



FORUM
Human Rights

**JOINT WRITTEN INFORMATION OF THE INTERNATIONAL
COMMISSION OF JURISTS AND FORUM FOR HUMAN
RIGHTS TO THE COMMITTEE AGAINST TORTURE**

**IN VIEW OF THE EXAMINATION OF THE STATE PARTY'S
SIXTH PERIODIC REPORT OF THE CZECH REPUBLIC
UNDER ARTICLE 19 OF THE CONVENTION AGAINST
TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING
TREATMENT OR PUNISHMENT**

The International Commission of Jurists (ICJ) is a non-governmental organisation working to advance understanding and respect for Rule of Law as well as the protection of human rights throughout the world. It was set up in 1952 and has its headquarters in Geneva (Switzerland). It is made up of some 60 eminent jurists representing different justice systems throughout the world and has 90 national sections and affiliated justice organisations. The ICJ works globally to uphold the protection of human rights in the criminal justice system, through legal research and analysis, third party interventions, and training of lawyers.

Forum for Human Rights (FORUM) is a Central European non-governmental organization working to ensure that human rights are respected, protected and fulfilled in accordance with relevant international human rights standards, using litigation and advocacy to promote human rights before national and international human rights bodies. It provides support to domestic NGOs and leads domestic and international litigation and advocacy activities in the Czech Republic and Slovakia.

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Articles 2 and 16 CAT: Prevention of Torture and other Ill-treatment

1. This written submission outlines the failure of the State party to ensure access to a lawyer and presence of a lawyer for children below the age of criminal responsibility (younger than 15) in the pre-trial stage of the juvenile justice proceedings, dereliction of their obligations under the UN Convention against Torture (*hereinafter* "the CAT"). Under Articles 2 and 16 of the CAT, the States Parties are required to adopt specific safeguards as a measure of prevention of torture and other ill-treatment. An effective and early access to a lawyer and presence of a lawyer during police questioning of children in the conflict with the law has been recognized by various judicial and non-judicial international human rights authorities as an essential safeguard for the prevention of torture or cruel, inhuman or degrading treatment or punishment.¹ Additionally, the State party fails to ensure access legal counsel for the purposes of an effective remedy under Article 14 of the CAT.
2. The particular issue of an access to a lawyer has been recognized as acutely important for the Czech Republic in the List of Issues prior to the reporting of the Czech Republic in which the UN Committee against Torture (*hereinafter* "the Committee") requested the State Party to provide information on the right of a detainee "to contact a relative or another trusted person, and the right of access to a lawyer, from the very outset of their detention." In addition, the Committee requested the State Party to "provide an update on any progress made in establishing a free legal aid service whereby access to a lawyer would be available free of charge from the very outset of deprivation of liberty."²
3. This submission has been prepared by the International Commission of Jurists (hereafter "the ICJ") and Forum for Human Rights (hereinafter "FORUM").

Description of the situation of juvenile offenders in the Czech Republic

4. In the Czech Republic, the main sources of criminal law are the Criminal Code (effective from 1 January 2010) and the Criminal Procedure Code (effective from 1 January 1962). However, in respect of offenders under 18 years of age, substantive conditions for criminal liability and specific procedural rules are governed by the special Act No. 218/2003 Coll. on Juvenile Liability for Unlawful Acts and on Juvenile Justice (*hereinafter* "Juvenile Justice Act").
5. The Juvenile Justice Act covers two age groups of youth: **children below the age of criminal responsibility** (under the age of 15) and **juveniles** (15 - 18 years of age). Even though children below the age of criminal responsibility cannot be held criminally liable, they may be subjected to standard pre-trial criminal proceedings and may be subject to concrete sanctions (called "measures") by the juvenile court. Such measures may include deprivation of liberty in an "educational correction centre", "children's homes with schools" or "psychiatric hospitals". In 2017, children were considered responsible of 3758 offences in total, out of which in 2636 (70%) cases juveniles were considered responsible and in 1273 cases (30%) children below the age of criminal responsibility, who also entered the juvenile justice system through the criminal procedure.
6. In the Czech Republic, the criminal procedure itself is divided into three stages: i) first phase of the pre-trial stage (*examination*); ii) second phase of the pre-trial stage (*investigation*); iii) the trial stage.

