

LEGAL EMBEDMENT OF CHILDREN'S PARTICIPATORY RIGHTS IN THE CZECH LEGAL CODE

Jana Borská¹, Sylva Švejdarová²

¹University of South Bohemia in České Budějovice, Faculty of Health and Social Sciences, České Budějovice, Czech Republic

²Czech University of Agriculture in Prague, Prague, Czech Republic

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Abstract

In the past three years, the Czech Republic has made far-reaching interferences in the legal regulation of socio-legal protection of children. In particular, children's rights have been strengthened, and new legal means assisting their protection have been established. With the adoption of new legal regulation of family law (which is comprehensively regulated by the Civil Code Act No. 89/2012 Coll.), a new procedural regulation has also followed, which deals with procedural ordinances connected with the protection of minor children, and a new act on special court procedures has been adopted. This extensive legal regulation has been a reaction to the elevated need of child protection, the necessity of which was evident in the periodical evaluations of the reports on the implementation of the Convention on Children's Rights in the Czech Republic. The increased children's rights protection, including the participatory right, was implemented in the new legislation, which became binding on 1 January, 2014. The purpose of this paper is to define the implementation of the children's participatory right into the new legal regulation in the Czech legal code, with a focus on the connection between such legal regulations, regarding the socio-legal children's rights protection authority (SLCRPA), and the courts in civil procedures, with respect to the differing roles and positions of the SLCRPA and courts in guaranteeing child protection. We have carried out a comparative analysis of legal texts from the point of view of implementation of international documents. The examined home legislation included the Act No. 359/1999 Coll., on Socio-Legal Child Protection, Act No. 89/2012 Coll., the Civil Code, Act No. 99/1963 Coll., the Civil Proceedings Code, Act No. 292/2013 Coll., on Special Court Procedures and the practical impact of such legislative regulation.

Key words: *minor child, children's rights protection; child protection authority; guardianship courts; children's participatory rights*

INTRODUCTION

Generally, all signatories to the Convention on Children's Rights (hereinafter Convention) are obliged to regularly evaluate the implementation of the Convention and report regularly on it to the relevant country. This article deals with children's participation in court processes,

the international legal regulations of such participation and the implementation of this regulation in the home legal system of the Czech Republic. It is necessary to point out that a similar summary is both domestically and internationally highly regarded, because so far *"surprisingly little is known about what children want and if their wishes correspond with what*

they actually receive" (Vis and Fossum 2013, p. 2103).

The Czech Republic is a signatory to the Convention, which was adopted in our legislation more than 20 years ago. Child protection, especially the respect for children's rights and the system of care for threatened children, is still being criticized by European and international authorities due to the fact that, particularly in practice, it shows minor deficiencies. The attitude to children's rights and their fulfillment is subject to debate by the professional and non-professional public, which resulted in the legal reform of the system of care for threatened children (Macela et al. 2015).

The legal establishment of participatory rights of minors in international and European documents

The key document is the Convention on Children's Rights, which brought a new view of the child as a legal subject, which ceases to be perceived as a passive object of protection, but becomes an active participant who has the right to express their opinion, and has the right to be heard and informed about all matters concerning them. Vis and Fossum (2013, p. 2101) summarize current practice by saying that *"children's participation in decision making is of practical importance and it contributes to decisions effective for children, but it is also seen as valuable, regardless of the practical results"*.

These rights have officially been acknowledged and states that have ratified the Convention on Children's Rights are required to ensure the observation of its terms and to create conditions for its implementation on their territory. So it is not a mere declaration of rights, but a formal commitment validated by an international treaty so that the Convention be respected, implemented and its fulfillment monitored through regular periodic reports.

Among other things, the Convention also relates to the Declaration on Children's Rights adopted by the General Assembly of the United Nations on 20 November, 1959, which changed the view on the child so that *"for its physical and mental immaturity, it needs special guarantees, care and appropriate legal protection before as well as after birth"*.

