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CFJ in Action

IO1's national report - CZECHIA

1. Introduction

A) Brief definition of Child-friendly Justice principles

The Guidelines of the Committee of Ministers to the Council of Europe member States of 17 November 2010 defined the Child-Friendly Justice. In paragraph E.3, "child-friendly justice" shall be defined as judicial systems guaranteeing the observance and effective implementation of all children's rights at the highest achievable level, taking into account the principles set out below and having due regard to the level of the child and its ability to understand the situation and circumstances of the case. This means, in particular, justice, which is accessible, age-appropriate, swift, consistent, adapted to the needs and rights of the child and to his or her needs and rights, respecting the rights of the Child, including the rights to a proper trial, participation in and understanding of the proceedings, respect for private and family life and on inviolability and dignity.

Principles of Child-Friendly Justice¹

A. Participation

1. The right of all children to be acquainted with their rights should be respected, have adequate opportunities for access to justice and be consulted and heard in the proceedings in which they are involved or which concern them. This involves taking appropriate account of the views of children, taking into account their level and any communication difficulties they may have in order to make such participation meaningful.
2. Children should be considered as proper holders of their rights, should be treated as such and be entitled to exercise all their rights in a manner that takes into account their ability to formulate their own views and the circumstances of the case.

B. Interest of the child

1. Member States should ensure the effective implementation of the rights of children to ensure that their interest is a primary consideration in all matters involving or affecting children.
2. In assessing the interest of the children involved or concerned:
 - a. Appropriate attention should be paid to their views and opinions;
 - b. All other rights of the child, such as the right to dignity, liberty and equal treatment, should always be respected;
 - c. All competent authorities should take a comprehensive approach, taking due account of all interests at stake, including the mental and physical wellbeing and social and economic interests of the child.

¹ <file:///Y:/DEI-Europe/EUCALLS%20-%20Projets%20en%20cours/Erasmus+%20CFJ%20in%20action%202018/CoE%20CFJ%20guidelines.pdf>

3. The best interests of all children involved in the same proceedings or case should be assessed separately and considered in order to reconcile the possible conflicting interests of children.

4. While the judicial authorities have the highest power and responsibility for taking final decisions, Member States should, where necessary, make concerted efforts and take a multi-disciplinary approach in order to assess the interests of children in the proceedings in which the children are involved.

C. Dignity

1. Children should be treated with care, sensitively, fairly and with respect throughout the procedure or case, with particular attention given to their personal circumstances, to their wellbeing and to their specific needs, while fully respecting their physical and mental integrity. Such treatment should be given to them whether they have come into contact with judicial or extrajudicial proceedings or other interventions in any way, and irrespective of their legal status and eligibility in any proceeding or case.

2. Children shall not be subjected to torture or to inhuman or degrading treatment or punishment.

D. Protection against discrimination

1. Children's rights must be ensured without discrimination by sex, race, colour or ethnic origin, age, language, religion, political or other opinion, national or social origin, socio-economic background, the status of their parent/s, membership of a national minority, property, birth, sexual orientation, gender identity or other status

2. Special protection and assistance may be needed to provide more vulnerable children, such as children of migrants, refugees and asylum seekers from children, unaccompanied children, children with disabilities, homeless children and street-living children, Roma children and children living in Institutional facilities.

E. Rule of law

1. The principle of the rule of law should apply in full to children, in the same extent as it applies to adults.
2. The elements of a sound trial, such as the principles of legality and proportionality, the presumption of innocence, the right to a fair trial, the right to legal advice, the right of access to the courts and the right to appeal, should be guaranteed for children in the same way as they are guaranteed for adults and should not be restricted or denied under the pretext of the child's interest. This applies to all judicial and extrajudicial and administrative proceedings.
3. Children should have the right of access to appropriate independent and effective complaint mechanisms.

b) Research Methodology

The Child-Friendly Justice in Action project (CFJ in Action) is a European project co-financed by the European Union's Erasmus+ programme and aimed at promoting the adaptation of administrative procedures to the specific needs of children, as set out in the Guidelines of the Committee of Ministers of the Council of Europe for Child-friendly Justice.

The CFJ in Action project is one of the projects of the Child-Friendly Justice European Network (CFJ EN), coordinated by Defence for Children International (DCI) Belgium and currently including 15 members among which the European sections of DCI. This network aims to promote the fundamental principles of child-friendly justice, by improving the visibility of expertise in this field, and by promoting the exchange of good practices between European partners.

This project, coordinated by DCI-Belgium and the DCI-World Service Foundation, was carried out jointly in seven Member States of the European Union, in partnership with DCI-Spain; DCI-France; DCI-Greece; DCI-Italy; DCI-Netherlands and DCI-Czechia.

This report presents the results of the Czech national research carried out within the framework of the CFJ in Action project. Its purpose is to assess the implementation of the Council of Europe Guidelines on Child Friendly Justice at the various stages of the administrative procedure taking place in the framework of adjustment of relations with children before and after the divorce of their parents. It aims to highlight the obstacles to the implementation of these guidelines at the various stages of the procedure, but also to point out the inspiring practices used in Czechia. This report will be combined with the national reports of the other six project partners to produce a practical information tool for professionals in contact with children. This tool aims to promote the principles of child-friendly justice to professionals.

The situation regarding migrant children in the Czech Republic is fundamentally different from the situation in western, southern and northern Europe. Legally or illegally, hundreds of thousands of working migrants, mostly from Eastern Europe and East Asia are residing in this country, but they are not children, let alone unaccompanied. Due to lack of workforce, the Czech government has issued recruitment programmes for labour from Ukraine, Moldova, Mongolia, etc.

New refugees from the Middle East or Africa are virtually absent. This situation has several causes:

- Czechia (Bohemia) has no colonial history, so there have been no communities of migrants from former colonies. Before the Velvet Revolution 1989, migrant workers were not invited to permanent residence, so no such communities were created.
- The Czech language is very difficult, sometimes even migrants of Slavic origin have problems with communication.
- The average wage in Czechia is about one third of wages in Germany (for the same type of work), and there are even larger differences in social benefits.

- Since the founding of the Czech Republic 1993, its governments have run a very restrictive asylum and migration policy, asylum receives less than one percent of applicants. In 2015 all runners with a ticket from Budapest to Berlin were withdrawn from the direct train, including families with children. They were detained for 6 weeks long in an isolated facility behind a double barbed-wire fence under the surveillance of riot police. (The Ombudswoman had to remedy.) They were stripped from their cash to cover this "accommodation". This can explain why Czechia has historically deterred asylum-seekers and has thus never become a target or transit country for refugees.

