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Committee on the Rights of the Child

Views adopted by the Committee under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, concerning Communications No. 139/2021[*,**]

Communication submitted by:	B.J. and P. J. (represented by counsels)
Alleged victim:	B.J. and P. J.
State party:	Czech Republic
Date of communication:	27 October 2020
Date of adoption of Views:	15 May 2023
Subject matter:	Placement in institutional care of two siblings to allegedly ensure their rights to health and education
Substantive issues:	Best interests of the child; separation of children from parents (institutionalization); right of the child to be heard; right to education; right to health; right to security
Articles of the Convention:	3 (1)(2), 5, 9 (1-3), 12, 16, 18 (1), 20 (1), 24 (1), 28 (1), 29 (1) 37 (b)(d) and 39

1. The authors of the communication are B. J. and P. J., both nationals of the Czech Republic born on 24 April 2006 and 25 August 2003 respectively. The authors claim that the decision of the State party's authorities ordering their placement in institutional care to secure their medical treatment and school attendance violated their rights under articles 3 (1)(2), 5, 9 (1-3), 12, 16, 18 (1), 20 (1), 24 (1), 28 (1), 29 (1) 37 (b)(d) and 39 of the Convention. They are represented by counsels, Maroš Matiaško and Anna Hofschneiderová. The Optional Protocol entered into force for the State party on 2 March 2016.

Facts as submitted by the authors

2.1 In June 2018, the authors' parents divorced and the authors continued to live with their mother.

[*] Adopted by the Committee at its ninetieth third session (8–26 May 2023).

[**] The following members of the Committee participated in the examination of the communication: Suzanne Aho, Aissatou Alassane Sidikou, Thuwayba Al Barwani, Hynd Ayoubi Idrissi, Mary Beloff, Rosaria Correa, Rinchen Chophel, Bragi Gudbrandsson, Philip Jaffé, Sopio Kiladze, Benyam Dawit Mezmur, Otani Mikiko, Luis Ernesto Pedernera Reyna, Ann Skelton, Velina Todorova, Benoit Van Keirsbilck and Ratou Zara.

2.2 On 6 February 2019, the Šlapanice Municipal Office, acting as the local authority responsible for the public protection of children, initiated proceedings for the authors' placement in institutional care.[1] It submitted a motion for an interim measure before the first instance District Court of Brno requesting that the children be placed in the institutional care of the Crisis Centre for Children and Adolescents, under Section 74 of the Act no. 99/1963, the Civil Procedure Code.[2]

2.3 The Šlapanice Municipal Office argued that P.J., who at the time was 15 years old, was not attending school, although he had already fulfilled the obligation of compulsory school attendance, and he was spending his time mainly on the computer. He had allegedly filed an application to study at a secondary school. He had not applied for jobs from the list administered by the Labor Office, a necessary condition to benefit from the state coverage for health insurance. Thus, he had contracted a big debt on his health insurance that he could not pay.

2.4 Regarding B. J., who was nearly 13 years old at the time, the Municipal Office argued that she was failing to comply with the obligation of compulsory school attendance. She did not take the exams even thought she had been offered to set for the exams in the consulting room of the school psychologist. The Municipal Office highlighted that despite their repeated recommendations, the author's mother had not ensured any psychological or psychiatric care for the children. It also cited a report dated 6 March 2019 of the school counselling centre recommending to conduct an expert examination to assess whether the mother was fully competent to properly upbring and take care of the authors. The centre also expressed concern that the authors suffered from beginning of social phobia or child depression and recommended immediate psychiatric care, ideally in the form of hospitalization. It mentioned that B.J. did not want to go back to school since the schoolmates hurt her and made fun of her and that she considered that home-schooling was a solution to her situation. The Municipal Office also noted that it had filed a criminal complaint against the parents for failure to secure B. J.'s compulsory school attendance.

