suitable to ensure the child's rehabilitation. Furthermore, as regards children with mental disorders, the court does not have to inflict criminal sanctions if it finds that the child's rehabilitation would be better achieved by protective treatment or protective detention²³⁵.

If the juvenile court refrains from ordering a criminal measure, the child shall be viewed as if having never been convicted. Regarding criminal records, the information about the offence is held separately and is ordinarily inaccessible. However, it may be used in future criminal proceedings against the person when considering his/her personality as well as in certain administrative proceedings, e.g., when reviewing an application for a gun licence.

All the educational, protective and criminal measures are combinable unless their nature excludes that. The combination of different measures should enable the juvenile court to individualise responses to the committed acts.

Educational measures include:

- the supervision by a probation officer;
- probation programme;
- educational obligations;
- educational limitations;
- admonition with warning.

Protective measures include:

- protective treatment;
- protective detention;
- confiscation of an item or object;
- protective education.

Criminal measures include:

- community service;
- fines;
- suspended fines;
- forfeiture of an object or item;
- prohibition to undertake activities;
- house arrest;
- ban on sports, cultural and other social events;
- sentence of imprisonment conditionally suspended for a probation period;
- sentence of imprisonment conditionally suspended for a probationary period with supervision;
- unconditional imprisonment.

The criminal measures are mostly the same as those imposed on adult offenders. However, the conditions of their execution are modified with respect to children. For instance, the maximum fine that may be inflicted on the child still represents only one twentieth in relation to the maximum fine imposable on adults. In addition, contrary to adults, the juvenile court may transform the fine into a community service or probation programme²³⁶.

²³⁵ The [Juvenile Justice Act](#), section 12.

²³⁶ The [Juvenile Justice Act](#), section 27.

Contrary to adults, the juvenile court may also order a suspended fine.

As regards community service, the maximum number of hours is halved compared to adults. Children can thus be ordered to provide community service for 50-150 hours which must be executed within two years following the conviction. Furthermore, the Juvenile Justice Act explicitly provides that community service should not endanger the child's health, security or moral development²³⁷.

The maximum duration is half compared to that of adults even with respect to the prohibition to undertake certain activities. Furthermore, the law prohibits the juvenile court from imposing this sanction if it could be harmful to the education of the child²³⁸.

The maximum duration of imprisonment, either conditionally suspended or unconditional, is halved compared to adults, while it still should not exceed five years. On the other hand, the minimum length should not exceed one year²³⁹. Apart from the mentioned reduction, the actual length of imprisonment may be further reduced below the rate provided for under the law²⁴⁰. With respect to the most serious offences, the duration of imprisonment is between 5 and 10 years²⁴¹.

Unconditional imprisonment can be inflicted on children only if other criminal sanctions would not be sufficient considering the nature of the offence, the personality of the child and any previously ordered measures²⁴². In order to complete his/her secondary education the child may apply for suspension if the duration of unconditional imprisonment does not exceed one year. However, the duration of the suspension should not exceed two years while many secondary educational programmes last in total four years. If the child was granted with suspension and during the suspension completed his secondary education, and did not commit any new offences, the juvenile court could refrain from enforcing the sentence²⁴³.

Contrary to adults, children cannot be subject to a residence ban.

There are no specific provisions on minimising delay in enforcement of sentences. Indeed, the enforcement of sentences falls within the competence of district juvenile courts (*okresní soudy pro mládež*) who act as soon as the judgment is enforceable.

Children below 15 years of age

With respect to children below the age of criminal responsibility, the law enumerates measures that the juvenile court may impose on them, most of them corresponding to the education and protective measures imposed on children above 15 years of age. These measures are:

- educational obligations;
- educational limitations;
- admonition with warning;
- inclusion in a therapeutic, psychological or other appropriate programme in an educational care centre;
- supervision by a probation officer;
- protective education;
- protective medical treatment;

²³⁷ The [Juvenile Justice Act](#), section 26(1).

²³⁸ The [Juvenile Justice Act](#), section 26(2).

²³⁹ The [Juvenile Justice Act](#), section 31.

²⁴⁰ The [Juvenile Justice Act](#), section 32.

²⁴¹ The [Juvenile Justice Act](#), section 31(3).

²⁴² The [Juvenile Justice Act](#), section 31(1).

²⁴³ The [Juvenile Justice Act](#), section 77(2).

The measures are mutually combinable unless their nature excludes this²⁴⁴ to enable the juvenile court to properly adapt the sanction to the characteristics of each case. On the other hand, the juvenile court may refrain from inflicting the sanction on the condition that the adjudication of the case by the juvenile court or the prosecutor would accomplish the rehabilitation of the child²⁴⁵.

The juvenile court may issue the judgment and inflict the measure until the child reaches the age of 18 except for protective medical treatment which may be imposed even on a child/person older than 18. This is so because for unlawful acts, contrary to offences, the statute of limitations does not apply²⁴⁶.

As regards the duration of the measures, the law sets forth that those may last only until the age of 18 except for protective medical treatment²⁴⁷. Indeed, duration of the protective medical treatment may be unlimited on the condition that the juvenile court revises its usefulness every year²⁴⁸.

Although the list of measures includes many alternatives to the deprivation of the child's liberty, in practice there is a lack of appropriate facilities to ensure their execution. Therefore imposition of protective education, which is the most restrictive measure besides institutional protective medical treatment, is still quite widespread.

There are no specific provisions on minimising undue delay in enforcement of the measures.