Che Soh (2014, p. 35) says that *"in many jurisdictions, the participation of children in family law decision making is seen as more and more important while ascertaining a child's best interest"*.

In par. 1 Article 3, the Convention states: *"The child's best interest must be the primary consideration in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies."*

Bilson and White (2005, p. 221) add to Article 3 that *"it is considerable that this Article deals with ensuring that authorities act in a child's best interests and adjusts its procedures to this purpose"*.

Donnelly (2010, p. 184) notes that in accordance with Article 3 of the Convention *"a child's best interests must be understood as the most important criterion in any decision"*, while *"the exact meaning of this Article resulted in long debates, and its various interpretations are between the strict paternalistic concept emphasizing child protection and the liberal view which sees children's autonomy and the right to independence as valuable"*.

The child's right "to be heard" is embedded in the Convention on Children's Rights in par. 1, Article 12 of the Convention: *"States acting as parties of the Convention must ensure a child that is capable of forming its own views the right to express those views freely in all matters that affect it, where these views must take its age and intellectual level into account"* and par. 2, Article 12 of the Convention continues: *"For this purpose in particular, a child must be provided the opportunity of being heard in any judicial or administrative procedures affecting the child either directly or through a representative or an appropriate body, where the way of hearing must be in accordance with the procedural rules of the national law"* (Jirsa et al. 2014, p. 124).

Bilson and White (2005, p. 222) commented on the importance of Article 12 so that *"this Article will focus on ensuring that a child is heard whenever it has a view, regardless of its age and maturity, and that the age and maturity is taken into account only to the extent which is attributable to the child's view"*.

Woodhouse (2014, p. 358) mentions that Article 12 of the Convention has been “a global impulse to formalize a child’s right to participate in court procedures. Even in the United States, where the Convention has no legal significance, the idea that children should have a say in matters that concern them has started to gain influence”.

The EU Fundamental Rights Charter’s (2000) Article 24 regulates children’s rights as follows: “Children have the right to protection and care necessary for their wellbeing. They may express their views freely. In matters that concern them, these views must be taken into account with regard to their age and maturity. All meetings, whether by public or private institutions, must be conducted primarily with regard to a child’s higher interests.”

Participatory children’s rights are regulated in detail by the European Convention on the Execution of Children’s Rights, adopted in Strasbourg on 25 January, 1996, where Article 3 states: “A child who, according to the national regulations, has sufficient understanding of a situation concerning it in a court procedure will be guaranteed the following rights and will be allowed to claim them:

- a) to get relevant information;
- b) to be consulted with and be able to express its view;
- c) to be informed about possible consequences if its opinion is complied with, and about possible consequences of any decision.”

Furthermore, Article 4 comprises the “Right to request the appointment of a special representative”, and a very important participatory right is expressed in Article 5 of this Convention, where there are additional procedural rights: “The Parties must consider granting children additional procedural rights in court procedures affecting them:

- a) the right to require help of a proper person by their own choice, who would help them express their view;
- b) the right to require a representative by themselves or with the help of a proper person, or, if needed, an advocate;
- c) the right to determine their own representative;

- d) the right to exercise some or all rights of a participant of a procedure” (The European Convention on the Execution of Children’s Rights 2001).

This consideration of a child’s views is in the first place among the factors which must be taken into account when assessing a child’s best interests.

The Committee on Children’s Rights in General Comment No. 14 states that “the fact that a child is very small or vulnerable (e.g. it is disabled, belongs to a minority group, is a migrant etc.,) does not deprive it of the right to express its opinions, nor does it minimize the importance of its views when ascertaining its best interest. Establishing specific measures to guarantee the fulfillment of equal rights of children in such situations must be assessed individually, which would ensure the role of children in their own decision-making process, and if necessary, set an appropriate adjustment” (Macela et al. 2015, pp. 90–91).

