

Summary

The legal comparison of alternative care of children in the Czech Republic and the Slovak Republic

There is always present a group of children who cannot for various reasons grow up in their biological family. Obligation of the state in such cases is to ensure that children alternative care. The purpose of alternative care is to protect and nurture children in a safe healthy environment and provide suitable conditions for their healthy physical, intellectual, emotional and moral development.

The objective of the thesis is to analyze and compare alternative care of children institute in the Czech and the Slovak Republic from the substantive and procedural point of view with intention to evaluate effectiveness of legal regulation, identify basic problems in the practical realization, outline the principles significant for the further development of alternative care and make proposals *de lege ferenda*. Focus is put on the analysis of differences in national regulations and their critical evaluation. The study takes into account relevant judicature with an emphasis on the reflection of the best interest of the child principle, right of the child to be heard and right to respect for private and family life in the decision-making practice of the courts.

Legislation of the Czech and the Slovak Republic is based on the common ground; however, after the dissolution of the common state each of the successor states issued their own regulation of alternative care. The basis of alternative care regulation in the Slovak Republic is The Family Law Act No. 36/2005 Coll. which took over an essential part of the family law rules contained in the repealed Family Law Act No. 94/1963 Coll. Up to the recodification of private law in the Czech Republic legal regulation of family law including alternative care was contained in the Family Law Act No. 94/1963 Coll. On 1 January 2014 the new Civil Code No. 89/2012 Coll. enters into force. Family law regulation will be together with other private law branches concentrated in the new codex, the Family Law Act No. 94/1963 Coll. will be repealed. Specific cases will be however considered under current law.

The thesis is composed of eleven chapters. Beginning of the study is introductory; it defines alternative care and makes its differentiation. It is followed by discussing the theoretical considerations of the best interest of the child principle which is one of the guiding principles of the Convention on the Rights of the Child. Next Chapter defines the concept of parental responsibility and deals with the admissibility of interventions into it. The term “*rodičovská odpovědnost*” has been established by the new Civil Code. It replaced the term

“rodičovská zodpovědnost” contained in the Family Law Act No. 94/1963 Coll. Parental responsibility means group of the most important rights and duties of parents in relation to their child. It includes rights and responsibilities in the care of a child, of his health and all-round development, in the representation and property administration. The most significant measures relating interference with the parental responsibility are in the exclusive power of the courts. Only a court may under the statutory conditions decide on its suspension, restriction or deprivation. Within the exclusive jurisdiction of the courts is also decision-making in cases where parental responsibility is restricted in fact, which covers all cases of alternative care. In this case, rights and duties arising out of parental responsibility are restricted factually, not by any special decision under the general regulation.

Part two of the thesis deals with the right to family life, including its interpretation by the European Court of Human Rights in cases of alternative care. The right to family life is one of the pillars of the international human rights protection. As a part of the right to privacy it is guaranteed by the article 8 (1) of the Convention on Human Rights and Fundamental Freedoms and on the constitutional level by the article 10 (2) of the Charter. Respect for family life includes an obligation of the state to act in a manner that allows normal development of relations among close relatives, including parents and children. The basic element of family life is the cohabitation of parents and children as it is within the bounds of this cohabitation where upbringing of children by their parents is to take place. Any measures that perverts may constitute an interference with the right to respect for family life (*Kutzner v. Germany*).

Attention to the historical development of alternative care regulation after 1918 is paid in Chapter three. Following Chapter analyzes the sources of alternative care regulation, including international. After that the comment about the role of the socio-legal protection of children in relation to alternative care and about the procedural aspects of alternative care and participation rights of the child is given.

The core of the thesis is based on analysis and comparison of particular types of alternative care, including adoption. Chapters 7-11 analyze adoption, foster care, institutional care, child custody and guardianship. Special attention is paid to the professionalization of foster care with intention to identify its assets and limits in comparison to other forms of alternative care and consider its realization in compared states. Professional foster care has been created due to decreasing number of foster care applicants and increasing number of children who was not possible to place into other forms of alternative care. Its purpose is to provide individual professional care to children as needed for shorter or longer period by

specially selected and trained foster parents. However, some professionals warn about its limits especially in meeting psychological needs of children. In the Czech Republic “the temporary foster care”, an institute applied for several years yet, is relating with foster care professionalization. The professionalization of foster care was also one of the main objectives of the amendment to the Act on Social and Legal Protection of Children made by Act No. 401/2012 Coll. effective from 1 January 2013. The amendment was to change the conditions for the exercise of foster care with the purpose to perform it on a professional basis. Elements of professionalizing are reflected in the newly established rights and responsibilities of foster parents, the unified system of their preparation and selection and the way their material security. Foster care benefits are construed as a reward for the service provided, for that reason, they were extracted from the Act No. 117/1995 Coll., on State Social Support. With the similar intention the specific model of the “professional family“ is used in the Slovak Republic. Professional family is a model of institutional alternative care, although from the psycho-sociological point of view it has signs of alternative family care. It is a manner of providing individual care for children under residential care. Professional parent is in a labor relation with the children’s home and as the employee he cares for children with ordered institutional care in his own family environment. Partial conclusions in chapters summarize performed analysis and present proposals de lege ferenda.

The conclusion of the thesis emphasizes the need to strengthen cooperation between all responsible ministries in matters of alternative care and their appropriate coordination, which is a prerequisite for improving work with concerned children and increasing the availability of appropriate care. It points out the significance of helping families and improving family lives, importance of preventive programs and the need to develop effective mechanisms of early systematic assistance to families with personal, health, social or property difficulties, which are precondition for reducing the number of children requiring to ensure alternative care. Focusing on child emergency prevention and creation facilities that would allow child to remain in his own family or in the alternative family environment, with the exception of cases where institutional care was evaluated as the best solution in the interest of the child, should be the priority.