



## **CHILD PARTICIPATION AS VICTIMS OR WITNESSES IN CRIMINAL CASES IN CZECH REPUBLIC**

**National Report for AIMJF's Comparative and Collaborative Research.**

*La participación de niños como víctimas o testigos en causas penales en la República Checa*

*Informe nacional para la investigación comparativa y colaborativa de la AIMJF*

*La participation des enfants en tant que victimes ou témoins dans des affaires pénales dans la République Tchèque*

*Rapport national pour la recherche comparative et collaborative de l'AIMJF*

Ministry of Justice Czech republic

**Abstract:** The paper is part of a collaborative research organized by the International Association of Youth and Family Judges and Magistrates (AIMJF/IAYFJM) on child participation as victims or witnesses in criminal cases. The article explains the legal, institutional and procedural aspects of child participation in the Justice System in Czech Republic.

**Resumen:** El documento es parte de una investigación colaborativa organizada por la Asociación Internacional de Juventud y Familia (AIMJF) sobre la participación de niños, niñas y adolescentes como víctimas o testigos en causas penales. El artículo explica los aspectos legales, institucionales y procesales de la participación infantil en el sistema de justicia en la República Checa

**Résumé:** Le document fait partie d'une recherche collaborative organisée par l'Association Internationale des Magistrats de la Jeunesse et de la Famille (AIMJF) sur la participation des enfants en tant que victimes ou témoins dans des affaires pénales. L'article explique des aspects légaux, institutionnels et procéduraux de la participation des enfants dans le système de justice à la République Tchèque.

### **Introduction**

The International Association of Youth and Family Judges and Magistrates (IAYFJM or AIMJF, in the French and Spanish acronym) represents worldwide efforts to establish links between judges from different countries, promoting transnational



judicial dialogue, in order to provide better conditions for a qualified attention to children based in a human rights approach.

To do so, AIMJF organizes research on international problems facing the operation of the courts and various laws relating to youth and family and training programs.

The aims of this research are to identify similarities and discrepancies among countries and to develop a cartography of how child participation as victims and witnesses in criminal cases is organized worldwide.

This national report is based on a questionnaire prepared by AIMJF.

## Questionnaire

### 1. Right to be heard

- 1.1. Are children presumed to be capable witnesses (or presumed invalid/untrustworthy by reason of their age alone, or similar)?
- 1.2. Are there any restrictions to the right to be heard (minimum age, or other criteria)?
- 1.3. Are children allowed to refuse to make a statement? If so, in which cases?

*In accordance with the Czech Criminal Code a child is a person under the age of 18. Everybody, including children and persons with mental and physical disabilities can be witnesses. There is no presumed incapability of children witnesses. However, for the purposes of the criminalistic practice of interrogation, the age of the child begins to be relevant around the age of three, for the reason that by this time the child is not fully aware of himself or herself or of the objective reality around him or her. There are specificities in the interrogation of child witnesses mainly because of their age and immaturity. General rules in regard to interrogation apply to children, meaning that in accordance with section 97 of the Criminal Procedure Code (Act No. 141/1961 Coll.)*



*everyone is obliged to appear and testify when summoned as a witness about matters know to them that are related to a criminal offence and its perpetrator or about circumstances essential for criminal proceedings. In certain cases witnesses have the right to refuse testimony:*

*– if a witness is a person related of the accused person in direct lineage, their sibling, adoptive parent, adoptive child, spouse, partner and companion,*

*- if it could cause danger of criminal prosecution to himself, his relative in direct lineage, sibling adoptive parent, adoptive child, spouse, partner and companion or to other persons in family or similar relationship to him, whose detriment would the witness perceive as his own.*

## **2. Broad perspective of the legal framework and procedure**

2.1. Is there a specific legal framework that defines how to treat child victims/witnesses of crime (e.g. special norms in the criminal procedural code, special child code, special victims code, etc)?