If, (very rarely) a minor refugee or migrant happens to come to Czechia, s/he either does not seek asylum or subsidiary protection for those reasons, or when persuaded to submit such a request, s/he does not wait for the result of the asylum procedure. In most cases, they transit to Germany, France or Scandinavia, where they seek to join their already established family or community, where they can hope for a higher wage or social benefits and where they are much more likely granted asylum or subsidiary protection.

Therefore, for the purposes of this research, minors who could report the administrative procedure could not be found. That is why we have focused on another type of administrative procedure with children, in which the Czech Republic has fundamental problems in fulfilling children's rights, concerning thousands of children – the procedure for placing a child in an institutional or protective education and guardianship justice.

The Czech Committee on the Rights of the Child of the Governmental Council on Human Rights had to address this issue repeatedly. Its proposals were not accepted by the Government in 2014. Last July 2019, the Committee noted that the Ministry of Justice still does not know the number of guardianship judges, despite such data being promised a year ago. The management of this statistic is an essential prerequisite for further steps. These statistics were published by the Ministry of Justice in June 2020 for the first time.

There is a similar situation regarding data on courts having established specialised guardianship Senates. The Committee appreciated the emergence of the Association of

Guardian and Family Judges, thanks to which the Guardianship judges can cooperate with each other. The Ministry of Justice should communicate with the Presidents of the courts on how to harmonise case-law, also in view of the impossibility of invoking in the guardianship cases, the role of which is currently replaced by the Constitutional Court. There is insufficient information on the existence of interrogation rooms for children and on capacity options of the courts to build such a room. Children are still interrogated in the courtroom, that is to say formal, not child-friendly room. However, progress is evident in the field of judicial training for judges, in particular in the area of child participation in judicial proceedings.

The Committee noted that the guardianship justice has long been considered an inferior area of justice. Although some improvements might be observed in the recent years, such as reduction of the time for the decision, strengthening of education as well as the specialisation of custodian judges or the emergence of specialised chambers in some courts, the issue is still not sufficiently systematically addressed and the situation in the individual courts continues to vary. Moreover, this agenda is traditionally underestimated by the judges themselves and therefore does not enjoy the necessary prestige.

The practice persists of entrusting cases to newly appointed judges or, conversely, judges who have not proved themselves in other agendas. The views and attitudes of children, as well as their best interests, are not adequately ascertained and taken into account and children are questioned in rooms not adapted to their status and in a way that is not friendly to them.

The practice of using forensic experts is also different, and it is often overused and therefore it causes unjustified delays in the proceedings. There is no mechanism of unification of case law in this area and, instead of invoking the Supreme Court, the Constitutional Court often has to deal with controversial decisions.

Last but not least, there is no compulsory specialisation in district or regional courts and the Ministry of Justice does not know even the number of judges dealing with this topic, nor is there any publicly available information on the number of such cases. The Constitutional Court has repeatedly pointed to many of these phenomena.

Encouragingly, the alarming situation of the family-law and guardianship judiciary, last but not least, led to the adoption of this subject as a priority of the Government Council on Human Rights for the period 2019 – 2023.

c) Scope/objectives of the research with justification

For these reasons, it is useful in the context of the DCI project “Child-Friendly Justice in Action” to consider this neglected issue so that we can substantiate the individual findings at least by sub-statistics from the field, as well as examples of good practice worthy of follow-up, as well as to reveal the real causes of long-term persistence of the described gaps in respect for the Rights of the Child and principles of the Child-Friendly Justice. Thus, we could rely on those authorities and organizations that feel the importance of this agenda.

Most of the questionnaires were thus distributed through organisations managed by the Ministry of Justice (the Probation and Mediation Service and the Judicial Academy for further training of judges), a lesser part by the institutions of the social legal protection of children (OSPOD), managed by the Ministry of Labour and Social Affairs.

2. Desk research - Description of the national context in terms of administrative proceedings

a) Type of proceedings

The issue chosen for the research was the 'Adjustment of relations with minors before and after the divorce of their parents'. The reason for this choice is the fact that in recent years it has been one of the most common types of administrative proceedings involving minors.

It concerns administrative proceedings at the Authority of Social and Legal Protection of Children (hereinafter referred to as OSPOD, Orgán sociálně právní ochrany dětí), which works in Municipal Offices, then they continue at the District Courts. The Courts decide on the future of minors by entrusting them to the care of a specific person.

In these cases, the OSPOD acts as a custodian of conflict for the minor, even if the parents agree on further childcare. This agreement must always be approved by a court. If the custodian or the court finds such an agreement contrary to the rights of the child or his / her best interests, or the parents' agreement is impossible to be reached, the court will decide on the future care of the child and on the further adjustment of the minor's circumstances, including the amount of maintenance for the minor.

The OSPOD always hears the child in the course of the administrative proceedings in a manner appropriate to the child's age and abilities, ascertaining his / her opinion on the current situation, his / her interests, preferences and his / her vision of the future (including with whom the child wants to keep the common household).

The OSPOD deals with the parents of a minor, trying to persuade parents to an agreement that is in the best interests of the child and which is closest to the child's vision. He suggests to parents to visit institutions such as Family Counselling, Psychologist, and in case of violence in the family, specific help and institutions that deal with this help. The OSPOD always submits a written report to the competent court and participates in the trial as the representative of the rights of the child.

b) Actors involved

Participants in administrative proceedings are minor children, their parents, OSPOD. Other actors are locally competent courts. Other institutions such as paediatricians, schools attended by the children, social departments at municipal offices, relatives involved in child-rearing (such as grandparents) are used by the OSPOD to identify the minor's social situation. The OSPOD can also seek information at the leisure-time (non-formal education) institutions that the child attends. If necessary, court experts, psychologists, specific non-profit organizations, etc. can be used by the courts in order to make decisions in complex cases.

c) Procedural stages²

- **First contact with the institutions**

The first contact with an institution such as OSPOD is experienced by the child after one of the parents submits a proposal for the Adjustment of the Minor's Relationship to the appropriate Local Court. The court informs the OSPOD who contacts the family without delay. The OSPOD initiates the first meeting with the parents in the office of OSPOD.