3.1.3 Deprivation of liberty

Children above 15 years of age

Among the measures imposable on children there are four measures depriving the child of his/her personal liberty:

- Protective education;
- Institutional protective medical treatment;
- Protective detention;
- Unconditional imprisonment;

Protective education

Protective education may be imposed on children above 15 years of age whenever their education is not appropriately ensured by their family which cannot raise the child because of some objective reason (e.g. health condition) that has made them neglect the child's upbringing or which has disrupted the child's education by providing him/her with a bad example. Since protective education is a very restrictive measure, it should be used as a last resort to deal with the aforementioned educational problems. In other words, educational measures as listed in [Section 3.1.2](#) or measures falling within family law should come first²⁴⁹.

Protective education is executed in closed educational facilities. The law allows these facilities to have bars on the windows and camera systems in the halls and social premises²⁵⁰. Children are not normally allowed to be visited by persons other than their relatives and social workers and to go for a walk outside the facility without an employee of the facility. The director of the facility may permit them to be visited by other persons or walk

²⁴⁴ The [Juvenile Justice Act](#), section 93(9).

²⁴⁵ The [Juvenile Justice Act](#), section 93(10).

²⁴⁶ The [Juvenile Justice Act](#), section 93(8).

²⁴⁷ The [Juvenile Justice Act](#), section 93(8).

²⁴⁸ The [Juvenile Justice Act](#), section 95a(2).

²⁴⁹ The [Juvenile Justice Act](#), sections 21 and 22.

²⁵⁰ Act No. 109/2002 Coll., on Execution of Institutional and Protective Education, section 15(1).

outside a facility for up to 12 hours. Nevertheless that falls completely at the director's discretion.

Children above 15 years of age placed in an educational facility have, *inter alia*, the right to physical, psychological, emotional and social development and to express their views on all issues concerning them.

Furthermore, they have the right to education proportionate to their skills, talents and needs. However, as the educational facilities are closed, children are limited in their choice of education by the educational programmes realised by the facility.

According to the law, the state covers food, accommodation, clothing, education and learning equipment and health care for children placed in educational facilities, and provides them with pocket money²⁵¹, presents²⁵² and material support when they leave the institution. Furthermore, the educational facility may provide the child with necessary leisure time and recreational equipment, cover the costs of his/her participation in cultural, artistic and sports activities, the costs relating to participation in competitions and costs relating to the child's visit to his/her parents' or other legal representatives²⁵³. The child's parents are obliged to pay a contribution to the state in this regard²⁵⁴.

The child should not be deprived of the right to be visited by his/her parents and other relatives while these visits are not limited by a number of hours a month. To make it easier for the child's relatives to visit him/her in an educational facility, the law sets forth that the child should be placed as close as possible to the place of residence of his/her parents or other legal representatives. However, the number of educational facilities for execution of protective education is quite low. Therefore it is not possible to place the child in proximity to his/her relatives.

Children have the right to file motions, complaints and applications to the director of the facility, the pedagogues employed in the facility and to require them to pass these motions, complaints and application to State authorities, the administrative body for social and legal protection of the child and municipalities. Children are also entitled to request an interview with an employee of the administrative body for social and legal protection of the child, an employee of the [Czech School Inspectorate](#), an employee of the [Ministry of Education, Youth and Sports](#) or an employee of the Regional Office. Children have to be informed by the facility on these rights²⁵⁵.

When the child fulfils his/her obligations well, he/she may be rewarded by the director of the facility with:

- remission of a previously imposed restriction;
- material or monetary reward;
- increase of pocket money;
- permission to visit a cinema, theatre, sports stadium etc. on the condition that such a visit would not endanger the purpose of the protective education;
- permission to be visited by a person other than the child's relatives on the condition that such a visit would not endanger the purpose of the protective education;

²⁵¹ Until 31/10/2012 the law set forth that the child is provided with pocket money from 200 to 300 CZK (approximately €8 to €12) depending on the internal order of the facility. However since 1/11/2012 the law only provides for the juvenile's right to pocket money without determining its amount. There has been no regulation dealing with this issue so far.

²⁵² The educational facility should give the juvenile a present for his/her birthday, completion of his/her education and on other similar occasions. The present may also take form of financial support. The value of the present depends on the juvenile's age, the length of his/her placement in the facility and his/her behaviour. See Act No. 109/2002 Coll., on Execution of Institutional and Protective Education, section 32.

²⁵³ Act No. 109/2002 Coll., on Execution of Institutional and Protective Education, section 2(9).

²⁵⁴ See Act No. 109/2002 Coll., on Execution of Institutional and Protective Education, sections 27-30.

²⁵⁵ Act No. 109/2002 Coll., on Execution of Institutional and Protective Education, section 20(1g).

- permission to walk outside the facility without any supervision for up to 12 hours on the condition that such a walk would not endanger the purpose of the protective education.

On the other hand when breaking the internal rules of the facility the child may be sanctioned with:

- remission of previously awarded reward;
- reduction of pocket money;
- remission of the right to participate in an attractive activity or event.

The execution of the sanction may be suspended for up to three months. If the child behaves correctly during the suspension, the director will refrain from enforcing the sanction²⁵⁶.

An aggressive child may be placed in a separate room (*oddělená místnost*). The duration of this measure should not exceed 48 hours a month while one continuous placement should not exceed 6 hours a day. The child in isolation should be immediately examined by a doctor and should be provided with supervision of a psychologist or therapist. Furthermore, the child must be able to exercise appropriate educational or recreational activities. The separate room should be at least 6 m² and be at least 2.5 m high. It must be provided with appropriate furniture and separated sanitary facilities²⁵⁷.

The director of the facility may allow the child to stay at his/her parents' or other legal representatives' for a period up to 14 days. The director's decision should be issued upon approval of the administrative body for social and legal protection of the child.