2.5 On 12 April 2019, the District Court of Brno rejected the motion for interim measures of the Šlapanice Municipal Office. The Court considered that P.J.'s placement in the institutional facility would be completely ineffective since it would not ensure that he would successfully continue in secondary education. The Court considered that the forced removal of B.J. from her mother's household would probably worsen her mental health and would be in the end counterproductive. The District Court also reminded that it had already ordered in the past the authors' placement in an institution to subject them to a diagnostic assessment but due to their mental health situation, the decision was finally not enforced (see below para. 4.1). The District Court concluded that the authors should be provided with other forms of support, ideally medical assistance, in another form of setting than in the institution for alternative care for children.

2.6 At an undetermined date, the Šlapanice Municipal Office, the public prosecutor of the District Public Prosecution Office of Brno and the Municipal Office of Hodonín (new place of residence of the authors), acting as the authors' guardians *ad litem* appointed by the District Court of Brno to represent the authors in the proceedings before it, appealed the decision of the District Court of Brno before the Regional Court in Brno. All appellants explicitly referred to B.J.'s right to education. The Municipal Office of Šlapanice added that it was aware that for B.J. the removal would be traumatizing, but it found no other solution than to place her in a "neutral environment" to ensure her psychological and psychiatric examination and her fulfilling the obligation of compulsory school attendance. The guardian *ad litem* argued that the authors did not respect the guidance by their mother and that it was obvious that the mother "was weak for their upbringing" and, therefore, neglected them. They argued that the parents should respect the recommendations by professionals to ensure expert

[1] The authors explain that the Municipal Office had already filed a motion on 25 October 2018, which had been rejected by the District Court of Brno, and the decision confirmed by the Regional Court in Brno.

[2] Section 74 (1) establishes that "Before the commencement of the proceedings, the chairman of the panel may order a preliminary measure if it is necessary to regulate provisionally the relationships of the participants or if there is a danger that the enforcement of a judicial decision could be jeopardized."

psychological and psychiatric care for their children, which they had failed to do. The public prosecutor of the District Prosecutor Office of Brno – Province mentioned that the previous placement order had never been enforced since the authors' parents actively obstructed it (see below para. 4.1). The public prosecutor found it necessary that the experts specialize in the field of child psychology and child psychiatry started to work with both authors as soon as possible. The public prosecutor concluded that she found the "normal development" of the authors to be seriously endangered and that the authors should be placed in the alternative care of an institutional setting.

2.7 On 28 May 2019, the Regional Court in Brno granted the interim measure motion and ordered the removal of the authors from their home and their placement in institutional care (the Crisis Centre for Children and Adolescents). The Regional Court referred to the previous conviction of the authors' parents for the criminal offense of endangering the upbringing of a child (see below para. 4.3). It argued that the parents did not properly fulfil their upbringing role. It further argued that the mother was unable to make the authors take part in systematic proper activities, disrespected the recommendations of the elementary school for B.J., was unable to make P.J. continue in his preparation for future employment or to enrol in the list of applicants for a job administered by the Labor Office and that, in a situation when the health insurance was not paid for him, still excused P.J. and defended him.

2.8 The Regional Court considered that both authors needed psychological and psychiatric care and did not have in their mother's care appropriate conditions for their future development. Their father did not care for them and was merely fulfilling his maintenance obligations. The Regional Court therefore concluded that it was appropriate to place the authors in a "neutral environment" where they would be subjected to proper and careful expert examination of their health, both physical and mental, and where it would be possible to work with them. The Regional Court further limited the contact to an hour a week for each parent at maximum "so that the parents, especially the mother, will not lose contact with the authors." The Regional Court also expressed that the separation from their mother would be undoubtedly very hard for the authors, but it argued that the authors' parents had to realize their parental responsibilities: their mother had to realize that it is not sufficient to only make promises and do nothing to ensure reparation, failing to attend the scheduled meetings even without any apology; the father has to understand that as a bearer of parental responsibility, he has not only rights but obligations as well.

2.9 The authors claim that they were not informed about this decision, neither by their guardian *ad litem* nor by the Regional Court. On 26 June 2019, the authors were placed in the Crisis Centre for Children and Adolescents in Brno.