² It is governed by Act No.359/1999 Coll., on the Social-Legal Protection of Children, § 4, §14, § 17 and others.

The OSPOD deals with each of the parents independently, finds out the family situation, the parents' views, their vision of solving the situation. It suggests them a way of solving, as well as other possibilities of help in family therapy.

This is followed by a meeting with the child in his home environment. Familiarization with the child takes place in the presence of the parent or another person close to the child, the interview with the child proceeds already without the parents' presence. The interview is conducted according to the age and intellectual abilities of the child, when the reason and severity of his / her message is always explained to him / her.

- Care/assistance to/handling of the child

In addition, the OSPOD requests a report from the school that the child attends, information from the attended physician, a report from the office from the place of residence of both parents, expert opinions or examinations of the parents and child by a psychologist, etc. Based on all these facts, the OSPOD will assess the possibilities and abilities of the parents in the care of the child, approve the parents' agreement or propose a solution to the situation. Then it submits a report to the court, in emergency with a proposal for an interim measure.

- Decision-making

As a custodian of conflict, OSPOD always defends the interests of the child, even before his parents, he always takes the child's opinion into account. If the investigation of the situation implies that the child is in psychological or physical danger, it is always obliged to intervene immediately, eg by informing the law enforcement authorities (Police, Court).

If the child itself feels threatened, the OSPOD is obliged to provide him / her with professional assistance, whether outpatient or institutional, or within the non-profit sector. The child has the right to contact the OSPOD without the parents' knowledge. If a child is involved in a meeting at the office, he / she must have the conditions appropriate to his / her age and intellectual abilities.

Standards for this³ have been developed and approved by all authorities involved in the social and legal protection of children, which they are obliged to observe, such as creating a special room for dealing with children where they will not be disturbed at the meeting; be trained to work with minors and their needs. The OSPOD staff have special aids available to help them communicate and identify the child's view of his / her specific needs. Children have the right to express

³ In Act No. 401/2012 Coll., which is an amendment to Act No. 359/1999 Coll., on Social-Legal Protection of Children, § 9a, para. (3) and (4)

themselves without the presence of their parents, to give a true explanation of the situation etc.

Upon the completion of the court proceedings by a decision on the adjustment of the minor child's condition, his or her custody in a particular person or by a decision on alternating care, the assessment of the amount of maintenance for particular persons and the legal judgment becomes final (lawful), the administrative proceedings on the OSPOD are also terminated.

With this, the OSPOD's function as a custodian of conflict ends up, but OSPOD is still available to both parents and children. In the case of protracted disputes between parents, the OSPOD may act as a mediator in their negotiations, in which case it continues to monitor the minor and is ready to defend his best interests.

An identified problem is that in some cases, the OSPOD as a custodian in conflict can be in a conflict of interests itself - for example when the concrete social worker is sympathetic with one of the parents (rarely), or if the OSPOD defends its own proposal for the Adjustment of the Minor's Relationship before the Court - then another totally impartial person defending the rights of the child solely would be needed, especially an ex-offo solicitor.

However, this is the case in penal proceedings only (the child as a perpetrator, victim or witness), not in civil or administrative proceedings - in the latter the child has less rights than an adult who is in a similar position but with a solicitor.

- Remedies and following steps

The main means of remedy is an appeal to the Appellation Court. In earlier phases of the proceedings, either party can submit a complaint to the superior authority (Regional Office or the Ministry) or to the Public Defender of Rights (Ombudswoman). Those offices may correct wrong decisions of an OSPOD while the Ombudswoman has no decisive competences - she can negotiate with state institutions and offices and/or publish a statement pointing at gaps in the system with the concrete case as an example and recommending a kind of remedy.

Nevertheless, none of the institutions named here may correct any decision of courts of justice or of self-managing entities (municipalities, regions). There is still no specific Ombudsperson for Children in the Czech Republic.

3. Field research - implementation of child-friendly principles

Two questionnaires were used to analyse the situation, one for professionals in the field of administrative and judicial proceedings concerning children, the other for children, or young adults who have undergone such procedures as children. Both questionnaires were developed by the Lead Partner of the project, DCI Belgium, as uniform for the partners involved in the project in all EU countries concerned. The Association of Children's Rights Defenders - DCI Czechia - translated them into Czech and localized them, i.e. adapted them for the Czech environment.

Questionnaires were sent to the staff of the Probation and Mediation Service, the Judicial Academy and the bodies of social and legal protection of children (OSPOD) after their previous consent, a total of 41 questionnaires were sent out.

Questionnaires for children, resp. juveniles, were not sent out, but filled in during two workshops, which were organized with the help of organizations that have been working with children in alternative care for a long time (e.g. Lumos Czechia), each with about 10 participants. The advantage was that these children or young adults had known the facilitators of the workshops and trusted them, so they were less likely to intentionally give fictitious or misleading answers.

3.1 Survey among professionals

The basis for the analysis of the situation in respect of the rights of the child in administrative and other proceedings is 29 completed questionnaires, out of 41.

A. Profession and education of the respondents

A1) Profession of the respondents

One third of the respondents did not mention their profession, the questionnaire was completed mainly by lawyers (also judges and solicitors) and by two social workers only in the remaining two thirds of the respondents.

A2) Initial education of respondents

This corresponds to the initial education of the respondents.

A3)+A4) Rights of the child and Child-friendly justice in the education of respondents

One can appreciate that lawyers mostly stated that their education includes the rights of the child, not so positive is the issue, whether the education contains the principles of child-friendly justice, where more than a half of the respondents answered negatively.