2.2. Is there any coordination between different role players (such as the police, education, social services, health system) to initiate legal proceedings and coordinate response (evidence collection and intervention), including avoiding multiple interviews of the child? Is there any flowchart in your country to coordinate these interventions? If so, could you please share it?

2.3. Can you briefly explain what are the major steps of the legal procedure in criminal cases (felonies) with child victims or witnesses involved?

2.4. In which moment(s) can a child be heard in this procedure?

2.5. Does the child have the power to initiate, suspend or terminate the criminal procedure (such as giving consent for the complaint or the possibility to refuse consent or revoke consent)? If so in which cases?

*As stated above there are specificities in regard to interrogation of child witnesses, the same applies also to the child victims. The specific provisions can be found in the Criminal Procedure Code and in the Crime Victims Act (Act No. 45/2013 Coll.).*



*The CPC provides for exceptions to the interrogation of persons under the age of eighteen if they are questioned about circumstances the reliving of which in their memory could, due to their age, adversely affect their mental and moral development. The interrogation must be conducted with particular care and in terms of its content so that the interrogation need not, as a rule, be repeated in subsequent proceedings. An authority of social and legal protection of children or other person experienced in the education of juveniles shall be brought in to assist in the proper conduct of the interrogation, taking into account the subject matter of the interrogation and the degree of mental development of the person being questioned. If this can contribute to the proper conduct of the interrogation, the parents may also be brought in. Such included persons may propose to postpone a procedural step to a later time and during execution of such a step may propose its suspension or termination, if performing the step or its continuation would adversely affect mental condition of the questioned person. If there is no threat of delay, the authority involved in criminal proceedings will comply with such a proposal.*

*The presence of the parents at the interview of a person under 18 years of age is therefore only optional and cannot replace the need to bring in a teacher or other person mentioned above. Furthermore, the presence of the parent(s) is excluded if the parents are also witnesses in the case, or are involved as victims or could even be prosecuted. The same applies if it can be concluded that a person under the age of 18 will not be able or willing to tell the truth in the presence of his or her parents. The questioning of a person under the age of 18 must be carried out in such a way that it is not necessary to repeat the questioning later in the proceedings. In practice, the interview is normally already carried out in the preparatory proceedings and should not be repeated at later stages of the proceedings unless necessary (the interview is audio-video recorder).*

*Special attention paid by the CPC to the questioning of persons under the age of 18 is further reflected in other provisions of the CPC (e.g., if an explanation is requested from a minor, the minor's legal representative must be notified of the act; this does not apply if the act cannot be postponed and the notification of the legal representative cannot be arranged).*

*The CPC also stipulates that a person under the age of 18 may be asked questions only through an authority involved in criminal proceedings (mostly the police). The aim is also to limit the repetition of interrogation of children, therefore the law specifically stipulates*



*that in further proceedings questioning/interrogation can be repeated only in necessary cases. In trial proceedings is possible, on the basis of a court decision, to produce evidence by reading a protocol or by playing an audio or visual record of questioning conducted by a video-conference device.*

*In regard to the children under the age of 15 and in accordance with the binding instruction of the President of the Police on activities in the field of youth, the interrogations should be carried out by specialists, e.g. police officers who have special training in dealing with juvenile. This applies not only to child victims and witnesses but also to child suspects. If possible the interrogation is carried out by police officers in civilian clothes. Acts with children under the age of 15 should not be carried out between 22:00 and 6:00, except for urgent or non-repeatable acts and cases of danger of delay.*

*There is coordination between the police and the authority of social and legal protection of children and educational staff and if necessary with medical assistance, or psychologists.*

### **3. Preparation for the child participation**

3.1. Is there in your country specific child-friendly information material for children as victims or witnesses (e.g. brochure, video etc)? If so can you please share them?