¹ See, among other authorities, Report on the Visit of the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment to the Maldives, (CAT/OP/MDV/1, 26 February 2009), at § 62; Report to the Czech Government on the visit to the Czech Republic carried out by the European Committee for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment (CPT) from 27 April to 7 April 2006 and from 21 to 24 June 2006, para. 15; ECHR, *Blokhin v. Russia*, app. no. 47152/06, Grand Chamber judgment of 23 March 2016. § 198.

² UN doc. CAT/C/CZE/QPR/6, para. 3.

7. In the case of juveniles (15-18 years), they all must be represented by a lawyer of their choice or by a defence counsel (legal aid lawyer) who is assigned to them **from the very beginning of the proceedings, including during the examination phase** (which is the first phase of the pre-trial stage).³
8. However, when it comes to children below the age of criminal responsibility (children younger than 15), unlike in respect of juveniles, the Juvenile Justice Act does not provide for the right to legal aid in the pre-trial stage. Children below the age of criminal responsibility do not benefit from this right and therefore, during the police questioning, they are typically left without any legal assistance and presence of a lawyer who neither can deter the police from resorting to ill-treatment or other abuses, nor work as a protection for police officers in case they face unfounded allegations of ill-treatment. The existing situation can be demonstrated by two concrete case studies:

Case study no. 1 – Pavel⁴

Pavel has a severe intellectual disability and he is effectively not able to distinguish between life and death. When he was 13 years old, he was suspected of having caused the death of another boy while they were playing together. During the examination, in the pre-trial stage, Pavel was subjected to police interrogation, which lasted five and a half hours. During the interrogation, he explicitly refused to testify. According to the official minutes of the interrogation, at one point he started to cry and to repeat: "No, I don't want to, I don't want to, I don't want to ... ". Ignoring his determined refusal, the same day the police officers brought him to the scene of the incident and demanded that he describe what had happened and to demonstrate it on a mannequin. Pavel eventually "confessed" to the allegations and did what the police asked. The interrogation and reconstruction were carried out by the police officers, in the presence of a social worker from the child welfare authority. The social worker had no legal education. The interrogation and reconstruction were carried out in the absence of a lawyer, because unlike in the case of juveniles, the law does not provide for mandatory legal representation for children below the age of criminal responsibility.

Case study no. 2 – Dominik⁵

At the time of interrogation Dominik was 14 years old. He suffers from ADHD syndrome. Police officials heard from local sources that he might have taken part in a group burglary of a small cabin in a nearby forest. In the afternoon, police officers came to his home and took him to the police station to interrogate him. At that time he was alone, his mother was still at work. At the police station, he was interrogated for approximately four-and-a-half hours, in the presence only of several police officers and a child welfare officer, and without being provided with any legal or any other expert assistance. He initially refused to testify, but then he apparently succumbed to pressure from the police officers and especially the child welfare officer who

³ The mandatory legal defence for juveniles is stipulated in article 42(2) Juvenile Justice Act, according to which the "juvenile has to be assigned lawyer from the moment measures under the Juvenile Justice Act have been used or actions under the Criminal Procedure Code have been taken". The national preparatory documents (the drafters' intention) explain that this broadly formulated right to legal aid mirrors a lack of ability of juveniles to defend themselves. The preparatory document is available in Czech at: <https://www.epravo.cz/top/clanky/vladni-navrh-zakona-o-odpovednosti-mladeze-za-protipravni-ciny-a-o-soudnictvi-ve-vecech-mladeze-a-o-zmene-nekterych-zakonu-duvodova-zprava-20827.html>

⁴ Case no. ČTS: PSC-265/TC-71-2007. The case was eventually adjudicated before the Kutná Hora District Court and Prague Regional Court. FORUM lawyers were involved as an advisory to counsel. The description of facts was provided by the FORUM and reflects the summary of the case and the actions taken in the pre-trial proceedings, as had been complained of before the domestic courts.