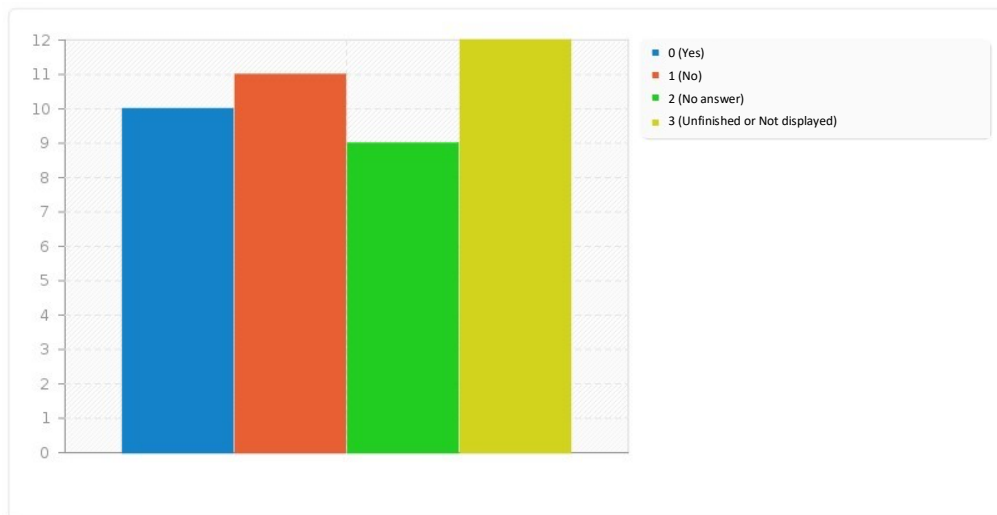


Diagram 1: Does your education include the principles of the Child-Friendly Justice?

A5) Further specific training connected to the rights of the child

Fortunately, the lack of education in the area of children's rights was complemented by the majority in respondents through various seminars, courses, training sessions, mostly at the Judicial Academy, social workers in courses organized by the MPSV, many gaining information through self-study or practice.

Only a small proportion of the respondents did not have sufficient time or information where to find such further studies.

B. Information provided for the child about his / her rights

B1) Types of information provided to the child on his / her rights

In order to respect the rights of the child in administrative and other proceedings, the child must be informed of his / her rights and the possibilities provided to him / her.

We can say that most of the time the child is informed about the different steps of the procedure (93%) and the length of the proceedings (64%), the respondents stated the specific situations according to their profession and role in these

proceedings. Of these rights, 35% are the right of access to a lawyer and the right of remedy or appeal, 29% are the right to access the file and 14% are the right to obtain international or subsidiary protection. Furthermore, 29% of information on the right to education, as well as access to health services, is provided, with 14% reporting on the right of access to appropriate housing.

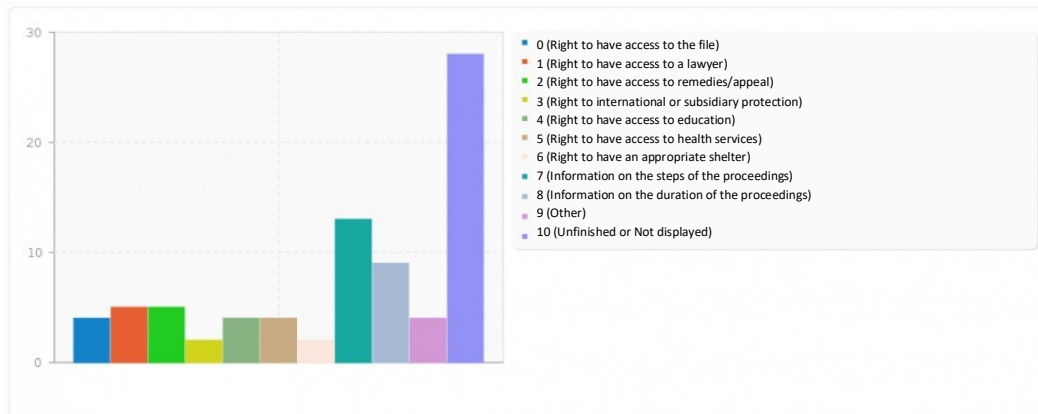


Diagram 2: Which information on the administrative procedure do you provide the child with?

B2) Form of information provided to the child on his / her rights

Most respondents said (93%) that the information was given orally, the rest of it in writing.

B3) Presence of an adult person when the child obtains the information

If information is given to the child in writing, half of the respondents replied that there is always an adult person present in order to read it with the child, two respondents did not know, and for the others the question was not relevant.

B4) Methods to identify the age of the child

If the child's age is unknown, official documents (64%), unofficial documents such as study documents (29%), anatomical (14%) and psychological tests (7%) are used most often.

B5) Presence of an interpreter/mediator

If a child does not speak Czech, a mediator is almost always present. However, it is uncertain whether these people are trained to communicate and work with children.

B6) Communicating evaluations and decisions to a child or his family

Not all decisions and evaluations are delivered to the child, the awareness of the children depends on the type of proceedings, the age of the child, his / her mental state, cognitive abilities, sometimes it is not appropriate to inform the child, e.g. in disputes of parents, etc. Often the child learns the decision, but it is not explained to the child on what basis the decision was made.

B7) Assessment of administrative clerks on their ability to communicate with children

Respondents are ambiguous about whether government officials are assessed for their ability to communicate with a child, which should be the basis on this agenda. This unfavourable situation is documented by the distribution of responses: 14% of answers is yes, 43% is no, 43% I don't know. Two respondents state that OSPOD officials are assessed by their superiors according to legislation and during their work.

Another topic is the accompanying of the child by the parent when talking to the administrative services or authorities. 29% of the answers are yes, 43% yes sometimes, 7% never and 14% don't know.

B8) Accompanying the child with the parents/guardians when interviewed

Possible problem relationships that a child may have with his / her parents or caregiver or guardian are always taken into account because their presence could cause discomfort to the child. However, this is not always taken into account, two-thirds of respondents said yes and one-third said not always.

B9) Do the officials ask the child whether to be accompanied by a parent/guardian?

Officers of the administration services do not always ask the child if s/he wants to be accompanied by a parent, a caregiver, a guardian or a close person in the conversation. The same number of respondents answered yes and no (36%) and 28% said they did not know.

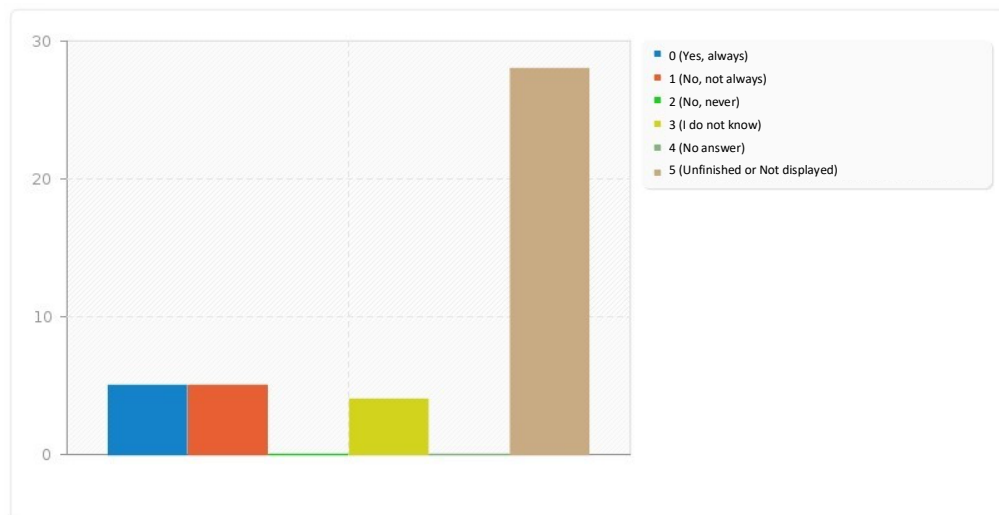


Diagram 3: Do officials ask children whether they want to be accompanied while interviewed?