3.2. How do children have access to these materials? (e.g. brochure available at police station/court; brochure sent to the child together with summon; witness preparation conducted in court with support of a video, or with support of a special professional; investigator/judge orally explaining in child-friendly language before interview/hearing, or any other?) How long before the interview/hearing does this happen?

3.3. Is there any assessment of the child conducted before a child is interviewed/heard? If so, what is assessed / for what purpose (e.g. background and circumstances of child; whether the child would be able to speak freely; capacity of child to express him/herself; capacity to participate, if uncertain; capacity to handle interview and possible effects; potential vulnerabilities and special needs, etc)? If so, what is the legal background of



their professional conducting this assessment? To which institution does this professional belong? Is there any kind of report produced? t

3.4. Is there any kind of contact or evaluation with the parents or legal guardians?

3.5. Is the child allowed/invited to visit the facilities where he or she will be heard prior to the interview/hearing?

3.6. Does the child receive any kind of support prior to the interview/hearing (psychological, social, medical, legal)?

*During the first contact with the child victim the Czech Police assess the needs of the child in order to provide them with the best support. The Police uses the so called manual for the identification of particularly vulnerable victims (child victims are also included). At the beginning the Police must also ensure that other parties are present for the interview as stated above (legal guardian, authority of social and legal protection of children, possibly other educational personnel, psychologist, medical personnel, etc.).*

*The interview with the child is lead in the special interrogation rooms that are available at more than 80 police station throughout the country (for more see below).*

*There are also specific provision regarding the protection of all particularly vulnerable victims, including child victims in the Crime Victims Act. Section 20 stipulates that interviewing such victim in criminal proceedings must be done in an especially sensitive manner and with regard to the specific circumstances making the person particularly vulnerable. If possible, a person with the relevant training should conduct the interview of particularly vulnerable victims in pre-trial proceedings in rooms adapted or adjusted for this purpose. If the victim is a child, a person with the relevant training shall always conduct the interview with the exception of cases when the action cannot be delayed and it is not possible to find a trained person. The interview of a particularly vulnerable victim is performed so that it need not be repeated later. In the case of another interview before the same authority, the one performing the interview is generally the same person, if important reasons do not prevent this. If a particularly vulnerable victim does not wish to have immediate visual contact with a person suspected of committing a crime or with a person against whom criminal proceedings are being conducted, if not prevented by*



*serious reasons, necessary measures are applied in order to prevent such visual contact, especially audiovisual technology is applied if technically possible. It is meanwhile necessary to ensure that the right to a defense is not violated. There are also further rights such as: providing information in the language victim declares that he or she understands; separating personal data from the official file so that only authorized authorities can familiarize themselves with them; preventing contact with the offender, etc.*

#### **4. Protection and Support**

4.1. Is there any risk assessment conducted for the child victim/witness after a crime has been reported? If so, who conducts it? Is there any specific tool? If so, can you share it please?

4.2. In case of identification of risks, what kind of protective measures are available in your country?

4.3. What kind of support measures are available for child victims / witnesses of crime (psychosocial, medical, legal) before, during, after the judicial process)

4.4. In case of intrafamilial violence, which measures can be / are usually adopted to grant the child's security? Is there any/which kind of support offered to the remaining members of the family? Are there any specific measures in case of child abduction or child kidnapping?

*Above to what has been stated in the previous question, part of the assessment of the child is to ensure their security. If there is imminent danger, these protective measures may be taken: concealment of identity, provision of short-term protection, special protection, emergency-barring order (expulsion of a person from the common household), issuance of a preliminary measure in criminal proceedings in relation to the offender or issuance of a preliminary measures in civil proceedings. There are available support measures depending on the state of the child in the form of legal, psychological, social, medical. There are specialized NGOs helping children even if the criminal proceedings is terminated or has not even started. They are able to provide the child and usually also the legal guardian (non-violent parent) with all the necessary assistance. For intra family violence the mostly used measure is the emergency barring order in the form of eviction*





*of the offender. There are also measure in the form of providing shelters, even with hidden address that are available for the child and non-violent parent.*

## **5. Environment**

5.1. In which institution/what kind of environment is the child interviewed/heard in pre-trial/trial phase?

5.2 Is there any specificity in this environment to adapt it for children? (e.g. separate ‘building’ specifically for children; non child- specific building, but separate entrance for children; separate interview/hearing room for children)

5.3. Are there guidelines for the environment where the child is interviewed/heard? (architecture, setting)? If so can you please share it? Can you share a photo of this space?