2.10 The authors explain that the Ministry of Labour and Social Affairs, as the central body responsible for the funding of placements in the Crisis Centre, confirmed that the interim measure issued according to the Civil Procedure Code could never have the effect to constitute a relationship of alternative care. Such an effect could be achieved only through the interim measure ordered according to the Act no. 292/2013 on Special Judicial Proceedings, which provided the child with substantive and procedural safeguards that were adequate to the gravity of the issue concerned. The authors' placement thus could not be considered, in the Ministry's opinion, as legal, and therefore it could not be supported by State funding. The Ministry further pointed out that it was unacceptable to use special protection measures in the form of removal of the child from his/her family to ensure the child's school attendance or to correct the child's behaviour and reminded that these measures could never result in deprivation of the child's liberty.

2.11 On 25 July 2019**,** the Municipal Office of Šlapanice filed a new motion for an interim measure to place the authors in the Crisis Centre for Children and Adolescents under the special legal provisions of the Act no. 292/2013 on Special Judicial Proceedings. The authors note that the reason for this was to ensure that their placement in the institution was covered by State funding. On 26 July 2019 the District Court of Hodonín rejected the motion on the grounds that it was not competent and that the previous interim measure ordered by the Regional Court in Brno was still valid.

2.12 On 22 August 2019, the authors' mother filed a constitutional complaint on her behalf and on behalf of her children, challenging the constitutionality of the interim measure ordered

by the Regional Court in Brno. She pointed out that the guardian *ad litem* had not taken into consideration the authors' views and wishes, filing the appeal which led to their placement in an institutional facility. The authors' mother objected the legality of the interim measure under the application of general rules of Act no. 99/1963, the Civil Procedure Code, instead of special rules of the Act no. 292/2013, on Special Judicial Proceedings. She challenged in particular that the right to health and the right to education may constitute legitimate objectives of a forced intervention against them resulting in their institutionalization.

2.13 On 15 October 2019, the Constitutional Court dismissed the complaint as manifestly ill-founded. Having reviewed the decision of the Regional Court in Brno, the Constitutional Court did not find any of the violations alleged by the authors. According to the Constitutional Court, the Regional Court in Brno assessed in a comprehensive way the interests and needs of the authors and its assessment corresponded to Article 3 (1) of the Convention. It found that the challenged decision had a legal basis, was issued by a competent court, and was not arbitrary.

2.14 At the time of the submission of the present communication, the author were still placed in the Crisis Centre. However, on the decision of the director of the facility, P.J. stayed at a boarding school during the week and visited her mother during weekends, and B.J. stayed at the mother's house even during the week.

Complaint

3.1 The authors claim that their rights under articles 3 (1)(2), 5, 9 (1-3), 12, 16, 18 (1), 20 (1), 24 (1), 28 (1), 29 (1) 37 (b)(d) and 39 of the Convention have been violated by the State party.

3.2 The authors contend that domestic authorities relied on a "welfare approach" to children, which is always a breach of the child's right to have his/her best interests taken as a primary consideration on all actions concerning the child guaranteed under article 3 (1) of the Convention. The authors argue that this approach resulted also in a violation of their right to personal and family autonomy guaranteed under the Convention by a whole set of articles that refer to different aspects of the freedom of the child and his/her family from "public direction and control", particularly articles 3 (2), 5, 9 (1), 16 and 18 (1) of the Convention.

3.3 The authors also allege that the domestic authorities disregarded the fact that, at the time of the intervention, they had both already reached the age of adolescence. Even though adolescents have the right to continuing protection, this protection should not be interpreted as allowing the public authorities to subordinate adolescents to coercion. Since the domestic authorities did not respect this principle, their intervention resulted in the violation of their rights under articles 5 and 12 (1) of the Convention.

3.4 The authors state that the Convention does not enable to use coercion against a child as a means of his/her protection. Both the non-coercive nature of special protection of children in general as well as the specific standards of continuing protection of adolescents do not enable to forcibly remove an adolescent from the place where he/she lives and to force him/her to live in a certain place, determined by the public authorities, as a measure of his/her protection. Such a forced intervention could be legitimate only in the child justice system if the child were suspected, accused or convicted of having committed a criminal offence, which was not the authors' case.