B10) Explanation by the officials in simple words about the possibilities to appeal

Insufficient awareness of the possibility of appeals against administrative decisions by the children, only 14% of respondents stated that the officials explain to the child this possibility in simple words, 21% that sometimes, and 64% that they do not know.

The reason for this is the high turnover of workers in this area, not enough trained ones, and the fact that the child is always represented by a guardian / custodian who examines his / her opinion and lodges an appeal for the child if the decision does not correspond to the child's statement.

C1) Possibility of a child to initiate legal steps alone, without parents/guardians

Whether the children themselves can initiate steps, appeals, or revisions without dependence on parents or designated guardians: 14% of respondents don't know, 57% said they did, 7% didn't need it and 21% didn't know. However, three quarters believe that children will be supported in this, because the child is represented by a guardian who defends the interests of the child and through which an appeal can be lodged. Often lack of full child's legal capacity prevents its full procedural capacity.

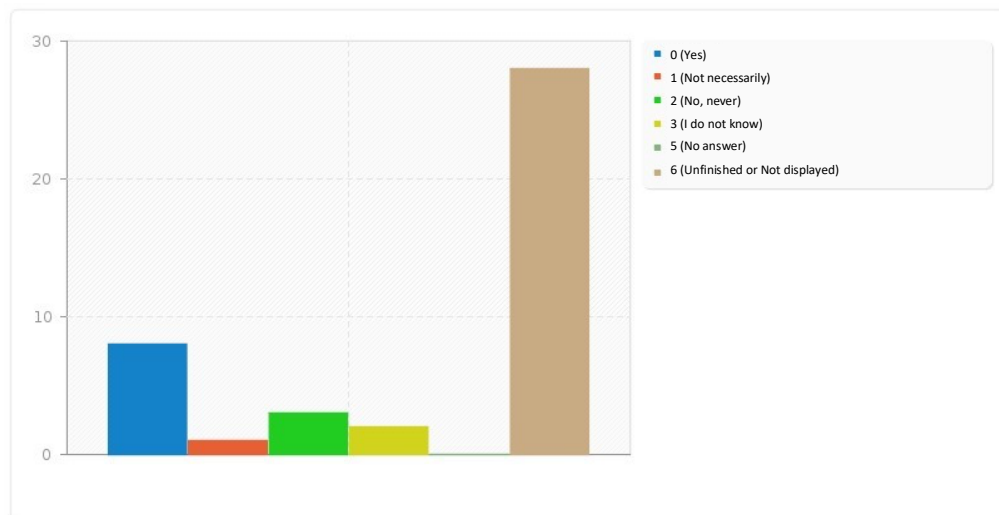


Diagram 4: Can children initiate legal step like remedy or appeal themselves (without their parents, guardians, etc.)?

D1) Interaction with the child at the beginning to determine its maturity

An important part of a child's right is to determine his / her ability to understand and participate actively in the proceedings. 86% of respondents said there was an informal interaction at the start of each conversation with the child to determine its maturity, thus allowing the interviewer to influence the child's behaviour and speech. Only 7% answered they didn't know and 7% said never. The social worker tries to gain the trust of the child, explains the reasons for the interview, the course and explains his / her rights. It is similar in a court.

D2) Attention of interviewers to child's feelings and behaviour, helping it feel safe

Interviewers almost always pay attention to the feelings of children when talking to them and give them a sense of security, if it is not so or to a lesser extent, it is due to inadequate training and complications to understand the child's emotions.

D3) Training staff to encourage children to speak and to be heard during interviews

Insufficient training of staff is reflected in responses to the issue of whether workers are trained to encourage children to speak and also to ensure that children are heard during each administrative procedure interview - 43% think yes, 21% do not always and 36% don't know. When asked why not always they explain "because it is not always possible and appropriate", "because it could jeopardize the child's further development" and "because of the child's age". Sometimes, however, slowly spreading good practice is to blame.

D4) Methods to help the child not to be afraid to speak

An important moment is to assess the maturity and ability of the child. Respondents were asked whether there is a mechanism or method to help the child to speak according to their age, maturity and ability.

Most (86%) don't know, only 14% said yes. They say that a child psychologist evaluates pre-school children and a social worker or a judge speaks alone with older children. From the age of 12, the law⁴ assumes that a child is able to give the own opinion on the matter, and thus to be examined by a social worker or judge at the interview.

D5) The extent the child's preferences are taken into account in decision-making

Most respondents believe that the views, opinions and preferences of the child are taken into account, to varying degrees.

E1) Existence of a child protection policy in administrative services and authorities

The answer to the question of whether there is a child protection policy in the administrative and childcare services can be positively evaluated. Most of the respondents believe that yes, 14% do not know and 29% did not answer.

Half of the respondents believe that all officers and authorities in contact with children have the training in question, but most respondents do not know whether these officials are assessed for implementing a child protection policy, if so, by the superior authorities.

F1) Respecting confidentiality when interviewing a child

Most respondents (69%) say that judges or administrative service officials respect confidentiality in a conversation and that the interview takes place in a room closed for other persons.