The director, as well as the child, the prosecutor, the administrative body for social and legal protection of the child or the probation officer may file a petition in the juvenile court to order suspended placement of the child outside the educational facility. The juvenile court may even act on its own initiative. The child is then still under the protective education but he/she may live, for instance at a college²⁵⁸.

The same persons may also file a petition in the juvenile court to transform the protective education into institutional education. The juvenile court may act *ex officio*. Institutional education is still to be carried out in an educational facility but this time not in a closed one. Furthermore, the child in institutional education has more rights than in protective education²⁵⁹.

The protective education should not last longer than necessary, at most until the child reaches majority. Exceptionally it may be prolonged until the age of 19 on the condition that the child's interest requires so²⁶⁰. However, it is pointed out that the periodic review of the usefulness of the protective education does not work in practice and that children, once placed in a closed educational facility stay there until the age of 18, and eventually until they turn 19 years old²⁶¹.

After reaching the age of 18 (or 19), the child may still stay in an educational facility, but under a less strict regime, until the age of 26 if he/she studies or otherwise prepares for future employment²⁶².

²⁵⁶ Act No. 109/2002 Coll., on Execution of Institutional and Protective Education, section 1-3.

²⁵⁷ Act No. 109/2002 Coll., on Execution of Institutional and Protective Education, section 22.

²⁵⁸ The [Juvenile Justice Act](#), section 85.

²⁵⁹ The [Juvenile Justice Act](#), section 87.

²⁶⁰ The [Juvenile Justice Act](#), section 22(2).

²⁶¹ See the report of the Czech ombudsman from his visit of educational facilities, available in Czech at: http://www.ochrance.cz/fileadmin/user_upload/ochrana_osob/2007/2007_vychovne-ustavy.pdf. The ombudsman proposed to enact an obligation for the juvenile court to review the usefulness of the protective education on a regular basis. However, no such proposal has been elaborated by the legislators so far.

²⁶² Act No. 109/2002 Coll., on Execution of Institutional and Protective Education, section 2(6).

Children being released from educational facilities for execution of protective education may be temporarily accommodated in so called halfway houses (*domy na půl cesty*). However, there are few such houses in the Czech Republic.

Institutional protective medical treatment

The law does not differentiate between children above 15 years of age and adults as regards the conditions of imposing and enforcing institutional protective medical treatment. Indeed, the juvenile court imposes institutional protective medical treatment if the child committed the offence under the influence of a mental disorder or of drugs or alcohol and it is in the interest of public safety to deprive him/her of his/her liberty. Mental disorder is defined in a broad sense and thus covers both mental illness (e.g., schizophrenia) as well as intellectual disability, severe antisocial personality disorder, profound disturbance of consciousness and sexual deviation.

Protective detention

Protective detention was introduced into Czech law in 2009 as a measure combining both deterrent and therapeutic aspects. The law does not differentiate between children and adults as regards conditions for imposing and enforcing protective detention.

Since 1 December 2011 the conditions for imposing protective detention have been significantly mitigated. This is contrary to the period before 1 December 2011 when protective detention could only be used as a reaction to the most serious offences. Currently it can be ordered in relation to any intentional offence punishable with more than five years' imprisonment. According to the law, the juvenile court must order protective detention if the child commits such an offence; is insane; or may endanger public safety unless detained and institutional protective treatment is insufficient to protect society, taking into account the child's mental disorder and the treatment options²⁶³. The juvenile court may impose protective detention on the same conditions even if the child is not insane²⁶⁴.

In addition, the juvenile court may order protective detention if the child committed the offence in relation to his/her addiction to drugs or alcohol and he/she had already been imprisoned for such an offence for more than two years.

The protective detention should last as long as necessary. With respect to children, the court is required to review usefulness of its duration every 6 months, while regarding adults, the law sets forth a review period of 12 months²⁶⁵. Furthermore, the court may transform protective detention into institutional protective medical treatment if it is no longer necessary but at the same time the institutionalisation of the child is still justified²⁶⁶. A commission of expert employees of the detention facility is required to prepare a complex report every 3 months to justify the detention. If the commission finds that the detainee should be released or placed under institutional protective treatment, it must file an application in this regard to the director of the facility. The director can then bring the application before the district juvenile court or notify the juvenile court why he/she did not file the application. The juvenile court may then start the proceedings on its own initiative²⁶⁷.

The protective detention is carried out in special detention facilities. However, since it is not a widely imposed measure, there are only two detention facilities in the Czech Republic (in Opava and in Brno – see [here](#)). It is therefore impossible to take into account family ties when placing the child.

The detention facility is supervised by the Prison service of the Czech Republic, but the detainees are treated by psychologists, special teachers and other experts²⁶⁸. All the

²⁶³ Criminal Code, section 100(1).

²⁶⁴ Criminal Code, section 100(2).

²⁶⁵ Criminal Code, section 100(5).

²⁶⁶ Criminal Code, section 100(6).

²⁶⁷ Act No. 129/2008 Coll., on Execution of Protective Detention, section 26.

²⁶⁸ Act No. 129/2008 Coll., on Execution of Protective Detention, section 1(3) in connection with section 3(3).

detainees, regardless of whether children or not, are subject to psychological, educational, pedagogic, rehabilitative and activity programmes.

The law does not include any specific provisions relating to the execution of protective detention of children except for the obligation to separate all persons up to 19 years of age from adults²⁶⁹ and the right of detainees up to 18 years of age to receive visits from the administrative body for social and legal protection of the child²⁷⁰. Furthermore, contrary to adult detainees, the detention facility should always enable child detainees without primary education to complete this education by following a special course²⁷¹.

