

Record Card

File number	616/2016/VOP
Area of law	Activities of the bodies for social and legal protection of children (BSLPC)
Subject	exercise of social and legal protection
Type of finding	Final statement – Section 19
Result of inquiry	Errors found
Relevant Czech legislation	359/1999 Coll., Section 6 (d), Section 42 (1), Section 53 (1)
Relevant EU legislation	
Date of issue	3 August 2016
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Final statement including proposed remedial measures concerning social and legal protection of Adéla N.

A. Conclusions of inquiry

In my inquiry report of 30 March 2016, I concluded that the Municipal Authority of Kutná Hora (acting in the role of the body for the social and legal protection of children, hereinafter the “BSLPC”) made errors consisting in:

- failure to obtain written parental consent with Adéla’s placement in the facility for children requiring immediate assistance attached to D (hereinafter “Facility D”);
- inappropriate transfer of Adéla from Facility D to the facility for children requiring immediate assistance attached to Children’s Centre F (hereinafter “Facility F”);
- provision of inaccurate information concerning the care provided by the Educational Care Centre E (hereinafter the “ECC”);
- discouraging Adéla from attending a court hearing resulting from provision of insufficient advice;
- failure to seek a court decision to place Adéla in a suitable environment, despite her repeated requests and physical breakdowns at school;
- trying to persuade the parents to place their daughter in a facility on their own request;
- failure to take into account the minor’s psychosomatic disorders, including the failure to use powers under Section 53 (1) of the Social and Legal Protection of Children Act to obtain information from health facilities;
- unprofessional conduct in dealing with the incident of 5 March 2016.

B. Statements of the authority/authorities

The statement of the mayor of Kutná Hora, Mr Martin Starý, of 21 April 2016 (hereinafter the “Statement”) indicated that he discussed the matter with BSLPC officers and concluded he disagreed with my findings and regarded the course of social and legal protection of Adéla as proper and extensive. He did not consider my conclusions objective, because I allegedly had not taken into consideration the minor’s duties and ignored parental responsibilities which include rights as well as duties. He is also of the opinion that I disregarded the duty towards protection of family, the duty of children to respect their parents and the necessity to conduct comprehensive social work with the family. He also responded to the individual errors I had found. Given the fact that this document is only meant for communication between me and the authority, I do not consider it useful to describe the mayor’s response in more detail. In the following part, I will draw attention only to the points most relevant for my assessment.

C. Final evaluation

With regard to the statement of the Municipal Authority of Kutná Hora to my inquiry report, I issue this final statement pursuant to Section 18 (2) of the Public Defender of Rights Act. This final statement also includes proposed remedial measures.

Firstly, I must object to the mayor’s statement saying that he “did not consider my comments objective”. I would like to stress that I based my conclusions noted in the inquiry report not only on Adéla’s own statements, but especially on a careful study of the file and an inquiry on site, during which authorised employees of the Office of the Public Defender of Rights spoke with four officers of the BSLPC. I also note that I have in all cases observed the applicable laws and my objective was not to one-sidedly defend Adéla’s rights. I understand that the BSLPC works with the entire family, not just the child, and that both children and parents have rights as well as duties. I took all these aspects into consideration while drawing up the inquiry report.

C.1 Placement in Facility D

In this part, I insist on my conclusions as indicated in the inquiry report.

I understand BSLPC’s doubt concerning the need for Adéla’s stay in Facility D, which was significantly supported by Adéla’s choice of the facility (the distance from the family home and Adéla’s boyfriend, impossibility to follow up on the first visit to the ECC). I wonder if the BSLPC would have reacted the same even had Adéla asked for placement in Facility F.

The BSLPC noted in its statement that Adéla’s “leaving the family was not necessary at that time. The information obtained did not indicate that Adéla’s life was in any immediate danger or that she would not be taken care of or her fundamental rights would be threatened, i.e. that there were reasons for her placement in a facility.” In my opinion, this statement is contradictory to the fact that the BSLPC later supported Adéla’s stay in Facility D until 10 August 2015 and the subsequent transfer to Facility F.