⁴ The Act No. 359/1999 Coll., on Social-Legal Protection of Children, as amended, § 8, para. (3)

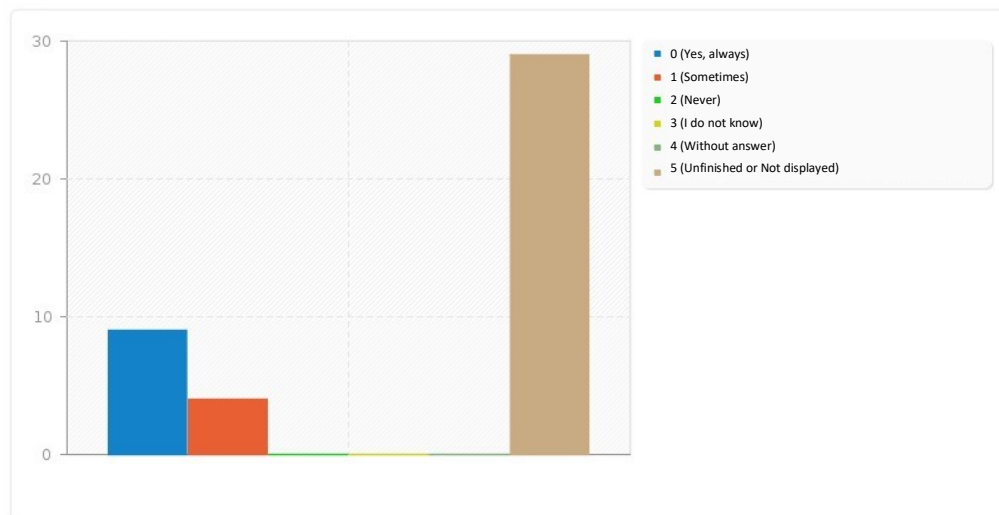


Diagram 5: When judges or officials of administrative organs/services interview a child, does the interview takes place in a separate closed room with respect to confidentiality?

F2) Existence of professional secrecy for services coming into contact with children

Almost all respondents report that there is professional secrecy for administrative services and authorities in contact with children.

F3) Audio / video recording during an interview or other procedures

Respondents do not know much about making audio or video recordings, 46% say that sometimes, the same percentage said never and 8% don't know. It depends on many circumstances, such as the technical equipment of the area where the interview is conducted or the nature of the proceedings.

F4) Clear and explicit protocols or rules for officials concerning confidentiality

It is also not clear whether administrative officials have clear and explicit confidentiality protocols or rules. 38% say yes, 23% do not and 38% don't know. Also, it is not clear to everyone whether these rules are for all services or just for those with children. If children are involved, the rules are also explained to children.

G1) Familiarity of respondents with the principle of the best interest of the child

Very positive is that all the answers to the question of getting to know the principle of the best interest of the child are positive.

G2) Interviews by judges or administrative officials with children in a friendly environment

Not always is the conversation of judges and administrative officials with the child in a friendly environment to the child, such as equipment, toys, etc. 73% of answers are sometimes, only 9% yes and 18% never.

G3) Average length of administrative proceedings concerning a child

Very different is the data on the average length of administrative proceedings (from filing to decision) concerning the child. Basically, it depends on the circumstances and the specific office or court. Social workers try to act as fast as possible, the time being between 1 month and several years. The reason is the lack of officers and/or missing rooms for interviewing children.

G4) Existence of an individual assessment of the best interest of the child

An important factor is the fact that one third of respondents answered the question of whether there is an individual assessment of the best interest positively, the rest do not know. The best interest is judged by the team, in cooperation with parents, guardians. They consider the file, expert opinions, etc.

G5) Respect for the best interests of the child in decision-making by administrative bodies and courts

Very important for maintaining and respecting the rights of the child is the observance of very essential aspects that concern the child.

These aspects are the following:

Average ranking:

1. the view of the child	3,25
2. preserving the child's family environment	3,44
3. social environment	2,88
4. care, protection and safety of the child	3,78
5. vulnerability of the child	3,38
6. education	3,13

The best ranking has the preservation of the child's family environment. Only one person estimated that the family environment is not taken into account. Others out of 9 tend to think it is.

Care, protection and safety is another fairly well-considered aspect. Only 2 in 9 respondents said that this factor is not taken into account or is almost ignored.

The aspects of child's view, vulnerability and education are assessed similarly, e.g. most respondents answered positively. In education, no respondent stated that this was not taken into account at all. One respondent stated this concerning respect for the child's view. Two stated the child's vulnerability is not taken into account at all.

G6) Existence of instructions to disregard the wishes of the child

It is also important for a child-related procedure whether administrative and agency officials have clear instructions when they may not respect the wishes of the child. The situation is incomprehensive in this area. 64% of the answers are yes, 18% no and 18% don't know.

The respondents stated that these guidelines were created by the Ministry of Labour and Social Affairs, by the legislator and the Constitutional Court. 72% of the respondents see these guidelines relevant, the remaining respondents do not know.

Asked whether the respondent would have written the guidelines differently, 43% said no, only 14% would change them by tying them more with the rules. Whether such guidance would be good, two respondents answered negatively.

H. Obstacles that prevent the implementation of these principles

H1) Education of lawyers in doctoral studies does not contain the principles of child-friendly justice.

H2) The lack of another totally impartial person defending the rights of the child solely, especially an ex-offo solicitor during the administrative court proceedings. The reason for that is that the Court of Justice (under the Ministry of Justice) would have to pay the solicitor while if the same Court entrusts the OSPOD (under MPSV) for the child as the custodian in conflict the costs are paid from the MPSV chapter of the State Budget.

H3) Often a child gets a decision without any explanation on what basis it was made.

H4) Government officials are not always assessed for their ability to communicate with a child, which should be the basis on this agenda.

H5) Officers of the administration services do not always ask the child if s/he wants to be accompanied by a parent, a caregiver, a guardian or a close person during an interview.

- H6) Children are not instructed of the possibility of appeals against administrative decisions. The reason for this is the high turnover of workers in this area, not enough trained ones, and the fact that the child is always represented by a guardian / custodian who examines his / her opinion and lodges an appeal for the child if the decision does not correspond to the child's statement.
- H7) The insufficient equipment of the premises where the interview with a child is conducted prevents sometimes video/audio recording, as well as creating of child-friendly environment.
- H8) The administrative proceedings concerning the child are sometimes un-acceptably long, amounting to several years. The reason is the lack of officers and/or missing rooms for interviewing children.
- H9) Despite some positive changes since 2014, there are still too many cases (I.e. even more children involved) for each poorly paid social worker. The average was 153 cases in 2012. The social workers (and judges) are overburdened with paperwork. This situation results in insufficient work with real children, syndrome of burning out and high fluctuation of social workers.

