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Rights of minors in court proceedings

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1. Legal capacity of children

In private law, Act No 89/2012 (the Civil Code) states that a child's capacity to accomplish a specific legal act is linked to the intellectual and volitional maturity of persons of his or her age. This is a rebuttable presumption, meaning that the contrary may be proven in every case. Full legal capacity is acquired at 18; under certain conditions a court may grant legal capacity to a child aged 16. If a child does not have legal capacity, it must be represented by its legal representative or guardian. Those persons may give their consent to certain legal acts of the child, in which case the child is allowed to act on its own within the scope of the consent, unless this is specifically forbidden by the law.

Under the Czech Criminal Code (Act No 40/2009) children under 15 may not be held criminally responsible. Children over 15, but who were under 18 at the time of the offence, are criminally responsible only if their intellectual and moral maturity at the time of the offence enabled them to realise the illegality of their actions and to control those actions.

2. Situation of children in proceedings before civil courts

(a) The role and legal capacity of children in civil proceedings

Children may be involved in court proceedings in various ways. In civil proceedings the role of children is usually that of participants, but they may also be witnesses. The following will deal with the role of children as participants in civil proceedings. The relevant legislation is the Code of Civil Procedure (Act No 99/1963) and the Special Judicial Proceedings Act (Act No 292/2013).

Civil proceedings are divided into adversarial and non-adversarial proceedings. While children may be involved in both types of procedures, most often they are involved in non-adversarial proceedings (for example proceedings concerning custody). The main issues dealt with in proceedings concerning custody are related to the child's name and surname, maintenance, right of access, parental responsibility and specific questions relating to custody. In most cases proceedings may be initiated upon request and by a court of its own motion, except for issues relating to representing the child (in which case proceedings may be initiated solely at a request of the legal representative) or to granting legal capacity (proceedings initiated solely at a request of the child or its legal representative).

Just like in private law, legal capacity of children in civil proceedings is linked to the intellectual and volitional maturity of children at their age. However, if required by the circumstances of the case, a court may decide for a child to be represented by its legal representative or guardian even if it could otherwise act independently in the matter.

(b) Courts and other authorities protecting the interests of children

The legal status of children is decided by courts. Adversarial and non-adversarial cases are examined by general courts. However, judges dealing with non-adversarial cases in those courts usually do not handle adversarial cases. In the first instance proceedings are conducted by district courts, while regional courts are the appeal courts. Appellate review is not permitted in cases concerning custody.

In civil proceedings relating to judicial care of minors the central role is played by the authority for the social and legal protection of children. This competence is exercised primarily by offices of municipalities with extended competence. The authority for the social and legal protection of children may initiate the proceedings listed above and subsequently acts as a guardian ad litem in those proceedings. At the same time, the authority ensures the social and legal protection of the child also outside of the judicial proceedings, whether in the context of preventive or advisory activities or by means of educational measures. The competence and remit of the authority for the social and legal protection of children is governed by the Act on Social and Legal Protection of Children (Act No 359/1999).

In the cases listed above, the public prosecution service may also initiate (or join) proceedings. In the case of judicial care of minors it may do so in cases concerning the imposition of a special measure relating to raising the child, to institutional care, to determining the date of birth, or to suspending, restricting or withdrawing parental responsibility or the exercise thereof. If the public prosecution service initiates proceedings, it acts as any other applicant. If the public prosecution service joins proceedings, it may take all the steps that may be taken by a participant in the proceedings, with the exception of dispositions (such as application withdrawals).

(c) Pursuing the child's best interests

A general principle underlying civil proceedings involving children is the emphasis placed on safeguarding the child's interests in line with the Convention on the Rights of the Child. If the child involved in the proceedings is capable of forming its own views, the court has to ascertain the child's views on the matter. When considering the child's views the court is mindful of the child's age and intellectual maturity.

Civil adversarial proceedings include a range of instruments that improve the child's position. One of them is the obligation to serve documents on children over 15. 'Formal decisions' against children are inadmissible, which is why judgments for recognition, judgments by default or orders for payment against children cannot be issued.