5.4. Is there a specific waiting area for the child?

5.5. Are there protection measures to avoid direct contact (including visual) between the child and the alleged offender? if so what kind? ( e.g. separate entrance, separate waiting area, separate interview/hearing rooms, use of video link, voice or image distortion etc)

5.6. In case identification of the offender is needed, how is this conducted, and where?

5.7. If the child lives in a different city in relation to the city where the proceeding is tried, what are the specificities at stake?

5.8. Is it possible in your country that the interview is conducted virtually (the child and the interviewer are in different places)? In which circumstances? Are any / which special security measures (are) adopted?

5.9. Must a child appear in court to be interviewed or are recorded investigative interviews admitted as evidence in court? If the child has to appear in court, which circumstances are determinant?

*The children are usually interviewed in the so called special interrogation room which is basically a complex of several rooms, at least two. These rooms are separated from each other but at the same time connected by audio visual technology. The room in which the actual interrogation takes place is equipped to give a calm and comfortable feeling. Microphones and cameras are placed in the room to record the interrogation.*





*The sound and video are transmitted to a second room, called the monitoring room. Here there are technical facilities - a video recorder with high quality recording, a computer, speakers, microphones and other essentials for the entire recording of the interrogation. In this room, the persons who must be present by law, such as the judge, the public prosecutor, a psychologist, an employee of a child welfare authority, a legal representative, etc., take part in the interrogation. These persons may ask questions over the microphone so that the interview does not have to be repeated. These rooms are available for use also for judges if further interview with the child is necessary. These videorecorded interviews are admissible as evidence in court. They are used in order to minimize the secondary victimization of the child.*

*The interview can be done also in the primary school, pre-school, or at home of the child – the specific circumstances of the case must be taken into account.*

*However, the CPC stipulates that all questioning of children under the age of 18 can be done only through an authority involved in criminal proceedings.*

*The interviewer can also use during the interview/hearing especially accommodated puppets or other means that help with the interview (playground, books, etc.).*

*The interview with the child is recorded so that it does not have to be repeated over again in the later stage of proceedings.*

## **6. Specific legal guarantees for the child**

6.1. Does the child have the right to legal assistance? for free? Is this assistance specialized? At what moment does this assistance come in (e.g. already advising whether or not to report a case / during the first interview / only in court / other)

6.1.1 What is the role of the legal assistant (representing views of child or best interests of child; advising the child; talking on behalf of the child; ...)?

6.2 Does the child have the right to be accompanied by a support person? If so, what is the role of this person? What is this person entitled to do in support of the child?

6.3. What is the role of parents/legal representative?

6.3.1 When are parents/legal representative excluded (e.g. perpetrator, exploitative, intimidating/influencing, non-supportive, conflict of interests...)?



6.3.2. If excluded, is there another legal representative appointed/ if so by whom?

6.4. What kind of measures are adopted to grant the right to privacy / confidentiality (public excluded / in all cases / in which cases? press statements so that child can not be identified?)