I. Good practices + Mapping of national tools promoting or explaining CFJ

There are not many nationally bounding clauses of CFJ (laws, by-laws and/or conclusions of the Government). Some principles of CFJ are included in the Act on Juvenile Justice⁵ (Nr. 213/2003 Coll.).

The principles and good practices in CFJ have been published by Prof. Dalibor Jílek, Masaryk University in Brno⁶.

Series of seminars on this issue have been organized by the Public Defender of Human Rights⁷, by the Authority for International Legal Protection of Children⁸ and by the Senate of the Parliament of the Czech Republic⁹.

⁵ <https://www.zakonyprolidi.cz/cs/2003-218>, §§ 37, 42, 42a, 43, 44, 53, 54, 57, 91

⁶ <http://www.prava-ditete.cz/zdroje/justice-vstricna-k-detem/>

⁷ <https://www.ochrance.cz/dalsi-aktivity/archiv-vzdelavacich-akci/>

⁸ <http://www.prava-ditete.cz/zdroje/justice-vstricna-k-detem/>

⁹ <https://www.senat.cz/xqw/webdav/pssnat/original/81452/68390>

3.2 Survey among children and adolescents

As part of the Child-Friendly Justice project, two meetings with eleven children and adolescents took place in the Pardubice and Ústí nad Labem regions in February and March 2020, ten of the participants being now between the ages of 16 and 19, who met as minors (mostly under the age of 15), institutions such as the Child Social-Legal Protection Body (OSPOD), police, court, etc.

The meetings took always place in the presence of two adults, field social workers. The children have known these workers from the practice of working with their families for a long time, even during events in the Lumos organization, or in the Open Youth Club, which they attended. The meetings took place in a clubhouse in a friendly atmosphere, the teenagers were at first a little shy then cooperated. Most of them came from disadvantages neighbourhoods in which children are often led against social workers and the police.

Half of the cases were submitted by a member of the own family (usually a mother), half by an OSPOD or another office. One boy applied himself to get out of a dysfunctional family with the help of the local Department of Social Affairs.

Unfortunately, these juveniles were not able to fill in questionnaires about their experiences of child-friendliness in administrative or guardianship proceedings themselves; sometimes the questions had to be read and explained to them several times. As children, they were involved in crime or drug use, so it was paramount for them what their rights are, they say they need better lawyers "to cut them out" ...

They also agreed that the personality of a social worker makes the most, they need to have someone they trust who will be "good" to them, they would always like to have a close person at the meeting, but not always their parents, they would like to choose them themselves. According to them, it also depends on the environment, they mind when they feel like prisoners, even if they have committed nothing.

They want to comment on their issues, but they need the situation to be explained to them "in their language" so that they can understand everything.

They have a problem when someone tells them something, it is necessary to treat them as partners - to ask, not to order. They would welcome an informal approach and clothing. At the end of the meeting, however, everyone agreed that they would not learn much about rights at school or from their parents, they would like lectures in the Open Youth Club, or that a social worker should talk to them more, who should be nice and explain everything to them. They understand that they cannot learn everything from their parents.

Survey results

3.2.1 Experience with the legal system

All 11 children had experience with a court, 9 of them with an OSPOD, 7 with a housing or social department of the Municipal Office, only 4 with a law firm.

1) Reasons why they found themselves in this situation:

- A proposal to entrust a child from the foster care of another relative (the aunt) to the care of the (biological) mother.
- Proceedings on the adjustment of the child's upbringing after the parents' divorce.
- Proposal of the OSPOD for the removal of a child from the family and entrustment to institutional care.
- Extension of institutional care until the child is 18 years old.
- The child's application for removal from the family and entrustment to institutional care.
- Request to place a child in institutional care after the death of his mother when no one else in the family has applied for care.
- A proposal for the institutional upbringing of a child fleeing from home.
- A proposal for the institutional upbringing of a girl who did not attend school and stole (her mother addicted to drugs).

2) The friendliness of institutions towards the child according to his own perception

Positive feelings outweighed negative ones about lawyers and OSPOD.

Roughly balanced positive and negative feelings about the Municipal Office and the Child Diagnostic Institute.

Negative feelings prevailed about the police and courts.

3) In order for children to feel friendliness when visiting these institutions, they would like them to be able **to have a confidant** (i.e. someone to be chosen by themselves) - 7 respondents - and for the place to be more welcoming (colours, chairs, environment) - 6 respondents.

About a third of respondents would help if they did not have to provide personal information about themselves, and 3 out of 11 respondents think that nothing would help them to feel better.

4) The presence and assistance of experts during the stay in the institution

In all 11 cases a social worker was present, in 8 a psychologist, in 5 a lawyer, in 3 a school counsellor and in one case an etho-pedagogue, who spoke to the children.

- 5) **The mother tongue of all children was Czech**, communication in another language was not necessary.

3.2.2 Informing children about their rights

- 1) All children think they understand the reasons why they had to talk to these people.
- 2) 8 out of 11 children received information about their rights during the proceedings, 3 did not receive information.
- 3) This information was received mostly (5) during the proceedings, for a minority (3) already before it, or after its beginning, 2 at or after the end of the proceedings.
- 4) Most children (6) consider **the information provided to be not very clear**, 1 to be clear, but 1 to be completely incomprehensible.
- 5) **A big majority of the children (8) would like to receive more information about their rights.**

- 6) In particular, the children would like answers to the following questions:

- **Can I have my lawyer (2 participants)? Who can represent me?**
- **When do I have to answer (in court) and what can I answer (2 pax)? Can I lie?**
- **What are my rights and options?**
- **How will the proceedings take, for how long and what impact will it have on my future?**

- 7) From whom would children like to obtain information:

Most **from social workers (9), or from a judge or a civil servant (7)**, to a lesser extent (2 each) from a parent, caregiver or counsellor, they would not want them from teachers (4) and lawyers (3). One participant would like information from a therapist.

- 8) Other forms of obtaining information on their rights:

- through **counselling centres (8)**
- from friends or relatives (6)

- from the Internet (websites, e-mail) (6)
- from a free telephone line (3), from a television (3)
- in a low-threshold club (1)

They don't want information from Snapchat (3) and leaflets (2), there are 3 pros and 3 cons on Facebook.

3.2.3 Perception of achieving justice

Achieving justice is most often assessed by children **on average** (4 accounts), the average mark is **3.2** (where 1... best, 5... worst).