In non-adversarial proceedings and proceedings concerning custody the emphasis is on the expediency of proceedings. In cases concerning arrangement of relations with children it is possible to issue an interim measure to be decided upon by a court within 7 days; in cases of serious threat or violation of the child's vital interests a court will normally decide on interim measures within 24 hours. Subsequently, ordinary proceedings should be issued within 6 months of the initiation of proceedings. In order to protect the child's interests the authority for the social and legal protection of children is frequently involved in proceedings as a guardian ad litem.

3. Situation of children in criminal proceedings

(a) Children under 15 as perpetrators of criminal offences

In the Czech Republic children under 15 may not be held responsible for criminal offences. If a child under 15 commits an offence otherwise regarded as a criminal offence, this results in extraordinary civil proceedings under the Special Judicial Proceedings Act (Act No 292/2013) rather than in criminal proceedings under the Code of Criminal Procedure (Act No 141/1961). The special rules applicable to cases concerning children under 15 are laid down in the Act on Juvenile Justice (Act No 2018/2003).

Cases concerning children under 15 are heard by juvenile courts (specialised judges at ordinary courts). These specialised judges receive training in order to obtain detailed knowledge of the rules applicable to such proceedings and of the approach to be taken in respect of offenders younger than 15. Public prosecutors and law enforcement officers also need to have received special training on dealing with young people.

Proceedings are initiated on an application of the public prosecution service or by a court of its own motion. In addition to the child, the proceedings involve the authority for the social and legal protection of children, the child's legal representatives or guardians, the persons to whose care or custody the child has been entrusted, as well as other persons whose rights and obligations are to be decided upon in the proceedings. Where the application for initiation of proceedings has been submitted by the public prosecution service (i.e. where the proceedings were not initiated by the court of its own motion) the public prosecution service is also involved in the proceedings. In the proceedings the child has to have a guardian, who is an advocate.

Where a child under 15 commits an offence that would otherwise be criminal, a juvenile court will take the

necessary remedial measures. A court may impose on the child an educational obligation (for instance, to compensate - in a way commensurate with the child's means - for the damage caused, to conduct - in its leisure time and free of charge - a socially useful activity), an educational restriction (for instance, to not meet certain persons, to not visit certain places, to not participate in gambling, to not use addictive substances etc.), issue an admonition with warning, place the child in a therapeutic, psychological or other appropriate educational programme at an educational guardianship centre, place the child under the supervision of a probation officer, in protective care or protective medical treatment. order supervision of a probation officer, protective institutional care or protective medical treatment. A court can choose not to impose measures if the experience of the court case itself has been enough to teach the child a lesson and discourage any illegal activity in the future.

Unless decided otherwise by a juvenile court, cases concerning children under 15 are heard in closed sessions. In the proceedings, emphasis is put on the protection of the child's privacy. The outcome of the proceedings may be published in the public media once the decision has become final (without naming the child or the other participants).

(b) Children over 15 as perpetrators of criminal offences

Proceedings in cases concerning juveniles are also governed by the Act on Juvenile Justice. A juvenile means a person who has reached the age of 15 by the time they committed a criminal offence (referred to as a 'transgression' [provinění] in the case of juveniles) but is not yet 18. Juveniles are criminally responsible, but only provided that their intellectual and moral maturity at the time of the commission of the act allowed them to recognise the illegal character of their actions and to control them.

Juveniles must have a lawyer from the moment measures under the Juvenile Justice Act or actions under the Criminal Procedure Code (including urgent or unrepeatable actions) are taken against them, unless it is impossible to postpone the implementation of such measures and to inform the lawyer thereof.