On admission, the child should be informed about all his/her rights including the right to apply for release from the detention facility as well as for transformation of the detention into institutional protective treatment²⁷².

The law provides in general that the execution of the protective detention should be proportionate to the detainee's personality and should minimise restrictions to personal liberty and private life as much as possible²⁷³. Under the protective detention children do not have:

- the right to strike;
- the rights relating to their membership of political parties and other associations;
- the right to exercise economic activity;
- the right to choose a doctor or medical facility;
- the right to found political parties and other associations;
- the right to perform elective and other public functions²⁷⁴.

The State should provide all child detainees with food appropriate to their age, accommodation, clothing and healthcare, while healthcare which is not covered by public health insurance is available only upon the decision of the facility director²⁷⁵.

All the detainees, including children, have the right to eight hours of sleep, at least one hour for a walk inside the facility and time necessary for personal hygiene²⁷⁶.

As regard contact with relatives and other persons, the detained child has the right to send and receive mail without any limitation. However, the director of the facility has the right to decide that mail addressed to or received from a certain person will not be sent or transmitted to the child. The child has to be informed of that decision. This measure should be revoked as soon as it ceases to be justified and the child has the right to file applications for its revocation. The director has to review such decisions every 6 months. The mail correspondence between the child and his/her lawyer, guardian, ombudsman and state authorities should not be restricted in any way. Furthermore, the prison service is required to read the mail to detainees who cannot read and to help those detainees who cannot write with filing applications and complaints to State authorities, ombudsman and international organisations and with communicating with their lawyer. However, the law does not provide any obligation requiring the prison service to help the detainees who cannot write to communicate with their family, friends and other close persons²⁷⁷.

²⁶⁹ Act No. 129/2008 Coll., on Execution of Protective Detention, section 5.

²⁷⁰ Act No. 129/2008 Coll., on Execution of Protective Detention, section 15(4).

²⁷¹ Act No. 129/2008 Coll., on Execution of Protective Detention, section 22(2).

²⁷² Act No. 129/2008 Coll., on Execution of Protective Detention, section 4(1).

²⁷³ Act No. 129/2008 Coll., on Execution of Protective Detention, sections 2(2) and 16(1).

²⁷⁴ Act No. 129/2008 Coll., on Execution of Protective Detention, section 16(2).

²⁷⁵ Act No. 129/2008 Coll., on Execution of Protective Detention, section 2(3).

²⁷⁶ Act No. 129/2008 Coll., on Execution of Protective Detention, section 20(2).

²⁷⁷ Act No. 129/2008 Coll., on Execution of Protective Detention, section 8.

The child in the detention facility may use the phone, especially, to communicate with relatives, guardians and non-governmental organisations. However, he/she has to cover the costs²⁷⁸. If the child does not have any income (for instance if he/she does not work), he/she has the right to receive 100,- CZK (approximately €4) a month as pocket money²⁷⁹.

Child detainees have the right to receive visits for at least two hours twice a week while their lawyer, State authorities etc. can visit them anytime and for as long as necessary²⁸⁰. The law does not differentiate in this regard between child and adult detainees.

As regards disciplinary sanctions and rewards, there are no specific provisions with respect to child detainees. Indeed, when breaking the internal order, a disciplinary action may be imposed upon the detainee, but on the condition that his/her responsibility, including 'mens rea' (*zavinění*), has been sufficiently proven. The disciplinary sanctions are:

- warning;
- public reprimand;
- remission of previously awarded reward;
- ban from participating in cultural or social event in the facility;
- forfeiture of an object or item²⁸¹.

Similarly to adults, child detainees have the right to file a complaint against the disciplinary sanction²⁸².

Detainees may be rewarded if they exhibit responsibility when fulfilling their obligations. Disciplinary rewards are:

- praise;
- public praise or public acknowledgement;
- exceptional increase in the number of hours for receiving visits in one month or other personal reward;
- material or monetary reward up to 1000,- CZK (approximately €40)²⁸³.

The competence to impose disciplinary sanctions and grant disciplinary rewards belongs to the General Director of the Prison Service of the Czech Republic and to directors of facilities²⁸⁴.

If the protection of the child detainee or of other persons requires so, the director of the facility, another authorised employee or a doctor, on the condition that the decision relates to a health condition of the child, may impose restrictive measures on the detainee. The law does not differentiate between children and adults in this regard. These restrictive measures are:

- placement in a "closed department" (*uzavřené oddělení*);
- placement in isolation²⁸⁵;
- restrictions in movement using buffers;

²⁷⁸ Act No. 129/2008 Coll., on Execution of Protective Detention, section 9.

²⁷⁹ Act No. 129/2008 Coll., on Execution of Protective Detention, section 20(5).

²⁸⁰ Act No. 129/2008 Coll., on Execution of Protective Detention, section 10.

²⁸¹ Act No. 129/2008 Coll., on Execution of Protective Detention, section 28.

²⁸² Act No. 129/2008 Coll., on Execution of Protective Detention, section 31(4).

²⁸³ Act No. 129/2008 Coll., on Execution of Protective Detention, section 27.

²⁸⁴ Act No. 129/2008 Coll., on Execution of Protective Detention, section 31.

²⁸⁵ The room for solitary confinement has to have at least 6 m², to be provided with a bed, furniture, separated sanitary facilities, electricity, natural and artificial lighting, possibility of natural ventilation and heating. See Act No. 129/2008 Coll., on Execution of Protective Detention, section 35(2).

- restrictions in movement with manual hold;
- acute parenteral medication with psychopharmacological fabrics²⁸⁶.