6.5. Is the child allowed to plea for cautionary measures?

6.6. Does the child have the right to appeal any decision?

*If a child becomes a victim, they are regarded as a particularly vulnerable victims and further assistance is therefore provided to them. In accordance with the CPC (sections 50-51a) they are in all cases entitled to legal aid provided by the agent (lawyer) free of charge. Agent is a person who represents the victim during the criminal proceedings. Agent is entitled to make proposals and submit petitions and appeals on behalf of the victim, they are also entitled to participate in all actions in which the victim as a party to the proceedings could participate.*

*According to the Crime Victims Act child victim has also the right to be accompanied by the a confidant (above the representation by the agent). Confidant can accompany victim to actions of criminal proceedings and to submittal of an explanation. He or she provides the victim with necessary, mainly psychological(emotional) help. The confidant cannot interfere in the course of the action.*

*The CPC provides that no person may, in connection with a crime committed against a victim, in any way disclose information that would enable the identity of the victim, who is a person under the age of 18, to be ascertained. The publication of images, visual and audio recordings or other information on the proceedings of the main trial or public session that would enable the identity of such a victim to be established is prohibited. A final judgment may not, in principle, be published in the public media with the name, surname and place of residence of such victims. Information covered by the prohibition of publication may be published to the extent necessary for the purpose of tracing persons, for the purpose of criminal proceedings and, in addition, where the public interest so justifies, where it outweighs the right to protection of the privacy of the person concerned or where the person to whom the prohibition of publication relates has given his consent to the publication of the information.*

*As stated above presence of parents during the interrogation of the child victim is only facultative. The presence of the parent(s) is excluded, e.g. if the parents are also*



witnesses in the case, or are involved as victims or could even be prosecuted. The same applies if it can be concluded that a person under the age of 18 will be unable or unwilling to testify truthfully in the presence of his or her parents. As stated above to represent the interest of the child, there is always present authority of social and legal protection of children. If the legal guardians (parents) cannot exercise their rights, another guardian is appointed for the child for the purpose of criminal proceedings (usually a person from the authority of social and legal protection of children).

If the victim is a party to the criminal proceedings than he or she has the right to appeal against a judgment in case he or she applied his or her claim for compensation of damage or non-material harm or for the surrender of unjust enrichment, for the inaccuracy of the verdict on the compensation of damage or non-material harm or for the surrender of unjust enrichment.

Children have the same rights as adults also in case of cautionary measures. However, the plea for cautionary measures is usually submitted for the child by the legal guardian, agent or other appointed guardian.

## **7. Interviewing structure and procedure**

7.1 Who hears the child victim/witness in the pre-trial phase / who in the trial phase? How often is a child usually heard in total (pre-trial and trial)? Does the law limit the total number of interviews/hearings conducted?

7.2. Is it mandatory that this professional has specific training for child interviews?

7.3. Is any kind of interview protocol adopted in your country (pre-trial and/or trial stage)? If so, which one? If so, could you please share it?

7.4. Who is allowed to participate in the interview/hearing? Who is sitting in the same room as the child / who is sitting in another room, if any?

7.5. Who is addressing the child victim/witness: only the interviewer? cross examination allowed? if only the interviewer, how can other participants ask questions? How is the communication between those who follow the interview and the interviewer? What kind of communication tool is used?

7.6. Is the interviewer allowed not to ask the questions raised by others? Is the interviewer allowed to rephrase the questions raised by others?



7.7. Is the interviews audio and video recorded, if so for what purpose (accuracy of statement, use as evidence in court, use in other courts, other)?

7.7.1. In case the recording is admitted as evidence in court: what protection measures can be applied (e.g. image and voice distortion, child heard in a separate room etc)?

7.8. How is the quality of the recording? In case of failure in the recording, what are the measures adopted?

7.9. If no audio/video recording: is the child allowed to review his or her statements and to correct them? Is the child/legal representative allowed to get a copy of written statement / recording?

7.10. If there is a special procedure for hearing child victims and witnesses, is it mandatory for the child to participate in such a way or has he/she the right to choose to be heard as any other victim or witness? Are there still adaptations in this case?