Although the BSLPC recommended co-operation with the ECC suitably and immediately after Adéla's request, it cannot blame Adéla for how she subjectively perceived the situation in the family, i.e. that she considered the situation so bad that it could not have been resolved merely by attending a non-resident therapy in the ECC, which was to continue 20 days later.

I must also draw attention to the fact that the purpose of the facility for children requiring immediate assistance [1] is to also assist children whose positive development is at risk. I believe that the positive development of a child is at risk in a situation where the escalating problems in the family force the child to flee from home and seek neutral environment.

C.2 Parents' consent to placement in Facility D

I regard supplementing the file with the parental consent to Adéla's stay in Facility D after the fact as acceptable. Nevertheless, I recommend that the BSLPC avoid such procedure in the future.

C.3 Adéla's transfer to Facility F

The statement indicates that Facility D provided psychological support to Adéla as well as her parents, immediately before their departure for Facility F. However, the BSLPC admitted this step was not clearly documented in the file. For this reason, the BSLPC requested from Facility D the relevant psychological intervention report, which was then included in the file.

I consider this remedial step sufficient and I do not insist on my original conclusions in the matter.

C.4 The family's co-operation with the ECC and psychological support for Adéla

I appreciate that the BSLPC heeded my recommendation and requested an up-to-date report from the ECC, based on which it could evaluate the current need of the family to continue co-operating with the ECC. However, the statement is unclear about whether it continues to support the co-operation or not. Therefore, I request that this information be provided to me.

However, the authority did not respond to my objections regarding the inaccuracies concerning the type of care provided by the ECC and the manner of its provision. The information that the BSLPC does not, under current circumstances, consider the provision of psychological assistance to Adéla as necessary lacks any explanation as to what kind of services the ECC was providing to the family in the past, whether the BSLPC was aware of them and whether it distinguished between special pedagogical and psychological care. Should new problems appear in the family, I request that the BSLPC continues assisting Adéla in obtaining psychological assistance. It is clear from her comments that she is interested in this kind of service, but is limited by the available options. [2]

C.5 Adéla’s presence during court hearing

Having regard of Adéla’s age, I insist on my previous conclusion. If Adéla had an appointment at the ECC on the same date, the BSLPC officer should have mentioned it, or offer Adéla help in arranging a different appointment date. I consider the information that the presence of a child during court hearing is not a “usual practice” as incorrect and inappropriate.

C.6 Repeated requests by the minor to be placed in a facility

I regard the BSLPC explanation as insufficient as it did not respond to my specific arguments in favour of the possibility to seek a preliminary injunction. [3]

C.7 The minor’s health problems

The BSLPC stressed in its statement that it was never proven that Adéla was abused. In this regard, it also noted that usually, doctors do not issue any reports on the BSLPC’s requests in cases of children that are not abused or neglected.

It is without doubt that Adéla’s repeated breakdowns must have had some cause, either objective or subjective. The fact that the situation affected Adéla negatively was demonstrated by her repeatedly being taken from the school by ambulance. It was in order, therefore, to exclude causes such as bullying, failure at school, health problems or abuse.

I stress that child abuse may occur even in the absence of physical violence, i.e. take the form of psychological abuse. According to literature,[4] this includes multiple subtypes, including “contempt for, terrorising, isolating, corrupting or denying emotional support to the child”. A different source [5] defines psychological abuse as “acts that have serious adverse effect on the emotional development and behaviour of a child; they take many forms, such as humiliating and offending the child, rejecting or repudiating the child, isolating the child from the child’s peers or family, exposing the child to severe family disputes, etc.” In these cases, too, the BSLPC may ask doctors for their opinion in accordance with Section 53 (1)(d) of the Social and Legal Protection of Children Act, in order to assess whether or not the child in question has been exposed to abuse (physical or psychological). If the BSLPC indicates in the request for information that the information is sought in connection to suspected abuse or neglect of the child, the healthcare services provider is obliged to disclose this information. Pursuant to the second sentence of Section 53 (1) of the Social and Legal Protection of Children Act, in these cases the healthcare services provider may not invoke its duty to maintain confidentiality pursuant to a special law [6]. [7]

C.8 Incident of 5 March 2016

I cannot agree with the conclusion that Adéla clearly lied about the incident. The facts available to me allow no such conclusion. I also believe that the BSLPC is not qualified to assess the time necessary to “repair the clutch”.

