SUBMISSION TO THE 108TH SESSION OF THE HUMAN RIGHTS COMMITTEE

REVIEW OF THE CZECH REPUBLIC

This submission written by the League of Human Rights aims to provide the Human Rights Committee with specific information relating to the List of Issues to be taken up in connection with the consideration of the Third Periodic Report of the Czech Republic.

League of Human Rights (LIGA)
Burešova 6, 602 00 Brno
Czech Republic
www.llp.cz
INTRODUCTION

1. This written submission provides information to the United Nations Human Rights Committee (hereinafter “the Committee”) with respect to the List of Issues raised by the Committee in connection with the Third Periodic Report of the Czech Republic under the International Covenant on Civil and Political Rights (hereinafter “the Government’s Report”).

2. This submission concerns relevant issues under the ICCPR with regard to the Czech system of juvenile justice. In the List of Issues, section 22., the Committee requests the Czech Republic to provide information on the age of criminal responsibility in the State party and how the State ensures that juvenile persons are treated in a manner commensurate with their age and are provided with appropriate assistance in the presentation and preparation of their defence during the pre-trial stage of criminal proceedings.

3. The Czech juvenile justice system differentiates between children below the age of criminal responsibility who are aged 0-15, and juveniles who are aged 15-18. The main problem is that children below the age of criminal responsibility are automatically denied access to various basic safeguards under the ICCPR. This submission aims to provide the Committee with appropriate information on how the Czech Republic complies with the obligations arising from the ICCPR, especially from the Articles 14 and 24 ICCPR, and particularly with respect to children below the age of criminal responsibility.

4. This submission has been written by the League of Human Rights (hereinafter “LIGA”). LIGA is a non-governmental human rights organization established in 2002 and headquartered in Brno, Czech Republic. Our vision is fair, free and engaged society for all. Since 2002, LIGA has been systematically promoting human rights in criminal justice, including children rights. LIGA is a member organization of Fédération Internationale des Droits de l’Homme (FIDH).

INFORMATION RELATING TO THE LIST OF ISSUES, SECTION 22.

1. The age of criminal responsibility in the Czech Republic

5. The official age of criminal responsibility in the Czech Republic is 15 years of age. Criminal offence committed by a child below the age of criminal responsibility is called an unlawful act. Children suspected of committing an unlawful act (criminal offence) are subjects to the first stage of standard pre-trial proceedings and subject to specific proceedings before the juvenile court under Juvenile Justice Act.

6. In this system, the police initiates standard criminal proceedings under the Criminal Procedure Code within which they carry out standard investigatory acts, including repeat interrogation of suspected child (usually at the police station), blood sampling, fingerprinting, extracting DNA, reconstruction and recognition. When the collected evidence justifies the suspicion against the child below the age of criminal responsibility, the criminal proceedings are terminated by the Police and the case is brought before the Juvenile Court. The pre-trial stage can last from several weeks to several years.
7. The following procedure before the juvenile court is not standard criminal procedure but civil procedure. However the juvenile court is authorised under the Juvenile Justice Act to impose one of the measures listed directly in the law. None of these measures are restorative and some of them are very restrictive and includes deprivation of liberty in educational facility or in a psychiatric hospital.

2. Failure to treat children below the age of criminal responsibility in a manner commensurate with their age

8. In the Czech Republic, even though the Juvenile Justice Act formally recognises restorative justice principles, these do not apply to children below the age of criminal responsibility. Unlike juveniles (aged 15-18), children under 15 years are subject to very paternalistic proceedings under the Criminal Procedure Code, Juvenile Justice Act and Civil Procedure Code. Children below the age of criminal responsibility are perceived as objects of care, rather than subjects with equal procedural rights. In particular, they do not have access to basic procedural safeguards, including the right of access to legal representation (see below paras. 10-11); victims are not involved the proceedings and none of the sanctions seek to restore disturbed relationships.