3.5 The authors maintain that they were subjected in the first weeks of their placement to restrictions on the contact with their parents and were not allowed to leave the institution without being accompanied by a staff member. The restrictions imposed on the contact of the authors with their parents constituted a violation of their rights under article 9 (3) of the Convention. Additionally, they were deprived of their liberty in violation of article 37 (b) of the Convention since the special protection of the child is not a legitimate objective of the child's deprivation of liberty.

3.6 The authors consider that the measure of alternative care did not bring them any support, but only very intensive restriction of their autonomy and freedoms, including personal liberty and the right to family life, having the same effect as if they were imposed a

sanction for their behaviour. Such effect of a special protection measure seriously contravened the requirements deriving from articles 20 (1) and 39 of the Convention.

3.7 The authors also consider that neither the right to health nor the right to education could legitimize the use of coercion against them in the form of institutionalisation. In their opinion, the right to health guarantees the child freedom from any interference with his/her integrity unless taken on basis of informed consent, as well as the right to such goods, facilities, and services that are, inter alia, acceptable for the child and that are compliant with the medical ethics, including the principle "first, do no harm". A forced intervention in the name of the child's health is a direct violation of the child's right to health, contravening, therefore, article 24 (1) of the Convention. The authors acknowledge that with respect to children substitute decision-making on interference with their integrity may be considered as legitimate.[3] Nevertheless, the principle of evolving capacities plays still the role of crucial corrective while the Committee emphasized on many occasions that it should be applied as enabling and not disempowering principle, especially with respect to adolescents.[4] Even though the substitute decision-making for the child cannot be generally considered as illegitimate, it should be applied with extreme sensitivity in the field of mental health, if at all.

3.8 The authors further consider that the right to education should never be ensured in a way that would conflict with other rights and freedoms of the child. Even compulsory education shall be ensured by such means that make it promote and not restrict other human rights and freedoms of the child. The institutionalization was, therefore, an illegitimate mean to ensure the child's right to education in breach of articles 28 (1) and 29 (1) of the Convention.

3.9 The authors also considered that the intervention imposed on them by the domestic authorities lacked not only a legitimate aim but breached also the requirement of legality, in violation of the abovementioned articles. They maintain that domestic authorities proceeded according to general rules of domestic law and circumvented the special regulations in the field of provision of health services and enforcement of the obligation of compulsory school attendance, even though these special regulations provided the authors with stronger procedural and substantive safeguards. Act no. 372/2011, on Health Services and the Conditions of Their Provision, covers situations related to the coerced provision of health services to the child, including involuntary hospitalization (against his will or the will of their parents), and includes de requirement to hear the child's views on the intended treatment and to obtain his consent both depending on his maturity and age and procedural safeguards such as the requirement of the expeditious court review of the legality and proportionality of deprivation of liberty of the person. Regarding the enforcement of the obligation of compulsory school attendance, the authors argue that the legislation relies on the responsibility of the child's parents and provides for administrative sanctions of up to 5 000,- CZK or criminal sanctions.

3.10 Regarding the interim measures when it pursues the placement of a child in alternative care, the authors maintain that it is a structural problem in the State party that the special provisions contained in Act no. 292/2013, on Special Judicial Proceedings (Articles 452 para. 1 -465), are systematically circumvented by the application of the general rules of Act no. 99/1963, the Civil Procedure Code (Art 74-77). Act no. 292/2013 contains important safeguards, such as the limit of the scope of situation in which the interim measure may be imposed and the limit of the duration of the interim measures. None of the cited safeguards is guaranteed to the child if the interim measure is ordered according to the general provisions of Act no. 99/1963, the Civil Procedure Code.

3.11 Finally, the authors allege that the way the authors' representative -their guardian *ad litem*- acted during the proceedings, appealing the decision of the District Court of Brno-Province against their will, resulted in a violation of their right to access to justice. Their guardian *ad litem* conceived that its role was to protect the authors' welfare rather than to provide them with practical and effective opportunities to participate in the proceedings. It

[3] CRC/C/GC/15, para. 31.