Cases concerning juveniles are heard by juvenile courts (specialised judges at ordinary courts). Under the Juvenile Justice Act, a juvenile court may impose measures on juveniles, such as:

- educational measures (supervision of a probation officer, probation programme, educational obligations, educational restrictions and admonition with a warning);
- protective measures (protective medical treatment, secure preventive detention, seizure of items, seizure of a proportion of property and protective institutional care),
- penal measures [community service, financial measures, suspended financial measures, confiscation, prohibition of certain activities, a ban on keeping and breeding animals, expulsion, home detention, an entry ban for sports, cultural and other social events, custodial sentence conditionally suspended for a probation period (conditional sentence), custodial sentence conditionally suspended for a probation period with supervision, unconditional custodial sentence]

Measures must take into account the personality of the juvenile offender, their age and intellectual and moral maturity, health condition, as well as his personal, family and social situation, and they must be proportionate to the character and seriousness of the committed act.

In the case of juveniles proceedings must be conducted so as not to negatively affect their psyche and - in view of their age - endanger their emotional and social development. The authorities involved pursuant to the Juvenile Justice Act cooperate with the competent authority for the social and legal protection of children and with the Probation and Mediation Service. The authorities involved pursuant to the Juvenile Justice Act are always obliged to advise the juvenile of their rights in an age-appropriate way and to provide them with every opportunity to exercise them.

The statutory representative or the guardian of the juvenile is entitled to represent the juvenile, particularly to choose a counsel for them, make proposals on behalf of the juvenile, submit applications and remedial measures on their behalf; the statutory representative is also entitled to take part in such actions in which pursuant to the Act the juvenile can take part. For the benefit of the juvenile the statutory representative or the guardian can perform these rights also against the will of the juvenile. The statutory representative or the guardian of the juvenile also has the right to ask the interviewed persons questions, inspect the files with the exception of the protocol on voting and personal data of secret witnesses, to make excerpts and notes from them and to make copies of files or parts thereof at his or her own expense.

In the proceedings, emphasis is placed on the protection of the juvenile's personal data; in particular, information that may result in the juvenile's identity being made known must not be made public without a statutory ground. All the authorities involved (police authorities, public prosecutors, judges, officials of the Probation and Mediation Service, as well as social workers, need to have received special training on dealing with young people. In principle, proceedings are conducted in camera.

(c) Children as injured parties (crime victims)

The legislation draws a distinction between injured parties and crime victims. The Code of Criminal Procedure defines injured parties as persons who have suffered bodily harm, damages or non-material injury as a result of a criminal offence, or to whose detriment the offender has benefitted by committing the criminal offence. Injured parties enjoy a range of rights, including the right to submit additional evidence, inspect the files, attend the main hearing, and to comment on the case prior to the conclusion of the proceedings. Both natural and legal persons can be injured parties.

Since 2013 special legislation (Victims of Crime Act No 45/2013) has been applicable in the Czech Republic to the rights of victims of criminal offences which, in addition to the rights of the injured party, emphasises the particularly careful approach to victims of criminal activity and grants them a range of rights to help mitigate the impact of criminal acts on the lives of victims. In this case, victims are understood to be natural persons who have suffered (or would have suffered) bodily harm, damages or non-material injury as a result of a criminal offence, or to whose detriment the offender has benefitted (or would have benefitted) by committing the criminal offence. The special rights of victims include in particular special support, the right to information, protection against imminent danger, protection of privacy, protection against secondary harm and financial assistance. Victims also have the right to be accompanied by a confidential counsellor during the performance of measures in criminal proceedings. Confidential counsellors are persons whom the victims themselves choose with a view to obtaining psychological support.

Under this special legislation persons under the age of 18 are considered particularly vulnerable victims and therefore granted a range of rights in addition to the status of an injured party in criminal proceedings, as well as in addition to the rights of victims. The rights of particularly vulnerable victims include free assistance. In principle, their requests for preventing contact with the offender and for the pre-trial interview to be conducted by a person of the same or of the opposite sex need to be granted. The pre-trial interview of vulnerable victims is conducted by trained persons and in premises designed or adapted for that purpose; where the victim is a child, the pre-trial interview is always led by a person trained to do so, except when the action is urgent and a trained person cannot be found (for the interviewing of children see below).