*The aim is to limit the number of interviews to the minimum. There is however no law limit of the total number. The interview is usually done in the pre-trial by a police officer who has experience and training in interviewing children. During the interview is present an authority of social and legal protection of children or other person experience in education of juveniles. The interview is usually videorecorded in order to be used in the latter stage of proceedings and not necessarily repeat the questioning of the child, therefore minimizing the secondary victimization of the child. The child under the age of 18 can be addressed only through an authority involved in criminal proceedings. The interviewer is allowed to rephrase the questions raised by others e.g. counsels in order to “translate” the question in a language the child can understand. Maturity of the child is always taken into account.*

*For more details see in other responses.*

## **8. Offender’s right during or after the interview**

8.1. Is the alleged offender allowed to participate in the interview of the child witness? Is his/her defence attorney allowed to participate? Is participation of either of the two mandatory?

8.2. If the offender is not present during the interview, how can he or she make additional questions to the child? How can he or she contradict the child’s statements?



*In the case of the questioning of a child witness, if he or she is questioned about circumstances whose recollection in his or her memory could disrupt psychological and moral development, the rule applies that evidence in court proceedings can be provided by reading the protocol or playing an audio-visual recording. So in the further process it is not possible to make additional questions to the child.*

*However, if the child is interviewed, the alleged offender, or usually his or her counsel is present. The presence is not mandatory. All questioning of children under the age of 18 can be done only through an authority involved in criminal proceedings which means that if the counsel or alleged offender have questions they must be asked through an authority involved in criminal proceedings.*

## **9. Parallel proceedings – coordination**

9.1. In case of parallel proceedings (such as in family or child protection procedures) based on the same facts, is it clear who has the priority to conduct the interview?

9.2. Is there any coordination procedure between different courts/authorities? How is the coordination procedure?

9.3. If another court/authority has not participated in the interview and needs additional information, is this court/authority allowed to interview the child again? And/or can interviews be shared (who can share with whom)?

*The interests of criminal and civil proceedings are different and the outcome of those proceedings is also different. There are different procedural systems and also the admissibility of the evidence can vary. The difference can be found also in hearing/interviewing of person. Questions aim at other areas and target other answers, as other interests need to be taken into account.*

*Specific processes are dependent on the exact proceedings that are lead. Usually, there is simultaneous/parallel proceedings in case of e.g. domestic violence – in such case criminal proceedings are started and in order to ensure also longer protection prior (than just the emergency barring order that is issued by the police for the maximum period*

*of 7 days) for the victim, resp. child victim, the court, in this case civil court, can decide on preliminary decision to evict the offender from the common household. This measure shall expire no later than 6 months after its enforceability. Since, this decision is meant to ensure the safety of the victim, the court must decide on the proposal within 48 hours. The decision is made without any hearing, therefore also no further interview is conducted. The process can also start visa versa – firstly there is proposal to the civil court for preliminary measure and afterwards e.g. the criminal complaint is filed.*

*If there are parallel proceedings e.g. in cases of preliminary measure relating to the circumstances of the child, the proposal to court to ensure that a child is placed in a suitable nevironmnet can be done only by the authority of social and legal protection of children. In this case this authority usually coordinates also with the authorities involved in the criminal proceedings.*

*If the intent is to immediately secure the safety of the child, the decisions by the civil court (for protection) are made within days. In these cases no further interviewing of the child is made. If, however, the decision should concern long lasting situation – e.g. decision on the parental responsibilities, in these cases interviewing the child is usually part of it.*

## **10. Training**

10.1. Are judges and magistrates trained to deal with child victims?

10.2. Is the content of the training interdisciplinary? Do other professionals also participate in the same training?

*There are available trainings for the judges on various topic – victims of crime, interrogation of children. These trainings are usually available for judges and public prosecutors. There are also specialized trainings available to police.*

## **11. Reforms in progress**

11.1. Are there reforms in progress in your country regarding child's victim rights, the procedure among others? What is the aim and the main subject of it?



*No current plans for reforms.*