When imposing such restrictive measures, the detention facility should immediately inform the prosecutor and in cases of detainees with limited legal capacity, their guardians. However, the law does not explicitly provide for the obligation to inform parents or other legal representatives if the detainee is a child²⁸⁷.

Furthermore, there is no maximum duration of the measure set forth in the law. There is only a general limitation that the restrictive measure should last only so long as it is justified. Detainees under restrictive measures should be regularly examined by a doctor.

As regards placement in solitary confinement, the detainee should be immediately examined by a doctor and his health condition should be then revised every 14 hours. The detainee in solitary confinement should be permanently supervised, even by using a camera system²⁸⁸.

As regards reintegration into society, the law only requires the detention facility to allow state offices and community offices providing social services to provide the detainees with necessary help to create favourable conditions for their future independent life²⁸⁹.

Unconditional imprisonment

As regards conditions for imposing unconditional imprisonment on children see [Section 3.1.2.](#)

As regards facilities where children carry out unconditional imprisonment see [Section 3.1.2.](#)

With respect to dealing with imprisoned children after they reach the age of 18 see [Section 2.3.1.](#)

Since the rights of children in prison relating to food, health care, clothing, pocket money, the number of hours for sleep and for a walk etc. correspond to those of children in a detention facility, for more information see the section on Protective detention.

There are some specific provisions on imprisonment of children. Concerning children up to 18 years of age, the prison service should concentrate primarily on their education²⁹⁰. When creating individual programmes (*program zacházení*) to ensure the individualisation of the sanction, the prison service should aim at promoting the child's qualifications as well as his/her self-sufficiency²⁹¹. Children who have not yet completed primary education have the right to attend classes instead of working. The child's parents or other legal representatives as well as the administrative body for social and legal protection of the child should be consulted on the child's education on the condition that the child is in contact with them. For the child, participation in the educational program is obligatory²⁹².

As regards children's work, the parents or the administrative body are not required to grant their consent²⁹³.

When placing the child into prison, the court cannot take into account the family ties and their preservation since there are only two juvenile departments in the Czech Republic – in *Všehrdy* (for boys) and in *Světlá nad Sázavou* (for girls).

Children have the right to receive visits for five hours a month, while adults only for three hours a month. Without any limitations they may also be visited by employees of the

²⁸⁶ Act No. 129/2008 Coll., on Execution of Protective Detention, section 36.

²⁸⁷ Act No. 129/2008 Coll., on Execution of Protective Detention, section 36(4).

²⁸⁸ Act No. 129/2008 Coll., on Execution of Protective Detention, section 35.

²⁸⁹ Act No. 129/2008 Coll., on Execution of Protective Detention, section 21.

²⁹⁰ Act No. 169/1999 Coll., on Imprisonment, section 61(1).

²⁹¹ Act No. 169/1999 Coll., on Imprisonment, section 61(5).

²⁹² Act No. 169/1999 Coll., on Imprisonment, section 61(7).

²⁹³ Act No. 169/1999 Coll., on Imprisonment, section 61(6).

administrative body for the social and legal protection of the child. Contrary to adults, they may receive a parcel of up to five kilograms four times a year instead of twice a year. Furthermore, like adults they are entitled to receive clothing and the necessary educational equipment without any limitation throughout the year²⁹⁴.

The right to send and receive mail is broader than with respect to children in detention facilities since the prison service is not entitled to refuse to pass a letter to the child or send a letter on his/her behalf except if the child uses the mail to plan to commit an offence²⁹⁵. However, as with respect to children in detention facilities, the law does not require the prison service to help children who cannot write with writing a letter²⁹⁶ (for more information see the section on Protective detention).

As regards the use of the telephone the same rules apply to both children and adults. The prison service may allow the child to use the phone to contact a relative or a close friend but only if it is justified. In other words, the prison service decides on a case-by-case basis whether a certain prisoner could use the phone. Furthermore, the child has to cover the costs of the phone call²⁹⁷.

As regards disciplinary rewards and sanctions, there is a specific list of measures applicable to child prisoners. The disciplinary sanction may be imposed only if the case is sufficiently proven after the child expresses his/her views. The sanction should be proportionate and aim at achieving the purpose of the imprisonment. One disciplinary offence is punishable with only one sanction²⁹⁸. The child may file a complaint against the disciplinary sanction within three days following its imposition²⁹⁹. The law does not explicitly require the prison service to inform the child's parents. Nor does it entitle the child's parents to file complaint on the child's behalf.

Disciplinary sanctions are:

- a. Reprimand;
- b. Reduction of pocket money; monthly pocket money may be reduced at most to one third for a maximum duration of two months;
- c. Prohibition from receiving one out of the four parcels allowed in one year;
- d. Forfeiture of an object or item;
- e. Placement in a 'closed department' (*uzavřené oddělení*) for up to 14 days;
- f. Day-long placement in a 'closed department' for up to 10 days;
- g. Placement in solitary confinement for up to 10 days;
- h. Withdrawal of benefits from a previous disciplinary reward.

The legality of disciplinary sanctions listed under e), f), g) and h) (contrary to sanctions listed under a) and d)) can be challenged by the child before the administrative court³⁰⁰. On the other hand, the prison service may refrain from enforcing the disciplinary sanction anytime on the condition that the child does not misbehave³⁰¹.

Day-long placement in a 'closed department' and placement in solitary confinement require previous examination by a doctor. Furthermore, the doctor should re-examine the child at

²⁹⁴ Act No. 169/1999 Coll., on Imprisonment, section 24.

²⁹⁵ Act No. 169/1999 Coll., on Imprisonment, section 17.