9. The Czech system of juvenile justice does not ensure the healing power accompanying full victim participation throughout proceedings against children below the age of criminal responsibility. Unlike proceedings against juveniles, the proceedings against younger children do not require active victim participation and also do not offer any real procedural possibility for the victim to take active part at any stage of the proceedings. Furthermore, children below the age of criminal responsibility are always subjected to judicial proceedings, including when committing petty offences. The law does not enable the prosecuting authorities to protect the child from potential harm caused by stigmatization before the juvenile court.

3. Failure to provide children below the age of criminal responsibility with appropriate assistance in the presentation and preparation of their defence during the pre-trial stage of criminal proceedings

10. As mentioned above in section 1., the proceedings against children below the age of criminal responsibility contains of two stages: i) the standard pre-trial stage held by the police and the public prosecutor’s office under the Criminal Procedure Code and ii) the judicial stage before the juvenile court regulated by the Juvenile Justice Act and the Civil Procedure Code. Very problematic is that children below the age of criminal responsibility are not provided with obligatory legal assistance earlier than for the judicial stage. Therefore, during the pre-trial stage, which in practice takes usually months, children below the age of criminal responsibility are routinely subjected to repeat interrogations by the police, fingerprinting, blood sampling and extracting DNA, reconstruction and recognition without presence of a lawyer.

11. Furthermore, in the pre-trial stage, children below the age of criminal responsibility are automatically excluded from possibility to access police file. This is due to the reason that they are not recognised under the Criminal Procedure Code as an entitled procedural party in the first phase of pre-trial stage.
RECOMMENDATIONS FOR THE STATE PARTY

1. Review the laws related to legal aid and access to file in criminal proceedings and ensure that children below the age of criminal responsibility are provided with the right to obligatory legal aid on equal basis with juveniles and the right to access the police file in the pre-trial stage.

2. Ensure that children below the age of criminal responsibility are dealt with without resorting to judicial proceedings whenever appropriate and desirable. Furthermore, ensure that restorative justice measures such as mediation between the child below the age of criminal responsibility and the victim and conferences with the family of the perpetrator are provided in cases when the child below the age of criminal responsibility is the perpetrator. Ensure appropriate victims participation in other stages of the proceedings.

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David Zahumenský
Chairman

Liga lidských práv (LIGA)
Burešova 6
602 00 Brno, Czech Republic
tel.: +420 545 210 446
fax: +420 545 240 012
e-mail: brno@llp.cz
APPENDIX no. 1:

Case studies

Interrogation of a child – at the mercy of the police
At the time of the interrogation D. was 14 years old. In addition, he suffered from ADHD syndrome which made him even more vulnerable. Despite of all these facts he was taken by the police from his home where he was alone to the police station for interrogation. He was forced to spend about four and a half hours under the control of the police and a child welfare officer, without being provided with legal or any other assistance. At first he refused to testify but then he succumbed to pressure from the police and the child welfare officer who intimidated him by placement in closed educational institution and confessed to all the acts he was suspected of. The following morning he had a nervous breakdown at school. In the afternoon the police and the child welfare officer came for him again and took him to the police station for interrogation on the same facts as the day before but this time as a witness in proceedings against his alleged adult accomplices. Nevertheless, the record of this testimony was used also as evidence in the proceedings against the child.

Extracting DNA in the pre-trial stage of proceedings held against a 14-year-old boy
J. was 14 when he allegedly committed an assault. Immediately after the incident he was detained firstly at the school director’s office and then taken to the police station where he was held for approximately 7 hours. During that time he was not allowed to contact anybody, he was interrogated without proper information about the right to remain silent, in the absence of a lawyer or his parents. He was also subjected to fingerprinting and extracting DNA, again in the absence of a lawyer or his parents.

Reconstruction in the pre-trial stage of proceedings held against intellectually disabled 13-year-old boy
P., a boy with serious intellectual disability, was 13 at the material time. He was suspected of having caused the death of another boy while they were playing together. He was subjected to an interrogation lasting four and a half hours during which he was brought to the scene of the incident and demanded to describe what had happened there and to demonstrate it on a mannequin. He was forced to testify even though he repeatedly expressed his will not to continue with the interrogation. The interrogation and reconstruction was carried out by the police in the absence of a lawyer.