[4] CRC/C/GC/7/Rev.1, para. 17; CRC/C/GC/20, para. 39.

did not respect the authors' views since it found them immature and not in their best interests and used the authors' procedural rights as its own. Should the child's voice be heard in the proceedings, the guardian ad litem must become the tool to express this voice and to assert it by effectively exercising the child's procedural rights the child disposes of as a participant of the proceedings. To comply with this role, the guardian *ad litem* has to be in regular contact with the child, have to ascertain the child views both on the merits of the proceedings and on the proceedings themselves and have to ensure that the child has all the relevant information about how the proceedings run. The authors find that the denial of the access to justice violated their rights guaranteed under articles 3 (1), in its procedural dimension, 12 (2) and 9 (2) of the Convention and since the intervention took the form of their deprivation of liberty, also under article 37 (d) of the Convention.

3.12 The authors request the Committee to consider the following remedies: a) to grant the authors appropriate redress and compensation; and b) to take all necessary steps to ensure that: i) the system of protection of children does not result in coercion against children and deprivation of their personal liberty; ii) the right to health and education are not considered as legitimate aims for the institutionalization of children; iii) whenever there are legitimate reasons to separate a child from their parents on the basis of an interim measures, only special legal provisions are applied; iv) interim measures ordering a child's placement in alternative care are not used for the purposes of forced treatment or enforcement of compulsory school attendance; and v) guardians ad litem exercise their function in a way that supports the child access to justice and does not deprive them of opportunities to make their views heard in the proceedings.

State party's observations on the merits

Factual clarifications

4.1 In its observations dated 25 October 2021, the State party submits that the decision for institutional care was only ordered after a prolonged unsatisfactory engagement with the family. It explains that the Office for the Social and Legal Protection of Children of the Šlapanice Municipal Office began to monitor the family in December 2017 after they had been notified by the primary school that the children had been missing a significant amount of the compulsory school attendance. The Municipal Office started working intensively with the family in January 2018. It held meetings with the parents and the authors, organised case conferences and developed individual child protection plans. The State party submits that cooperation with the parents was difficult and that the mother kept excusing herself from meetings scheduled with the municipality and the school. On 26 April 2018, the District Court of Brno-Province ordered, with the consent of the parents, a two-month placement in institutional facilities of the children for a diagnosis assessment. However, B.J. only stayed for two days in an educational care centre and P.J. only for a day in a diagnostic assessment institute for children. Professionals diagnosed the children with problems requiring expert attention. P.J. was developing social phobia; the psychiatrist found a disharmonious personality development, signs of addiction and mild signs of an autistic spectrum disorder. B.J. was diagnosed with an adjustment disorder and later also social phobia. At the case conference of 12 June 2018, the head of the educational care centre recommended B.J.'s hospitalisation and a comprehensive psychological and psychiatric examination of the children and their parents. The psychologists of the centre for diagnostic assessment of children offered out-patient cooperation to P.J.

4.2 The State party indicates that in its judgment of 22 June 2018, the District Court ordered supervision over the children's upbringing by the Šlapanice Municipal Office, including support so the mother ensures contacts between the children and their father and cease her overprotective parenting and the father has more involvement in the children's upbringing and that the parents accompany, as promised, the children to out-patient sessions. The parents were informed at the case conference held on 10 August 2018 that if they failed in their parenting role, a motion seeking placement in institutional care would be filed. On 25 October 2018, the Šlapanice Municipal Office filed a motion seeking an urgent interim measure under Article 452 para. 1 of Act No. 292/2013 on Special Judicial Proceedings. On 26 October 2018, the Hodonín Municipal Office was appointed as a guardian to the children. The District Court rejected the motion by its decision of 26 October 2018, holding that there

were no grounds for urgent child arrangements. In its decision of 16 November 2018, the Brno Regional Court upheld the decision.

4.3 On 9 November 2018, the Hodonín District Court convicted the authors' parents of the criminal offence of endangering the upbringing of a child and sentenced them to a conditional prison sentence of eight months.