3.2.4 Circumstances of the decision concerning the child

- 1) Almost all children (9 out of 10) encountered a decision that directly affected them.
- 2) The timing of these decisions was even (before, after the start, during, at the end, after the end of the proceedings).
- 3) For all 11 children, the judge decided, for 10 also a social worker, for 4 a police officer, for 3 a psychologist, for individual children the school headmaster, the director of the children's home, a doctor, a lawyer, a caregiver, a clerk and his own mother.
- 4) In most cases, it was **a removal from the family** (8) and placement in alternative care (6).
- 5) As the most important decision for them, they feel removing them from their family (5).
- 6) 6 children were present for decision-making, 5 were not.
- 7) Before it was decided, 7 children had been asked about their opinion, 4 not asked.
- 8) The mother tongue of all children is Czech.
- 9) 6 children feel that their opinion has been taken into account, 4 children feel the opposite.

- 10) 6 children feel that they have been treated fairly, 4 children have the opposite feeling.
- 11) However, it is **important for all 11 children to be heard by the decision-maker**.
- 12) S/he should hear them directly (5), through a lawyer (4) or a confidant (4), and in no case through their parents (4 nos). In individual cases, they would like a family member, social worker or director of the children's home to be heard.
- 13) In the proceedings involving half of the children (5), someone was present who clearly explained the circumstances to them.
- 14) They were parents (2), a social worker (1), a director of the children's home (1), a lawyer (1) or a civil servant (1).
- 15) Half of the children (5) understood the final decision, 1 explicitly stated that s/he did not.
- 16) 4 children understood when this decision was explained to them, one was not explained, one is not sure, the others did not answer this question.
- 17) The children would prefer to have such a decision explained to them **by a social worker** (10 yes, 1 no - *it could have been influenced by the fact that only children with whom the social worker had been working for a long time and had their full confidence took part in the interviews*). They justify this by saying that social workers understand the issue and should be able to explain it best to the child. Personal contact with someone they trust is important to them.
- To a lesser extent, they would like a parent (3 yes, 1 no), another family member (3 yes, 1 no), a confidant (3 yes, 1 no) or a judge (4 yes, 1 no), the director or a worker ("aunt") of the children's home.
- They would not want an explanation from a doctor or a civil servant or that the explanation be sent by ordinary or e-mail – the children are afraid that they would not understand such an explanation.
- 18) The majority of children (6) were given the opportunity to ask or comment on decisions concerning them, a minority (4) did not have this opportunity.
- 19) Suggestions from children what they would like to change in the decision or in the way it has been taken:

- I would like to be in court and express my opinion there - no one asked me.
 - It would be good if someone would listen to me.
 - I would like to be able to say more facts about the situation.
 - The media coverage of the case should not be taken into account - the lawyer is concerned with his success, not with the best interests of the child.
 - Change the court's approach, giving priority to the best interests of the child, not to financial considerations.
 - Replace a lawyer with one that would advise me (2 participants).
- 20) To most children, the whole procedure seemed too long (7), too fast (3), reasonable (1).

4. Recommendations

4.1 Recommendations of the children for proceedings before the authorities and courts:

- a) A more personal, considerate way of communication.
- b) Greater impartiality of social workers.
- c) Greater emphasis on the child's opinion (otherwise the child feels unnecessarily deceived what is psychically difficult for him).
- d) Speak to the child, concretely and clearly (2 participants).
- e) The child should be in court with a confidant and should be allowed to speak directly.
- f) More helpful employees in the child diagnostic institute.
- g) More accommodating social workers and better lawyers.

4.2 Recommendations by professionals

a) The right to information

It is necessary that the child is always informed (in a child-friendly way) not only about the decision concerning the child but also on what basis the decision was made.

b) The right to access to remedies

The children must be carefully instructed of the possibility of appeals against administrative decisions.

c) The right to participation

Officers of the administration have always to ask the child if s/he wants to be accompanied by a parent, a caregiver, a guardian or a close person during an interview.

d) The right to protection

It is necessary to amend the legislation so that the right of the child during the administrative court proceedings are always protected and defended by an impartial person, especially an ex-offo solicitor paid by the government.

e) The right to privacy/confidentiality

It is necessary to allocate more funds to provide the authorities and courts dealing with children with sufficient child-friendly equipment of the premises where interviews with children are conducted.

Equipment for audio/video recording of the interviews should also be available when necessary.

f) The principle of the best interest of the child

It is necessary to include the principles of child-friendly justice in the curricula for basic education of lawyers.

The hiring procedure for government officials dealing with children should always include an assessment for the candidate's ability to communicate with a child.

It is necessary to amend the legislation with inserting binding periods for each step of administrative proceedings concerning the child to prevent unacceptably long protraction amounting to several years now.

It is necessary to alleviate the burden of paperwork for social workers and judges. The government should hire more social workers and lower justice assistants while motivating them with raising their salaries in order not to change their job. Especially social workers working with children should get the same amount of paid vacations as teachers do, in order to prevent their burning out and high fluctuation.

4.3. Recommendations by the Committee on the Rights of the Child of the Government Council for Human Rights (2019):

- 1. Establishment of a special position at the Ministry of Justice – a coordinating officer for the family law and guardianship justice;**
- 2. Introduction of the specialization of judges on the agenda of family law and guardianship;**
- 3. Ensuring proper collection of data on the number of guardianship judges in the individual district and regional courts and their workload or the scope of the agenda;**
- 4. Ensuring easy access to this information to the public and its inclusion in the Ministry of Justice monitoring on the State of Justice;**
- 5. Elaboration of an analysis comparing the number of judges dealing with this agenda at the individual courts with the scope of the agenda;**
- 6. Based on these statistics, the provision of sufficient capacity of the guardianship judges to make swift and fair decisions at all courts;**
- 7. Setting the appropriate legal regulation in the laws and by-laws of the Ministry of Justice, in particular the Rules of Procedure for district and regional courts;**

- 8. Promoting children's participation, creating an environment and using child-friendly approaches - providing special questioning and meeting rooms for children in each court, establishing Uniform general requirements for appearance, equipment and function of such rooms;**
- 9. Ensuring the availability of systematic training of guardianship judges, including the issue of child participation, and monitoring of attendance in these special modules;**
- 10. Ensuring the unification of case law in guardianship cases in respect of the impossibility to appeal;**
- 11. Standardization of the procedures for forensic experts in the guardianship judiciary;**
- 12. Promoting interdisciplinary cooperation between all actors involved.**