A child’s right to “be heard“, was issued the General Comment No. 12 by the Committee, which included a legal analysis of the legislation and its application in different countries, as well as in different environments; in a family, in foster care, in health care, in education, while playing, during recreation, sports, cultural activities, in employment, in connection with violence, in developing prevention strategies, in processes related to migration and asylum policy and in emergency situations. Basic requirements for applying this law have also been specified. Especially here, the principles of the implementation of a child’s right “to be heard” have been formulated, which should be “child-friendly”. In fact, these principles are projected in the situations where the environment and working methods should be adjusted to create a safe environment of trust, and they should also be given sufficient time so that the child can truly express its opinion based on pre-given information on the matter. With respect to the above, the form of child support in learning its opinion must be dependent on both its age and mental and ethical maturity. Although the above rights are related to court procedures, it is possible and desirable to also use them in the interpretation of the commented legislation.

This legislation is essential in the activities of the socio-legal protection – specifically in its role as a public procedural guardian in court procedures, as it should focus on observing the child's procedural rights in a particular procedure.

The implementation of the above-mentioned international instruments in home legal codes is often very problematic. For example, James says that in Britain *“the courts are reluctant to add importance to children's wishes and feelings”* (James 2008, p. 60). Pölkki et al. (2012, p. 110) say that, in the Nordic countries, the ratification of the Convention was an important step towards strengthening children's rights protection. At the same time, however, they warn that a child's participatory right is not yet fully implemented in childcare politics. Vis and Fossum (2013, p. 2108) describe how the influence of children's wishes on decisions regarding childcare is always different, even though the current legislation protecting children regulates that children's opinions are compared to what is in a child's best interest.

Participation and a child's best interest

The Convention on Children's Rights is referred to as the three “P” convention – provisions (collateral development), protection and participation (a child's active participation in the decision-making process). The three substantive conditions of participation are that the child is able to form its own opinions, the child's age and maturity to understand the meaning and the consequences of its views. The relationship between the participatory right and a child's best interest can be perceived as two sides of the same coin. The principle of a child's best interest (Article 3 of the Convention on Children's Rights) sets the target, while the participatory right (the right to be heard in court procedures) provides the way it can be achieved. The child's best interest in a process involves the court's decision making, which often deals with conflicting interests of the parties, and takes into account the child's best interest to reach stable and long-term solutions.

Changes in the Czech legislation

The newly adopted legislation criticized the definition and fulfillment, as well as

children's rights protection in the Czech Republic. The essential element in ensuring the children's rights protection within its jurisdiction, with reference to the pr. Act No. 359/1999 Coll., is the municipal authority with extended jurisdiction, which ensures the dispensation of the public administration regarding minor child protection and has the role of the authority of the socio-legal child protection. The explanatory memorandum to the Act No. 359/1999 Coll. states: *“The socio-legal child protection ensures a child's right to life, its positive development, parental care and family life, identity, freedom of thought, conscience and religion, education, employment. It also includes child protection against any physical or mental violence, neglect, abuse or exploitation. Child protection thus includes a comprehensive set of protection of rights and a child's legitimate interests, and is, therefore, adapted in various legal branches and regulations. It thus creates an activity of a number of authorities, legal entities and individuals, depending on their province. Child protection and ascertaining its rights is reflected in the legislation of family law, social, educational, health, tax, civil, criminality, etc., and it also shows the range of entities that implement it. It is clear from this fact that child protection legislation cannot be included in a single legislative act. It is necessary, however, that, for authorities executing socio-legal protection, a legal presumption be created, which, in accordance with the Charter on Fundamental Rights and Freedoms and the Convention on Children's Rights will enable them to realize the socio-legal protection effectively”* (Macela et al. 2015, p. 2).