4.4 On 26 November 2018, the authors' guardian carried out the first examination of the family situation and then again on 3 January and 7 February 2019. During an interview on 11 February 2019 the authors were informed about the motion seeking an interim measure filed on 6 February 2019 by the Šlapanice Municipal Office (see paras. 2.2 above). Another interview was carried out on 25 April 2019. Cooperation with the mother was deemed complicated as she had not solved the children's problems despite repeated warnings. Despite their refusal to cooperate with the guardian, both children received clear information from the guardian on the progress of the ongoing proceedings about the motion for an interim measure, including an understanding of the consequences of their parents' behaviour.

4.5 Following the decision of the Regional Court of 28 May 2019, (see above para. 2.7), the authors were placed in the Crisis Centre for Children and Adolescents on 26 June 2019. When distance learning was implemented owing to the Covid-19 pandemic, the children were on a long-term leave home until 3 May 2020. The authors stayed in the crisis centre only until 29 June 2020. After the supervised contacts were terminated, they regularly spent time outside the institution and stayed with their parents, on so-called weekend leave and leave during school holidays. After an adaptation phase, the children could go out on their own outside the premises of the crisis centre every day.

4.6 The State party also submits that on 23 July 2019, the Hodonín District Court issued a criminal order, sentencing the mother to 200 hours of community work on account of failure to secure B. J.'s compulsory school attendance.

4.7 On 25 November 2020, the authors' mother was awarded custody of the children by the judgment of the Hodonín District Court. The authors had previously expressed their views during the hearing related to the merits of the case held on 24 August 2020. At the same time, the court maintained in place the supervision order that had been issued under the judgment of 22 June 2018, discontinued the proceedings on placement in institutional care, and terminated the interim measure of the Regional Court of 28 May 2019 on placement of the children to the crisis centre. This judgment formally terminated the children's stay in the crisis centre on 11 January 2021.

4.8 The State party maintains that, during their stay at the crisis centre, the authors were under the care of a psychologist and P.J. also received psychiatric care. They stabilised and underwent positive changes. In the 2019/2020 academic year, B.J. successfully completed Year 7 of the compulsory school attendance and established relationships with her peers; the following year, she duly attended school. B.J. continued to comply with her school obligations in the 2020/2021 academic year. In the 2019/2020 academic year, P.J. completed the first year of secondary school and started the second year. He became more self-reliant and responsible and had relationships with his peers. The parents also started communicating more often with the teaching staff. P.J. was demotivated by distance learning and despite all the support available he decided not to take part in it. His school attendance ended on 31 March 2021.

Observations on the Merits

4.9 The State party observes that the authors claim a violation of numerous articles of the Convention, often without due justification and considers that only articles 3, 9 and 12 of the Convention are particularly concerned in this case.

4.10 Regarding their placement in an institutional facility, the State party submits that under Article 971 para. 1 of the Civil Code, institutional care is an ultima ratio measure, the court always considers whether it would not be appropriate to prefer entrusting the child to the care of a natural person. By placing the authors in an institutional facility, the domestic authorities followed the children's best interests. The decision to place the children in an institutional facility was preceded by many less invasive measures that, however, proved

fruitless due to the family's lack of cooperation. It reiterates that the Šlapanice Municipal Office has worked intensively with the family since January 2018. It established intensive contact with the parents and the children, organised several case conferences and cooperated with the schools. Individual child protection plans were prepared and there were repeated attempts to arrange for professional help (see above para. 4.1). Despite all the efforts, the children situation was worsening, they continued failing to attend school and having mental problems and addictions (electronic devices).

4.11 The State party submits that, when deciding on the children's stay, the Šlapanice Municipal Office considered the option of temporary grandparents' care or foster care, however, given the situation and the children's strong attachment with their mother, placement in the crisis centre appeared to be the most appropriate solution as the crisis centre could provide all the necessary services to the children. The Office's aim in filing motions for the ordering of institutional care was to arrange health, educational and diagnostic care for the children during their placement outside the family and to secure their integration among their peers. Other objectives were to rehabilitate the family, bring the mother to cooperate with professionals, support the relationships between the father and the children and arrange for regular supervised contacts between the children and the parents. The ultimate intent was to successfully return the children to the family in accordance with the children's best interests. The State party notes that, in its decision of 28 May 2019, the Regional Court justified its decision by the necessity that the children's physical and mental health be duly and thoroughly examined by professionals.