⁵ Case no. KRPB-32681/TC-2012-051071-NO. The case was eventually adjudicated before the Trutnov District Court. FORUM lawyers were involved as an advisory to counsel. The description of facts was provided by the FORUM and reflects the summary of the case and the actions taken in the pre-trial proceedings, as had been complained of before the domestic courts.

threatened him with a placement in a closed educational institution. There was no lawyer who could inform him properly about his right to remain silent and who could complain about the abusive manner of interrogation, and Dominik eventually "confessed" to having taken part in the burglary. The following morning he had a nervous breakdown at school. Despite this, in the afternoon, the police officers and the child welfare officer came for him again and took him to the police station for interrogation about the very same incident. However, this time, he was interrogated as a witness against his alleged adult accomplices. Dominik repeated what he had said the day before. Even though he was in completely different procedural position, this testimony was used as evidence against him.

Compliance with Articles 2(1) and 16 CAT

9. The experience of well-established monitoring and advisory bodies on prevention such as this Committee's Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT), as well as the European Committee for the Prevention of Torture (CPT) show that legislating for safeguards, including prompt access to a lawyer, is one of the best ways to meet their obligation to take such effective measures. This obligation is strengthened in cases of the most vulnerable individuals, in the juvenile justice system the youngest children.
10. The SPT has stated: "*From a preventive point of view, access to a lawyer is an important safeguard against ill-treatment which is a broader concept than providing legal assistance solely for conducting one's defence. **The presence of a lawyer during police questioning may not only deter the police from resorting to ill-treatment or other abuses, but may also work as a protection for police officers in case they face unfounded allegations of ill-treatment.** ...*"⁶ In respect of pre-trial detention or prison, the SPT has affirmed that specialized legal assistance is necessary to ensure access to justice. Similarly, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) identified that there are several fundamental rights which constitute safeguards against ill-treatment, "*namely the right of detained persons to inform a close relative or another third party of their choice of their situation, and the right of access to a lawyer and to a doctor.*"⁷ Moreover, these rights must also be guaranteed to persons who are obliged to remain with the police to provide an explanation, regardless whether they have been formally recognised as suspects.⁸
11. The right to legal assistance is also provided for in a number of UN standards related to juvenile justice. The Beijing Rules provides that "*[t]hroughout the proceedings the juvenile shall have the right to be represented by a legal adviser or to apply for free legal aid where there is provision for such aid in the country*".⁹ The Guidance Note by the Secretary-General of the United Nations on the UN Approach to Justice for Children stresses that: "*Basic procedural safeguards as set forth in relevant national and international norms and standards shall be guaranteed at all stages of proceedings in state and non-state systems, as well as in international justice. This includes, for example, the right to privacy, the right to legal aid and other types of assistance and the right to challenge decisions with a higher judicial authority.*"¹⁰ The Vienna Guidelines for action on children in the criminal justice system call on States to prioritize the set-up of "*agencies and programmes to provide legal and other assistance to children [...] and, in particular, to ensure that the right of every child to have access to such assistance from the moment that the child is detained in*

⁶ Report on the Visit of the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment to the Maldives, (CAT/OP/MDV/1, 26 February 2009), at § 62.

⁷ Report to the Czech Government on the visit to the Czech Republic carried out by the European Committee for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment (CPT) from 27 April to 7 April 2006 and from 21 to 24 June 2006, para. 15.

⁸ *Ibid.*, para. 15.

⁹ UN General Assembly, United Nations Standard Minimum Rules for the administration of juvenile justice ("The Beijing Rules"), UN Doc. A/RES/40/33, (1985), para. 15.1.