A specific amendment to the participatory right of minors is implemented in Act No. 359/1999 Coll., on child protection, particularly in § 8 par. 2 of this Act, which states: *“A child who is capable of forming their own views has the right to express those views freely when discussing all matters that concern it, even without the presence of its parents or other persons responsible for the child's upbringing. The child's view is seriously taken into account in all matters concerning it, with regard to its age and intellectual maturity. In its activities, the socio-legal protection authority takes the child's wishes*

and feelings into account with regard to its age and maturity, so as not to endanger or disturb its emotional and psychological development." In § 8 par. 3 of the Act, it is set that *"the child, with respect to its age and intellectual maturity, who is able to assess the scope and the significance of the decisions arising from judicial or administrative procedures in which it participates, will receive information on all serious matters relating to its person from the socio-legal protection authority; a child older than 12 years is considered to be able to understand the information given by the court or any other authority, to form its own views and communicate them"* (Macela et al. 2015, p. 88). It is a direct connection to embed a child's participatory right, which is one of the fundamental human rights. From the perspective SLCRPA, a child's participatory right is applied so that it really is an equal partner in the protection of its rights. Therefore, the child has a firm right to freely express its opinions, feelings and wishes on all matters relating to it with regard to its age and intellectual maturity. There is an obligation to respect the child's opinion, possibly explain the effects of its opinion, and the child protection authority is obliged to inform the child about serious matters that concern it. The age limit of 12 years assumes that the child is able to understand the information and present its views.

Procedural amendment, in general, is reflected in a civil level to the provisions of § 100 par. 3 of the Act No. 99/1963 Coll., which states: *"In the proceedings, where a participant is a minor child who is capable of forming opinions, the court will proceed so that its views on the matter are clear. The court can ascertain the child's view by questioning the child. The court may, in exceptional cases, clarify the child's view through its representative, expert opinion or a competent child protection authority. The court may question the child without the presence of others if their presence is expected to affect the child so it would not express its true view; the presence of a child's fiduciary who is not its legal representative and whose participation in the interrogation is asked for by the child, may be overruled by the court only if their presence thwarts the purpose of the questioning. The court*

takes into consideration the child's view with regard to its age and intellectual maturity."

This is a general provision which governs the judicial process while ascertaining the opinion of a minor child who is a party (Jirsa et al. 2014, p. 125). The court, as the authority deciding on the child's rights and obligations, is obliged to ascertain the child's opinion with the set procedure. The first mentioned is questioning the child. This provision is mandatory in nature. It is further stipulated that the child's opinion may be ascertained, in exceptional cases, through a representative, expert opinion or a competent SLCRPA. The questioning of a child should certainly not be replaced with applications for ascertaining a child's view by a socio-legal protection authority, which is in regular contact with, and has full documentation on the minor child. It certainly was not the intention of the legislators for the court to replace questioning a child in this way. On the contrary, ascertaining a child's views by being questioned by a judge should serve to children's protection – it is a verification by the court whether it is possible that the child's views presented before the SLCRPA have been affected by other factors that might have modified the child's view. The interval between a court procedure and a child hearing by the SLCRPA also plays an important role. The time interval may have an influence on a child's view. In addition, transferring the responsibility for ascertaining a child's view to the SLCRPA during a court procedure is a step that accelerates the court procedure, but may be considered as a possible disclaimer of an independent court hearing if ascertaining the child's best interests is based only on the findings of the SLCRPA and the facts are not ascertained by the court alone. The court has the right to exclude others from a hearing if it fears that their presence could affect the child so that it may not express its true opinion. If this happens, the new legislation grants the child the right to choose a fiduciary who is not its legal representative, who is present in court during ascertaining the child's opinion. The fiduciary chosen by the child, may be excluded by the court only if their presence thwarts the purpose of the questioning. The question is who should inform a minor child about the possibility to choose a fiduciary. The child should know about this possibility

before a court procedure in order to consider whether to choose the presence of a fiduciary. A minor child's interests are defended by the SLCRPA, so it should inform the child about the possibility of choosing a fiduciary, and it should do so in advance. If a child requests the participation of a fiduciary in court, the court should adjourn the hearing and grant the minor child's request, and the SLCRPA, defending the child's interests, should support it. It is certainly in the minor's best interest to be able to use this possibility after being properly informed.