(d) Children as witnesses of criminal offences

The legislation provides for exceptions in respect of interviewing persons under 18 who were witnesses of criminal offences. Interviewed children must be advised of their right to refuse to testify and of their obligation to speak the truth and not to conceal anything. At the same time, children must be advised about the consequences of false testimony. As they may not be held criminally responsible, children under 15 are not informed of the consequences of false testimony. This information must be given in a way that is appropriate to the age, as well as the intellectual and moral maturity of the child; clearly, interviews must be conducted taking account of the age and of the intellectual level of the child.

Where children are interviewed with regard to circumstances, the recollection of which could have an unfavourable influence on their psychological and moral development on account of their age, it is necessary to conduct the interview with particular care and to treat the content thereof in such a way as to avoid any need to repeat the interview in further proceedings.

The authority for the social and legal protection of children or any other person with experience in youth education and who may contribute to the interview being conducted in a careful manner are invited to attend the questioning. Parents may also be invited to attend if their presence may contribute to the interview being performed in a careful manner.

As a rule, children are interviewed in special interview rooms that are supposed to create a friendly and homely atmosphere, therefore making it easier to establish contact with the child. Interviews are conducted by specially trained police officers. Children under 18 may only be asked questions through a police authority, so that they

are protected against inappropriate questions asked by persons lacking special training.

In further proceedings children may be interviewed once again only if necessary. Pursuant to a court decision, in court proceedings it is possible to produce evidence by reading out minutes or by playing video or audio recordings of the interview using videoconferencing equipment.

In respect of persons under 18, the legislation also emphasises protection of personal data and privacy. The Code of Criminal Procedure states that in connection with a criminal offence nobody may by any means make public any information making it possible to ascertain the identity of the injured party (the victim) who is under 18. It is also forbidden to make public images, video or audio records or other information about the course of the trial proceedings or a public hearing that would make it possible to determine the identity of the injured party (the victim). Final judgments must not be made public in the public media stating the name(s), surname and residence address of the injured party. Taking account of the person of the injured party, as well as of the nature and character of the criminal offence committed, the chamber's president may decide on further restrictions concerning the publication of a final convicting judgment in order to ensure appropriate protection of the injured party's interests. Violations of these obligations are prosecuted.

4. Adoption

Adoption can be described as accepting someone else's child as your own, which distinguishes it from other legal concepts establishing parenthood. Adoption may only take place as a result of a court decision.

The Civil Code (Act 89/2012) lays down the following conditions for adoption:

- Adoption is not possible between relatives in a relationship of lineal consanguinity and between siblings (except surrogate motherhood).
- There has to be an appropriate age difference (normally of at least 16 years) between the adopter and the adopted child.
- The child's consent (if over 12) or the guardian's consent in the case of younger children is required.
- The adoption rules permit the adoption of minors who have not acquired full legal capacity.
- The parents' consent personally declared to the court. Consent to adoption may be withdrawn up to three months from the day it was given (later withdrawal is possible in certain cases). Parental consent is not required where the parent's whereabouts are unknown, where conditions are met for restricting their legal capacity, and also where they show no interest in the child or have been deprived of their parental rights and obligations (which include the right to consent to their child's adoption) by a court.
- Child custody prior to adoption. Only custody established pursuant to a court decision is considered relevant, in which case the court may order custody only after 3 months following the day when a parent consented to adoption. The court will decide on handing the child over to the adopter's custody prior to the adoption only after having carried out an investigation concerning the mutual suitability of the child and the adopter.
- Adoption decision by the court. In addition to the above, the court must ascertain that the relationship between the adopter and the adoptee corresponds to that of a parent and a child, or at least that a basis for such a relationship exists. The child's adoption must be in harmony with its rights.

The consequences of the adoption are the following:

- the previously existing relations between the child and its biological family disappear, while new status relations emerge between the adoptee and the adopter and their relatives. Pursuant to the court's decision on adoption the adopter is entered in the vital records.
- The adoptee acquires the status of a child of their adopter or adopters; the adoptee and the adopter(s) have the same rights and obligations as the rights and obligations arising from the natural parent-child relationship.
- In the case of a surname change, the adoptee may have a compound surname.

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