¹⁰ UN Secretary-General, Guidance Note, UN Approach to Justice for Children, (2008), para. 6.

respected practice."¹¹ The United Nations Rules for the protection of juveniles deprived of their liberty provide that "*an untried juvenile [...] should have the right to legal counsel and be enabled to apply for free legal aid, where such aid is available, and to communicate regularly with their legal advisers.*"¹²

12. In the general Comment no. 10, the UN CRC Committee addressed concerns regarding the treatment of children below the minimum age of criminal responsibility when they are recognized or accused of having infringed the penal law. The Committee underscored the importance of legal safeguards that must be in place to ensure that their treatment is as fair and just, as that of children at or above the minimum age of criminal responsibility.¹³ In addition, in a number of its concluding observations on the compliance of States with their CRC obligations, the UN CRC Committee has called upon States to ensure that authorities provide children in conflict with the law with special protection during the proceedings.¹⁴
13. Other UN human rights treaty bodies have also noted the failure of the Czech Republic to meet its obligations to ensure adequate procedural protection of children below the age of criminal responsibility. In its concluding observations on the Czech Republic adopted on 17 June 2011, the UN Committee on the Rights of the Child, expressed its concern that children under the age of 15 are not held criminally responsible, but can be placed, even for petty offences, in institutional care prior to legal proceedings, without the guarantees associated with standard criminal proceedings. **The Committee recommended that the Czech Republic "[u]ndertake the legislative amendments necessary for ensuring that children under the age of 15 years have at least the same level of legal guarantees associated with standard criminal proceedings".** Similarly, the UN Human Rights Committee in its concluding observations on the Czech Republic adopted on 24 July 2013¹⁵ expressed its concern that although children under the age of 15 are not held criminally responsible, they are subject to standard pre-trial criminal proceedings when suspected of an unlawful act without the required legal assistance or the possibility of accessing their file. The UN Human Rights Committee recommended that the State party "**[e]nsure, as a minimum, that children under the age of 15 suspected of an unlawful act enjoy the same standard criminal procedural safeguards at all stages of criminal or juvenile proceedings, in particular, the right to an appropriate defence.**"¹⁶
14. The commentary and jurisprudence of regional human rights authorities, for instance the Council of Europe, also reinforce the position of UN authorities concerning access to lawyers for children. The right to access to a lawyer and presence of a lawyer during the questioning has been also recognized by European human rights bodies. The Council of Europe Recommendation no. 1987/20 on social reactions to juvenile delinquency recommended "*the governments of member states to review their legislation and practice with a view to **reinforcing the legal position of minors throughout the proceedings, including the police investigation, by recognising inter***

¹¹ Economic and Social Council, Resolution on the administration of juvenile justice, UN Doc. 1997/30, (1997), para. 16.

¹² UN General Assembly, United Nations Rules for the protection of juveniles deprived of their liberty, UN Doc. A/RES/45/113, (1990), para. 18.

¹³ Committee on the Rights of the Child, General Comment No. 10, Children's rights in juvenile justice, UN Doc. CRC/C/GC/10, (2007), para. 6.

¹⁴ Committee on the Rights of the Child, Concluding observations: Russian Federation, UN Doc. CRC/C/RUS/CO/323, (2005), para. 86 (a), (d); Committee on the Rights of the Child, Concluding observations of the Committee on the Rights of the Child: Poland, UN Doc. CRC/C/15/Add.31, (1995), para. 32; Committee on the Rights of the Child, Concluding observations: Republic of Korea, UN Doc. CRC/C/15/Add.197, (2003), paras. 56, 57(b); Committee on the Rights of the Child, Concluding observations: Tajikistan, UN Doc. CRC/C/TJK/CO/2, (2010), paras. 72, 73 (b)(d); Committee on the Rights of the Child, Concluding observations: Cuba, UN Doc. CRC/C/CUB/CO/2, (2011), paras. 54(a), 55(c).

¹⁵ Human Rights Committee, Concluding observations on the third periodic report of the Czech Republic, UN Doc. CCPR/C/CZE/CO/3, (2013).