The special amendment, which is always a priority, is the pr. § 20 par. 4 of the Act No. 292/2013 Coll., which stipulates that: *"In the procedures where a participant is a minor who is able to understand the situation, the court proceeds so that the minor receives the necessary information about the procedure and is informed of the possible consequences if its view is accommodated, and the consequences of the court's decisions"* (Svoboda et al. 2015, p. 990). The amendment stipulated in the pr. § 100 par. 3 of the Act No. 99/1963 Coll., and the special amendment in § 20 par. 4 of the Act No. 292/2013 Coll., are oriented to fulfilling a child's procedural rights according to Article 3 of the European Convention on the Exercise of Children's Rights. Despite the fact that both provisions are very closely related, each of them has its own content and space during a procedure. While pr. § 100 par. 3 of the Act No. 99/1963 Coll. concerns the procedure of the court before issuing a decision in the matter, pr. § 20 par. 4 of the Act No. 292/2013 Coll., governs the court's duty to explain to the child the consequences of the procedure and the decision that was issued. It is about the actual impact of the process and its outcome, in which the view of a minor is ascertained and taken into account. These are specific instructions for a minor child and need to be direct, specific, "tailored to the participant's needs", but at the same time, they must be extremely sensitive and understandable. A minor's rights are specifically adjusted regarding enforcement, in pr. § 497 par. 4 of the Act No. 292/2013 Coll., which states: *"With regard to the age and intellect, the child is informed of the reasons and all the steps associated with the execution of a decision. With regard to the child's intellectual and emotional ties, it*

will be explained the reasons which led to the execution and receive answers to questions concerning the procedure" (Svoboda et al. 2015, p. 990). It regards the implementation of the pr. Article 3 of the Convention on Children's Rights, where ascertaining a child's best interest lies in the cooperation between the court and a child protection authority. As part of the enforcement, it is necessary to pay particular attention to a child's personal rights, with reference to the pr. Article 19 of the Convention on Children's Rights, or a child's rights to express its own opinion. The child here can be either a party in the procedure or just the object, which depends mainly on the stage of the executive procedure. In such a case, the court, together with the SLCRPA, will use a consultant, e.g. a psychologist.

Furthermore, the Czech legislation acts in the interest of a minor according to the pr. § 867 par. 1 Act No. 89/2012 Coll., which states: *"Before making a decision that affects a child's interests, the court must give the child the necessary information so that it can form its own opinion and communicate it."* Par. 867 § 2 of the above mentioned law then states: *"If the court finds that a child is not able to form its own opinion or it is not able to communicate the opinion, the court will inform and hear the person who is able to protect the child's interests. They must be a person whose interests are not contrary to the child's. **A child over twelve years is considered to be able to understand information, form its own opinion and communicate it. The court pays due attention to the child's opinion.**"* This especially concerns the implementation of Article 12 of the Convention on Children's Rights. The child's right to express its opinion and the right that it be taken into account is taken into account by the fact that a child develops gradually. Depending on the degree of a child's development, especially the intellectual development, its ability to independently make decisions for itself increases. The participatory law guarantees a child to express its opinion on the issues that concern it directly. It partly allows it to equalize the unequal status with parents or a guardian. **A child's right to be informed can be considered as the lowest level of participation. A higher level is granting the right to express views**

and using these views to possibly influence the decision. The Civil Code amends both the right to be informed by the child's parents and the right to "be heard" by authorities. The court's obligation to inform precedes the child expressing its opinion and communicating it to the court. A child should be informed in sufficient quantity and with regard to the child's age and maturity. According to the explanatory memorandum, the information should be provided in such quantity and quality so that a child could make its own opinion on the matter, based on the previous information (and communicate it as well). It should also be given advice and explained about the consequences of its statement. The decisive prerequisite for expressing a child's view is the **ability to formulate its views with regard to age, stage of development and intellectual maturity.** The lowest age limit for this is 12 years, when it is considered that a child who reaches that age is able to understand information and the issues concerning it, to create its own opinion and communicate it properly to the court. From the legal point of view, it is a rebuttable presumption, that is, if the court finds that a child older than 12 years is not able to formulate its opinion, it is necessary to hear another person. In that age, the court should assess each child individually on whether it is able to create an opinion and express it adequately. Therefore, the court will inform and hear a younger child as well if it is able to formulate its opinions. In this case, what turns the scales is not the content of a child's opinion, but the child's definitional skills. From a procedural point of view, it is important that the court, should it find that a child is able to formulate its views at a younger age, be obliged to hear the child. Ascertaining a child's best interest indirectly – through a representative – is possible only when a child is unable to understand the given information and is not able to create its own opinion. Ascertaining the view of a child is the rule from which the court may depart in justified cases, e.g., if the child is mentally unstable. A judge perceives the direct questioning of a child from a personal perspective, and, in this case, there is a minimum risk of misinterpretation by a third party. In ascertaining a child's views, the court should meet its needs and create an environment of trust, it should be