²⁹⁶ Act No. 169/1999 Coll., on Imprisonment, section 17(4).

²⁹⁷ Act No. 169/1999 Coll., on Imprisonment, section 18.

²⁹⁸ Act No. 169/1999 Coll., on Imprisonment, section 47.

²⁹⁹ Act No. 169/1999 Coll., on Imprisonment, section 52.

³⁰⁰ Act No. 169/1999 Coll., on Imprisonment, section 52(4).

³⁰¹ Act No. 169/1999 Coll., on Imprisonment, section 53.

least once a week. The child placed in a 'closed department' or in solitary confinement does not have the right to work; nonetheless he/she should not be deprived of the right to study³⁰².

Disciplinary rewards are:

- Praise;
- Exceptional extension of the right to receive visits to eight hours a month;
- Permission of one-off purchase of food and personal items to a child who cannot do so otherwise;
- Increase of pocket money; monthly pocket money may be increased at most by one-third for a maximum duration of three months;
- Material or monetary reward of up to 1000,- CZK (approximately €40);
- Exceptional permission to receive an extra parcel;
- Extension of personal leave time for sports, cultural or other recreational activities for up to one month;
- Permission to leave the prison in relation with receiving a visit or fulfilling the treatment programme for at most 24 hours;
- Interruption of unconditional imprisonment for up to 20 days a year.

Specific rules also apply in relation to the interruption of imprisonment (*přerušeni výkonu trestu*). In addition to the conditions that are required with respect to adults (successful completion of the individual programme), the imprisonment of children may be interrupted only if it is reasonably presumed that the child would stay in a place where there is no negative influence on him/her³⁰³. The interruption of the imprisonment should not exceed 20 days³⁰⁴.

As regards the reintegration into society, the same rules apply as with respect to children in detention facilities (see the section on Protective detention). Furthermore, the law entitles churches and non-governmental organisations to support the prisoners³⁰⁵.

As regards release, there are no specific provisions differentiating between children and adults. Therefore general provisions have to apply. In general, the child has the right to apply for parole after having carried out at least half of the total duration if either there is a high probability that he/she will not commit an offence again or if the district juvenile court accepts a guarantee from another person or association³⁰⁶.

However, in relation to negligent offences and intentional offences punishable with no more than five years of imprisonment, the district juvenile court may release the child on parole at any time, even before half of the sentence is served³⁰⁷. Such released children should be ordered to stay at home at certain times of the day or to carry out community service or to pay a monetary contribution destined to help to victims to the state³⁰⁸.

³⁰² Act No. 169/1999 Coll., on Imprisonment, section 49.

³⁰³ Act No. 169/1999 Coll., on Imprisonment, section 65.

³⁰⁴ Act No. 169/1999 Coll., on Imprisonment, section 56.

³⁰⁵ Act No. 169/1999 Coll., on Imprisonment, section 43.

³⁰⁶ Criminal Code, section 88(1). There has been an amendment effective since 1 October 2012. Currently the juvenile may be released even after one third of the total duration carried out on the condition that he/she has never been imprisoned before. This provision does not apply to the most serious offences.

³⁰⁷ Criminal Code, section 88(2). This provision has been amended with effectivity since 1 October 2012. According to the amended law, the court should release the child on parole on the application filed by the director of the imprisonment unless it finds it obvious that the child would commit another offence.

³⁰⁸ Criminal Code, section 89(2).

Then the law sets forth a list of more serious crimes in relation to which it is necessary to carry out more than two thirds of the total duration to have the right to apply for release on parole³⁰⁹.

Depending on the nature of the offence, parole may last up to 3 years (for negligent offences and intentional offences punishable with no more than five years of imprisonment) or from 1 to 7 years (for other intentional offences). Children may be placed under the supervision of a probation officer or be subject to the so-called proportionate restrictions and proportionate obligations (*přiměřená omezení a přiměřené povinnosti*), including undergoing professional training, social training, treatment of drug or alcohol abuse etc.)³¹⁰.

Children below 15 years of age

With respect to children below the age of criminal responsibility there are two measures which can deprive them of their personal liberty:

- Protective education
- Institutional medical treatment

Protective education

As regards conditions of enforcement of the protective education, these are the same as with respect to children (see Protective education).

The juvenile court should obligatorily order protective education if children between 12 and 15 years of age commit an unlawful act punishable under the criminal code with an exceptional penalty, i.e. the most serious offences (so called obligatory protective education – *obligatorní ochranná výchova*)³¹¹. Furthermore, the juvenile court may impose protective education whenever it finds that the nature of the unlawful act and the educational requirement so require (so called facultative protective education – *fakultativní ochranná výchova*)³¹². As regards facultative protective education, the Czech Supreme Court ruled that it does not have to be necessarily imposed as a reaction to the most serious unlawful acts. It is the degree of the substantial flaws in the upbringing of the child which is decisive³¹³.

Institutional protective medical treatment

Protective treatment is a new measure in the system of juvenile justice with respect to children below the age of criminal responsibility effective since 1 November 2011. A juvenile court will not impose protective medical treatment unless it finds, following the expert psychiatric examination, that the unlawful act is directly related to:

- a mental disorder or
- drug or alcohol abuse

and public safety requires that the child be placed under protective treatment³¹⁴. Whether protective treatment will take institutional rather than ambulatory (outpatient) form depends on the nature of the mental disorder as well as on treatment options³¹⁵.

Contrary to adults and children, the duration of the protective medical treatment is not limited in time. The juvenile court is only required to review whether it is still justified every 12 months.

³⁰⁹ Criminal Code, section 82(3).