4.12 The State party maintains that less invasive interferences with family life were exhausted, such as out-patient care, diagnostic assessment of the children in school facilities and supervision ordered by the court. Even the Regional Court observed in its decision of 28 May 2019 that the previous motion for the delivery of an urgent interim measure of 25 October 2018 had been rejected, in particular on the ground that it had followed shortly after supervision over the children had been ordered when the same reasons had led to the adoption of this less severe measure (supervision). It was the next motion that the Regional Court granted (in its decision of 28 May 2019), and only after supervision had proved ineffective.

4.13 The State party concludes that the authors' placement was lawful, pursued a legitimate aim, i.e. the children's best interests, and was proportionate to the aim pursued. The authors' placement in the crisis centre was necessary for the purpose of protecting their healthy development and, therefore, complied with Article 9 read in conjunction with Article 3 of the Convention. The State party concludes that the interference with the authors' family life cannot be considered disproportionate.

4.14 Regarding the authors' claim that their placement in the crisis centre was unlawful as it was done under the general provisions of the Code of Civil procedure (the State party refers to "regular interim measure") and not following the Act on Special Judicial Proceedings (the State party refers to "urgent interim measure") (see above para. 3.10), the State party submits that even if in general it can be agreed that special provisions prevail over general provisions, in the present case the applicability of the Code of Civil Procedure is not ruled out and both laws are complementary to each other.

4.15 The State party admits that, in practice, at the time of the events, there was no sufficient clear distinguishing criteria for applying "regular" or "urgent interim measures". The State party notes however that the amendment to the Act on Special Judicial Proceedings No. 363/2021 effective from 1 January 2022 sets out clear distinguishing criteria between the two types of interim measures and limits their duration to one year. According to the amendment, a child may be placed outside the care of his or her parents only on the basis of an "urgent interim measure" under Article 452 para 1, and only on the motion of Municipal Office (Office for the Social and Legal Protection of Children).

4.16 The State party acknowledges that it is unfortunate that the "regular interim measure" issued by the Regional Court on 28 May 2019 was not limited as to its duration and eventually led to the children's long-term stay in the crisis centre without the possibility of regular review of the conditions for such an interference. However, the State party considers that as a result of the long-term work of the professionals from the crises centre, the children's stay in the facility achieved its purpose (see above para. 4.8). The State party therefore considers

that the requirement of lawfulness of the interference with the rights protected by the Convention was satisfied, and the institutional care met its purpose.

4.17 Regarding the authors' claim that they were not heard during the court proceedings that lead to their institutionalization, the State party states that the right of a child to be involved in matters affecting him/her is enshrined in Article 867 of the Civil Code. The State party refers to the decision of 15 October 2019 of the Constitutional Court whereby it held that having regard to the time limits in which a decision must be delivered, when considering motions for interim measures courts cannot deal with all the factual claims of the parties to the same extent and as thoroughly as when they are deciding on the merits of the case. The court may decide without a hearing and without taking evidence, and it shall therefore focus on whether all the prerequisites for an interim measure have been met and whether the situation requires an immediate preliminary solution rather than on the merits of the case.

4.18 The State party observes that the authors also alleged that the guardian *ad litem* acted without their consent and against their wishes when appealing the District Court's decision of 12 April 2019 denying the motion for their placement in institutional care. The State party notes that the guardian is not a mere messenger who should only convey the views of the child to the court without any added value. Rather, the guardian's role is to find out the child's view and to represent him/her in the proceedings while protecting their interests and independently assessing the relevance of the child's opinion taking into account the child's maturity. The State party consider that the role of the guardian is to provide the child with the necessary information about the court proceedings and the potential consequences if the child's opinions are complied with, and advise him or her that the final decision will not necessarily fully correspond to his/her views. The State party asserts that the guardian fulfilled this role.