done privately and the court should show understanding. A child's right to be heard only guarantees that its opinion will be heard, it will be paid attention to, the court will evaluate it very carefully, but it does not mean that it will always be upheld. While making a decision, a child's age will be important, and also the fact that its statement corresponds with the protection of its best interest will be important too (Hrušáková et al. 2014, pp. 852–856).

Sometimes, applying the above provisions may result in **a collision of a child's best interest and the participatory right.** A child's right to express its opinion is very closely linked to the principle of a child's best interests, as stated in Article 3 of the Convention on Children's Rights. Both of these principles cannot be viewed individually but regarding all general principles, which means banning discrimination of any kind, according to Article 2 of the Convention, or granting the right to life and development, pursuant to Article 6 of the Convention. It cannot be concluded that a decision will be made in a child's best interest if the requirement in Article 12 is not fulfilled. Ascertaining a child's view in court procedures was entrusted to the jurisdiction of the court by a legislator with reference to the pr. § 100 par. 3 of the Act No. 99/1963 Coll. Should a child's opinion be influenced by the decision made by the court, there can occur **a conflict between a child's wish and its best interest** from the court's or the SLCRPA's perspective. Thus, a conflict between the paternalistic approach of child protection (whether through a decision of state authorities, or a child's legal guardians) and the approach preferring the participation of an individual. Should a minor be given the right to decide of its own fate in a particular issue, its autonomy would be of greater importance than its best interests. There is no doubt that the current concept of children's rights allows a child's autonomy to be outshined by its best interests (Hrušáková et al. 2014, p. 858).

The aspect of the Constitutional Court III. CC 3007/2009 (2010) is that *"the final assessment of a minor child's interests, which is imperative, is up to the general court, which is entitled to make corrections on a child's opinions in what is suitable or beneficial for it, and what is not, and that is*

why the court takes the child's opinion into account regarding its age and intellectual and emotional maturity".

Regarding a child's participatory rights, we can consider as important pr. § 806 of the Act No. 89/2012 Coll., which in par. 1 states *"If an adopted child is at least twelve years of age, its personal consent is always necessary, unless there is doubt that it is in fundamental conflict with the child's best interests, or the child is not able to assess the consequences of the consent"* (Hrušáková et al. 2014, p. 649). Par. 2 defines the obligation of the court to inform a child properly on the purpose, content and consequences of its consent to adoption, which also refers to the child's basic participatory rights. The consent to adoption of a child younger than 12 years is treated in pr. § 807 of the aforementioned Act so that the consent is given by its guardian, who is generally appointed by the SLCRPA. The prior authorization detects all relevant facts that will lead them to the conclusion that the adoption is in the child's best interest. The court questions the adopted child and takes its opinion into account with respect to its mental development level. It is, therefore, obvious that the adopted child has the right to comment on the adoption if its under 12 years of age. Upon reaching the age limit of 12 years, the child's consent is the condition for adoption. It is, therefore, the strongest form of exercising a child's participatory rights, which is clearly defined below 12 years of age as well. The form of adoption should have the character of a child's personal statement to the court. If a child does not state its consent upon reaching 12 years of age, it cannot be replaced by a legal representative's consent or the court's decision. A child may withdraw its consent by the court's decision on adoption. According to pr. § 431 of the Act No. 292/2013 Coll., an adoptee has the status of a party in the process with all the rights related to the participation in the process.