¹⁶ Human Rights Committee, Concluding observations on the third periodic report of the Czech Republic, UN Doc. CCPR/C/CZE/CO/3, (2013), para. 20(a).

alia the right to the assistance of a counsel who may, if necessary, be officially appointed and paid by the state".¹⁷ According to the Council of Europe Recommendation no. 2003/20 concerning new ways of dealing with juvenile delinquency and the role of juvenile justice the juveniles while being questioned by the police "*should also have the right of access to a lawyer and a doctor. [...]*".¹⁸ The Council of Europe Guidelines on Child-friendly Justice provide that a child should be provided with access to a lawyer **whenever apprehended** by the police.¹⁹ In addition, the Guidelines stipulate that "*a child who has been taken into custody should not be questioned in respect of criminal behaviour, or asked to make or sign a statement concerning such involvement, except in the presence of a lawyer or one of the child's parents or, if no parent is available, another person whom the child trusts*".²⁰

15. **The particular importance of early access to legal assistance** has been emphasised also by the European Court of Human Rights in its jurisprudence related to juvenile justice. In *Blokhin v Russia* the Grand Chamber called early access to legal assistance as a procedural guarantee of the privilege against self-incrimination **and a fundamental safeguard against ill-treatment noting the particular vulnerability of a child at the early stages of the proceedings**.²¹

Compliance with Article 14 CAT

16. Further, the ICJ and the FORUM note that the present situation in Czechia also raises an issue of ability for children below the age of criminal responsibility to access legal counsel for the purposes of an effective remedy under Article 14 of the CAT. The juvenile justice proceedings and failure to adequately *protect* all children against any form of ill-treatment can be of relevance for any proceedings concerning allegations of ill-treatment in the hands of the police. Bearing that Article 14 of the CAT, as determined by the Committee, encompass all forms of redress, including guarantees of non-repetition, the ICJ and FORUM consider that failure to ensure presence of a legal counsel of children below the age of criminal responsibility in the pre-trial stage of the juvenile justice proceedings may also impair their capacity to enjoy the right to redress under Article 14 of the CAT. The Committee has underscored in its General Comment no. 3 on the implementation of Article 14 of the CAT, underlying "*the importance that appropriate procedures are made available to address the needs of children, taking into account the best interests of the child and the child's right to express his or her views freely in all matters affecting him or her, including judicial and administrative proceedings, and that the views of the child are given due weight in accordance with the age and maturity of the child. States parties should ensure the availability of child sensitive measures for reparation which foster the health and dignity of the child*".²²

Conclusion

17. Ensuring that children of *all* ages can enjoy access to a lawyer at the pre-trial stage of juvenile justice proceedings is critical to ensure a number of rights guarantees, including the right to a fair trial, freedom from arbitrary detention, and, the principal concern of the Committee against Torture, the right to be free from torture and cruel, inhuman or degrading treatment or punishment. This is necessary both for

¹⁷ Recommendation no. 1987/20 on social reactions to juvenile delinquency, para. 8. Available at:

<https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=608029&SecMode=1&DocId=694290&Usage=2>

¹⁸ Recommendation Rec (2003)20 of the Committee of Ministers to member states concerning new ways of dealing with juvenile delinquency and the role of juvenile justice, adopted on 24 September 2003, § 15.

¹⁹ Guidelines of the Committee of Ministers of the Council of Europe, adopted on 17 November 2010, § 28.

²⁰ Guidelines of the Committee of Ministers of the Council of Europe, adopted 17 November 2010, § 30.

²¹ ECHR, *Blokhin v. Russia*, app. no. 47152/06, Grand Chamber judgment of 23 March 2016. §§ 198-199.

²² UN DOC CAT/C/GC/3, para. 36.

preventative purposes under article 2(1) and 16 CAT, and for redress under article 14 CAT.

18. The ICJ and FORUM note that the existing legislation does not provide children below the age of criminal responsibility a defence counsel in the pre-trial stage, unlike in cases of juveniles and thus lets them particularly vulnerable to ill-treatment during the pre-trial stage of the proceedings. This situation concerns significant number of children, in particular 1273 in 2017 and constitutes a violation of the obligation to *prevent* torture or acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture under Articles 2 and 16 of the CAT.
19. The ICJ and FORUM therefore, request the Committee **to recommend that the Government ensure, at a minimum, that children under the age of 15 suspected of an unlawful act enjoy the same standard criminal procedural safeguards at all stages of criminal or juvenile proceedings as juveniles, in particular, the right to an appropriate defence in the pre-trial stage of the proceedings.**