³¹⁰ Criminal Code, section 48(4).

³¹¹ The [Juvenile Justice Act](#), section 93(2).

³¹² The [Juvenile Justice Act](#), section 93(3).

³¹³ The Supreme Court of the Czech Republic, decision of 30 April 2008, No. 8, Tdo 514/2008.

³¹⁴ The [Juvenile Justice Act](#), section 93(4).

³¹⁵ The [Juvenile Justice Act](#), section 93(5).

The child himself/herself and parents are entitled to file applications for cessation of institutional medical treatment or for its transformation into an ambulant one.

The conditions of execution are the same as those which apply to children, so please see the section on Institutional protective medical treatment.

3.1.4 Criminal records

Children above 15 years of age

The conditions under which the child's criminal record is cleared differ significantly from those which apply to adults. However, the child's criminal record is not automatically cleared when the child reaches the age of 18.

If the child is ordered to do community service or is prohibited from undertaking certain activities, the criminal record is to be cleared automatically after the execution of these sanctions. With respect to suspended fines, a sentence of imprisonment conditionally suspended for a probationary period and a sentence of imprisonment conditionally suspended for a probationary with supervision, the criminal records are automatically cleared when the juvenile court decides that the child has proven himself/herself to be corrected. If such a decision of the juvenile court is not issued within one year following the termination of the probation period, the child is deemed to have proven himself/herself to be corrected and the criminal record is therefore cleared as well.

As regards other criminal measures, these are to be cleared upon a decision of the juvenile court. Contrary to adults, children do not have to file an application in order to get such a decision. In other words, the juvenile court should start the proceedings on clearing the criminal record on its own initiative.

In addition, contrary to adults, the law does not set forth the time period necessary to lapse before the juvenile court can take this decision. The juvenile court should thus decide on clearing the criminal record just after the criminal measure has been executed.

If the child's criminal record is cleared once, the child can never be viewed as a recidivist. However, the police, the prosecutor and criminal court or the juvenile court dealing with a new offence have access to all the notes in the criminal record, including the cleared ones. And even though they should not view the child as a recidivist, they may take into account the cleared offence when considering his/her personality and his/her chance to be corrected.

Even though this is not so common, cleared notes in criminal records are accessible to competent authorities in specified administrative proceedings in order to protect public safety, for instance in administrative proceedings concerning an application for a gun licence. These are the only exceptions for the disclosure of the cleared criminal records.

Children below the age of responsibility

Unlawful acts of children below the age of criminal responsibility are not registered in the child's criminal record since the child is not formally criminally responsible.

4 Strengths and potential gaps

The strengths lie predominantly in the regulation of the rights of child witnesses and child suspects/defendants.

A. Strengths in the protection of the rights of a child suspect/defendant

The institution of mandatory legal assistance proves extremely protective for children above 15 years of age in conflict with the law as they must be provided with defence counsel from the very beginning of the criminal proceedings, even before charges are brought against them.

There is a wide range of alternatives to judicial proceedings. The benefit of these measures is that there are many possibilities to stop the criminal proceedings when this seems reasonable. There is also a wide range of sanctions if the child is convicted.

The maximum duration of custody is substantially shorter in comparison with that of adults and there are also alternatives to it. Custody is therefore used only rarely.

B. Strengths in the protection of the rights of child witnesses

There are protective measures developed for child witnesses/victims in practice. The child-friendly interview rooms operate in 32 police stations throughout the Czech Republic.

Video-recording equipment for witnesses/victims in general was recently introduced and children can benefit from it through being able to take part in the proceedings separately from the defendants.

C. Gaps in the protection of the rights of child victims

If the child is below 15 years of age there are procedural safeguards which guarantee safety. A child below 15, for example, does not need to testify in person during the court hearing so is not exposed to the trauma of meeting the offender. If the child turns 15 during the proceedings, these safeguards are lost even if the crime was committed when the victim was under 15 years old.

D. Gaps in the protection of the rights of child suspects below 15 years of age

As the proceedings against a child below 15 years of age are not criminal proceedings, these children do not enjoy the rights other offenders have. First, they do not enjoy the right to mandatory legal assistance. If a child below 15 is to be interviewed by the police, the law prescribes only the mandatory presence of a social worker. The police can inform the parents before the interview but they are not required to allow the parents to participate in the interview. The child can be informed about the possibility to have legal counsel to help, (and they are usually informed about it), but they would have to find and to pay for counsel themselves and within a short timeframe.

In regular criminal proceedings, an attorney is entitled to be present at the questioning of witnesses once the charge is made against the defendant. However, there is no such right to counsel for a child under 15 years of age.

Civil proceedings against a child below 15 are not flexible enough to allow a cessation. The law obliges the prosecutor to submit a case to court even if it may not be beneficial, e.g. if the child is unlikely to relapse into unlawful activity. Once the case is filed with the court, it has to hear the case in the presence of the child, regardless of how useful this may be.

It is not possible for children below 15 years of age to appeal against a guilty verdict. The child may appeal only against the measures imposed. The child below 15 cannot file the appeal by her or himself.

Even though proceedings against a child below 15 years are not criminal ones, the sanctions which can be imposed on the child are quite severe. The institutions in which a child can be placed are also covered by rather strict rules (e.g. iron bars on the windows). And procedural

safeguards for a child's defence, in comparison with defendants over 15 years of age, are less sufficient.

E. Gaps concerning child suspects/offenders below and above 15 years of age

Court judgements are not adjusted for children if they appear in proceedings. Legal language may be very difficult for children to understand.

If there is an attorney acting as a mandatory legal assistant (for children above 15 years of age) or a regular attorney (for children below 15 years of age) they are obliged to act in the 'best interests of the child' as they view it (no matter the opinion of the child concerned).