Regarding the age limit, our legal system is bound by special cases of a child's consent. There are several legal regulations. As one of many examples, we can include ***the change of first name, second name and surname***. According to the Registries Act No. 301/2000 Coll., it is required that a minor over 15 consents to a second name (§ 62 par. 3 of the Act No. 301/2000 Coll.), the

change of the name of the adopted child after adoption (§ 64 of the Act No. 301/2000 Coll.), the change of surname from the female form to the masculine form (§ 69a of the Act No. 301/2000 Coll.) and the change of surname (§ 76 of the Act No. 301/2000 Coll.). Similarly, a child's consent to change surnames is required according to the Act No. 89/2012 Coll., pr. § 863, which states: *"To change a child's surname, it is necessary that a child expresses its opinion under the same conditions as in other matters related to it if the child is older than fifteen years. It is necessary that the child agrees with the change of its surname."* Changing the name or surname of a person is a fundamental status decision. It is, therefore, obvious that it was necessary to reflect the child's interests.

CONCLUSION

An extensive change in legislation regarding the above mentioned matters and arising from international and European documents has implemented the required changes regarding child protection. Due to the extent of the changes, their application caused the legislation to appear as doubled. But it is necessary to bear in mind that every provision to a particular regulation is important. Authorities have a crucial role in applying child protection. They accompany the child until adulthood and their scope of activity is not determined only by law No. 359/1999 Coll. Their status of an appointed guardian requires them to have a much broader knowledge, which includes all the above regulations, to be able to apply them effectively to protect children's rights. When creating the new legislation, a number of problems occurred, which are manifested in practice. One of the many include a situation when a child's best interest is to be ascertained, and the court, very often, does not question the child to find its opinion because of the lack of scope, and transfers the matter to the SLCRPA because it has the necessary information on the child. However, the court's duty to question a child is mandatory by law. The reasons are usually overworked judges, especially in guardianship courts, because the number of judges has not been increased, whereas the agenda has, so the agenda has been fragmented

and divided among other judges who are not as experienced in the matter. Adequate children's rights protection and the exercising of their participatory rights is the supreme principle that has accompanied all changes in legislation. Only practice will show where the additional changes are required for the applied child protection to be efficient and helpful.

CONFLICT OF INTEREST

The authors have no conflict of interest to disclose.