I understand that the BSLPC officer tried to teach Adéla some discipline, as she noted in the statement, and I believe that this particular attitude was in order. However, I am certain, after repeated hearing of Adéla's phone call recordings, that the BSLPC officer's conduct in this situation was inappropriate. The tone of her voice was very hostile and the solutions she offered (e.g. to call a taxi) were not constructive.

C.9 Change of the social worker

The BSLPC said in its statement that it did not consider as "proper and good in terms of discipline" to change the curator. The manner of social work, dealing with the minor and the exercise of social and legal protection must be understood in the context of engagement with the entire family over the entire period of dealing with the minor's situation."

I again stress that the exercise of social and legal protection of child must be based on mutual trust and respect between the family (including the child) and the key social worker. I also note the importance of making the child [8] (taking into account the child's age) a partner in a two-way relationship, not a mere object of the adults' dealings. I believe this will enable the BSLPC to influence the child's positive development in a more profound way.

Even though I have doubts as to whether Adéla is a child with behavioural problems or a child growing up in unsuitable environment, I still consider it important for her not to lose faith that co-operation with the BSLPC is meaningful and in her interest. If Adéla is unable to constructively communicate with her parents, it is important for her to be able to communicate her problems, objections, wishes or proposals to someone she trusts (a BSLPC officer). Such a person may better lead Adéla to self-reflection and guide her towards better discipline.

D. Remedial measures

To the Municipal Authority of Kutná Hora, I recommend:

(A) to accept Adéla's request to be assigned a different social worker (i.e. for Ms Adéla Mužíková to assume responsibility for the family's case) in order to improve the relationships in the family and support Adéla's trust in the BSLPC;

(B) to talk with Adéla in an especially sensitive manner and in private, especially not in the presence of the parents;

(C) to again discuss the possibilities of psychological assistance with Adéla and help Adéla to arrange appointments;

(D) to, in the future, inform children over twelve about the possibility to attend court hearings that concern them, commensurately to their age and abilities.

I am sending this final statement to the mayor and request that he inform me, pursuant to Section 20 (1) of the Public Defender of Rights Act, whether he adopted

the proposed remedial measures. I am expecting his response within the statutory period of 30 days of the delivery of my final statement. I will also acquaint Adéla with my final statement, commensurately to her age.

If the Municipal Authority of Kutná Hora does not adopt the proposed remedial measures or I find the measures insufficient, I will proceed pursuant to Section 20 (2) of the Public Defender of Rights Act and inform the superior authority; alternately, I may be forced to inform the public of the case, including the names of the persons authorised to act on behalf of the BSLPC.

Mgr. Anna Šabatová, Ph.D., v. r.
Public Defender of Rights

[1] *Pursuant to Section 42 (1) of the Social and Legal Protection of Children Act*

[2] *Especially due to financial demands with respect to the Crisis Intervention Centre X where Adéla contacted a psychologist recently.*

[3] *Especially asking Adéla for her opinion while the parents were present, Adéla's repeated physical breakdowns (although without obvious symptoms) and delay in dealing with the incident of January 2016.*

[4] *E.g. LANGMEIER, Josef. KREJČÍŘOVÁ, Dana. Vývojová psychologie (Developmental psychology). 2th updated edition. Prague: Grada, 2006. p. 283. ISBN 80-247-1284-9.*

[5] *NOVOTNÁ, Věra. Metodický materiál: Ochrana dětí týraných, zneužívaných a zanedbávaných (Guideline for protection of abused and neglected children) [online]. Jihlava: 2013. p. 10 [retrieved on: 27 July 2016]. Available at: http://www.kr-vysocina.cz/VismoOnline_ActionScripts/File.ashx?id_org=450008&id_dokumenty=4051893.*

[6] *Act No. 372/2011 Coll., on medical services and the conditions of their provision (the Health Care Services Act), as amended.*

[7] *For more details, see the methodological guideline of the Ministry of Labour and Social Affairs: Regulation concerning confidentiality of health care services providers in relation to the bodies for social and legal protection of children of 8 February 2016, Ref. No. 2016/7944-231.*

[8] *including children with behavioural problems*