If a child (regardless of the age) is placed in a protective educational institution, the right to education is substantially limited. There is usually only a limited variety of educational programmes from which a child can choose.

It is also difficult to keep up contact with parents and relatives. There are currently two juvenile departments in Czech prisons –in Světlá nad Sázavou (for girls) and in Všehrady (for boys) so most of the parents have to travel long distances to see their child. No financial assistance is offered to these parents to help them cover these expenses. The child has to pay for phone calls, the prices of which can be high in terms of the spending money he or she receives.

Conclusions

A range of legal measures are in place to ensure child victims and witnesses receive appropriate protection before and during criminal judicial proceedings. Several safeguards are in place to ensure a child friendly environment and protection from harm. For example, there are child-friendly interview rooms in 32 police stations throughout the Czech Republic. Since January 2012, a new measure came into force aimed at preventing stigmatisation by allowing the use of video recording whenever it is in the victim's best interests. However this measure depends on the technical equipment of a particular body and lies fully at the discretion of the prosecuting bodies and the court.

The law does not confer the right to information on child victims/witnesses. Only the legal representatives enjoy this right as well as other procedural rights. The legal representatives are the parents or a *guardian ad litem* if the child's legal representatives are the alleged perpetrators or they are not able to administer their rights. There are no legal obligations requiring the child's lawyer, guardian *ad litem* or legal representative to communicate and explain the given decision to the child in a child-friendly way.

Regulation of child suspects/defendants falls into two independent areas of law, depending on the child suspect's age. There is no age of criminal responsibility for children under 15 years of age; if an under 15 year old commits an act considered a crime, the proceedings take place under the provisions of the Civil Procedure Code. This means however that a child under 15 does not benefit from the procedural safeguards provided in criminal proceedings. e.g. there is no obligatory legal assistance. This means that the child has to seek legal assistance and pay for the lawyer on their own and there is no way to divert a child from formal judicial proceedings. During the judicial stage (i.e., the trial) the child as well as his/her parents, legal representatives and guardians are parties to the proceedings.

If a child is above 15 and below 18 years of age when committing a crime he/she falls under the regulation for 'juveniles' under the Juvenile Justice Act. There are quite comprehensive safeguards for the procedural rights of children above 15 years of age.

There are neither rules nor methodologies obliging the prosecuting bodies to provided information to children above 15 years of age in a manner appropriate to their age and maturity. Furthermore, under certain circumstances, the child may be allowed to forgo judicial proceedings and have certain other measures imposed. The maximum duration of a child's pre-trial custody significantly differs from the adult's.

The Juvenile Justice Act sets forth, as one of its fundamental principles, that any sanction imposed on a child in conflict with the law should aim at the reparation, resocialisation and reintegration of the child while considering all their circumstances, e.g. age, maturity, family and social circumstances, etc.

A convicted child above 15 years old may be subject to educational, protective or criminal measures. The possibility exists for the court to refrain from imposing any measure if certain conditions are met.

For children below the age of criminal responsibility, the law provides for the imposition of the same measures as for the children above 15 years of age, excluding the criminal ones.

Although the system of juvenile justice is quite comprehensive, there are substantial gaps in the protection of the procedural rights of children below 15 years of age. This is the case even when these children are subject to measures depriving them of their liberty. Here their procedural rights are much weaker than those of children over 15 years old.

Annex – Legislation reviewed during the writing of this report

Acts

- Act n. 373/2011 Coll., on Specific Health Services
- Act n. 40/2009 Coll., the Criminal Code
- Act n. 273/2008 Coll., on the Police of the Czech Republic
- Act n. 129/2008 Coll., on Execution of Protective Detention
- Act n. 108/2006 Coll., on Social Services
- Act n. 218/2003 Coll. on Juvenile Liability for Unlawful Acts and on Juvenile Justice
- Act n. 109/2002 Coll., on Institutional and Protective Upbringing and on Preventive Education In Educational Care Centres
- Act n. 6/2002 Coll ., on Courts and Judges
- Act n. 137/2001 Coll., on the Special Protection of Witnesses and Other Persons in relation to Criminal Proceedings
- Act n. 101/2000 Coll., the Personal Data Protection Act
- Act n. 359/1999 Coll. , on Social and Legal Protection of Children
- Act n. 169/1999 Coll., on Imprisonment
- Act n. 82/1998 Coll., on Liability of the State for Harm Caused in Connection With Exercising the State Power
- Act n. 209/1997 Coll., on Providing Financial Support to Victims of Crimes
- Act n. 2/1993 Coll., Charter of Fundamental Rights and Freedoms
- Act n. 293/1993 Coll., on Execution of Custody
- Act n. 40/1964 Coll., Civil Code
- Act n. 99/1963 Coll., the Civil Procedure Code
- Act n. 94/1963 Coll., The Family Act
- Act n. 141/1961 Coll., The Criminal Procedure Code

Other

- The Binding Instruction of the Police President of 30/2009, on the Role of the Police in the Criminal Proceedings
- General Instruction of Supreme Public Prosecutor n. 8/2009 from 8 September 2009
- General Instruction of Supreme Public Prosecutor about Model Organizational Rules n. 4/2009 from 27 July 2009
- The Binding Instruction of the Police President n. 201/2008
- The Binding Instruction of the Police President n. 8/2002, on the Role of the Police When Investigating Children Offenders and Offences Committed Against Children
- Binding Instruction of Police President regulating the system of police work shelves in detecting and documenting youth crime and crime against youth n. 8/2002 from 21 January 2002