REFERENCES

1. Bilson A, White S (2005). Representing Children's Views and Best Interests in Courts. *Child Abuse Review*. 14: 220–239. DOI: 10.1002/car.902.
2. Charta základních práv EU (2000) [The Charter of Fundamental Rights of the EU]. [online] [cit. 2016-03-21]. Available from: http://www.euroskop.cz/gallery/6/2090-charta_zakladnich_prav_1.pdf (Czech).
3. Che Soh R (2014). Children's Participation in Custody and Access Proceedings. *IIUM Law Journal*. 22/1: 34–45.
4. Donnelly C (2010). Reflections of a Guardian Ad Litem on the Participation of Looked-after Children in Public Law Proceedings. *Child Care in Practice*. 16/2: 181–193. Doi: 10.1080/13575270903493390.
5. Evropská úmluva o výkonu práv dětí (2001) [European Convention on Practice of Children's Rights]. [online] [cit. 2016-03-21]. Available from: http://www.umpod.cz/fileadmin/user_upload/Pravni_predpisy_-_PDF/sbo21-01m.pdf (sdělení MZV č. 54/2001 Sb.m.s.) (Czech).
6. Hrušáková M, Králíčková Z, Westphalová L et al. (2014). *Občanský zákoník II, Rodinné právo (§ 655–975), Komentář* [Civil Code II, Family Law]. Praha: C. H. Beck, 1349 p. (Czech).
7. James AL (2008). Children, the UNCRC, and Family Law in England and Wales. *Family Court Review*. 46/1: 53–64.
8. Jirsa J, Beran V, Doležal M, Havlíček K, Janek K, Janek KD et al. (2014). *Občanské soudní řízení soudcovský komentář, Kniha II. § 79–180 občanského soudního řádu (podle stavu k 1. 4. 2014)* [Civil Court Proceeding Arbitral Comments, Book II]. Vyd. JUDr. Karel Havlíček Brain Team, 2014, 601 p. (Czech).
9. Macela M, Hovorka D, Křístek A, Trubačová K, Zárasová Z (2015). *Zákon o sociálně-právní ochraně dětí, Komentář* [Act on Social and Legal Protection of Children, Comments]. Praha: Wolters Kluwer, a. s., 912 p. (Czech).
10. Nález Ústavního soudu III. ÚS 3007/2009 (2010) [Finding of the Constitutional Court III, CC 3007/2009 (2000)]. [online] [cit. 2016-03-21]. Available from: http://www.ochrance.cz/fileadmin/user_upload/Publikace/sborniky_stanoviska/Rodina_a_dite/Nalez_US_3007-2009_.pdf (Czech).
11. Pölkki P, Vornanen R, Pursiainen M, Riikonen M (2012). Children's Participation in Child-protection Processes as Experienced by Foster Children and Social Workers, *Child Care in Practice*. 18/2: 107–125. Doi: 10.1080/13575279.2011.646954.
12. Svoboda K, Tlášková Š, Vlášil D, Levý J, Hromada M. et al. (2015). *Zákon o zvláštních řízeních soudních. Komentář* [Act on Special Court Proceedings. Comments]. Praha: C. H. Beck. 1054 p. (Czech).
13. Vis SA, Fossum S (2013). Representation of children's views in court hearings about custody and parental visitations – A comparison between what children wanted and what the courts ruled. *Children and Youth Services Review*. 35: 2101–2109.
14. Woodhouse BB (2014). Listening to children: Participation rights of minors in Italy and the United States, *Journal of Social Welfare and Family Law*. 36/4: 358–369. Doi: 10.1080/09649069.2014.967983.
15. Zákon č. 99/1963 Sb., občanský soudní řád, v platném znění [Act No. 99/1963 Coll., civil court, as amended]. [online] [cit. 2016-03-21]. Available from: <http://www.zakonyprolidi.cz/cs/1963-99> (Czech).

16. Zákon č. 359/1999 Sb., o sociálně-právní ochraně dětí, v platném znění [Act No. 359/1999 Coll., on Social and Legal Protection of Children, as amended]. [online] [cit. 2016-03-21]. Available from: <http://www.zakonyprolidi.cz/cs/1999-359> (Czech).
17. Zákon č. 301/2000 Sb., o matrikách, jménu a příjmení, v platném znění [Act No. 301/2000 Coll., on Registers, Names and Surnames, as amended]. [online] [cit. 2016-03-21]. Available from: <http://www.zakonyprolidi.cz/cs/2000-301> (Czech).
18. Zákon č. 89/2012 Sb., občanský zákoník, v platném znění. In: Sbírka zákonů ČR [Act No. 89/2012 Coll., Civil Code, as amended. In: Statute-book of the Czech Republic]. [online] [cit. 2016-03-21]. Available from: <http://www.zakonyprolidi.cz/cs/2012-89> (Czech).
19. Zákon č. 292/2013 Sb., o zvláštních řízeních soudních, v platném znění. In: Sbírka zákonů ČR [Act No. 292/2013 Coll., on Special Court Proceedings, as amended. In: Statute-book of the Czech Republic]. [online] [cit. 2016-03-21]. Available from: <http://www.zakonyprolidi.cz/cs/2013-292> (Czech).

 Contact:

Jana Borská, University of South Bohemia in České Budějovice, Faculty of Health and Social Sciences, J. Boreckého 1167/27, 370 11 České Budějovice, Czech Republic
Email: j.borska@volny.cz