4.19 On the other hand, the State party acknowledges that it is unfortunate that the authors were not directly heard by the courts in the proceedings on their placement. Although the law sets out a relatively short time frame (seven days) for issuing a decision on the motion seeking a "regular interim measure", in the case at hand it was not impracticable to give the children an opportunity to express their views on the proposed decision, considering their age.

4.20 However, the State party concludes that, considering the role of the guardian ad litem and the children's actual participation through the Municipal Office, the Convention has not been violated. The Municipal Office, which was in regular contact with the children, assured their right to be heard, conducting regular interviews with each author. Interviews with the children were also repeatedly conducted by the guardian ad litem who informed them, among other things, about the ongoing proceedings on interim measure. The social worker also informed the authors of the Regional Court's decision of 28 May 2019 on the day of enforcement of the decision, i.e. on 26 June 2019, and she then conducted an interview with them. The guardian ad litem was also present at the enforcement of the decision, and it is clear from the record of the enforcement that the children were informed of the Regional Court's decision. In addition, this requirement was met in the end, as the authors were directly heard by the Hodonín District Court on 24 August 2020.

Authors' comments on the State party's observations on the merits

5.1 In their comments dated 14 January 2022, the authors contend that the State party fails to address the central issue of the communication, namely, whether a person's alleged "needs" can be secured in a way that will result primarily in coercion against the children.

5.2 Regarding the State party's statement that in the authors' case only articles 3, 9 and 12 of the Convention are relevant, the authors consider that the State party denies the very principle of interdependence, interrelatedness, and indivisibility of human right and insist that its approach corresponds to the welfare approach to children, where the rights perspective is not relevant. The authors stress the relevance of the rights to education and health in a situation when the coercive intervention against them was justified by their alleged need of professional educational, health and diagnostic care. Furthermore, the State party ignores the further consequences of its action against them in relation to their autonomy and their personal liberty.

5.3 The authors note that in order to support their argument that its action against the authors was legitimate, the State party points out that the intervention fulfilled its objective and brought "positive" results for the authors. Nevertheless, this State party's assessment seems to again completely ignores the authentic views of the authors as well as the rule that the process of realizing the rights of the child must be as important as the result. It ignores that any act of coercion is a form of violence applied against the concerned person and that for the future life of the person the experience of that violence may have repercussions. Nobody except for the authors knows what the authors had to go through and how they feel about the result of the action they were subjected to and how they will be able to deal with their further lives. The principle of best interests of the child and the child's evolving capacities may in certain cases require to adopt a coercive action against the child's will in the name of his/her other rights. This should happen only in exceptional cases, especially when the child would face, without the coercive action taken in his/her interests, even greater violence. This was, however, not the case of the authors.

5.4 The authors observe that the State party tries to mitigate the guardian's ad litme failure by signaling many occasions where the authors were either present or directly heard by the court. Yet, the guardian's major failure by appealing the District Court's decision against the authors' will, could not be remedied by any authors' presence at case conferences or court hearings when the forced placement had already been ordered. The State party also argues that the guardian ad litem did not fail to inform the authors about the interim measure issued by the Regional Court since the guardian was present at the enforcement of the decision, taking place nearly a month after it was ordered. This argument shows again the State party's lack of understanding of the authors' right to access to justice. When the decision was already being enforced, they needed especially the information about available remedies and not the mere information that the decision had been adopted.

State party's additional information

6. On 2 February 2022, the State party submitted the judgment of the European Court of Human Rights in the case of Hýbkovi v. the Czech Republic (no. 30879/17, judgment of 13 October 2022) in which the Court considered that Article 8 of the European Convention on Human Rights (right to privacy) had not been violated.

Issues and proceedings before the Committee

Consideration of admissibility

7.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 20 of the rules of procedure under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, whether the communication is admissible under the Optional Protocol.

7.2 The Committee notes the authors' claim that they have exhausted all available domestic remedies by filing a complaint before the Constitutional Court. Since the State party has not raised any objections in this regard, the Committee concludes that article 7 (e) of the Optional Protocol does not constitute an obstacle to the admissibility of the communication.[5]

7.3 The Committee considers that the authors have failed to sufficiently substantiate their claims under articles 3 (2), 16, 18 (1), 20 (1), 24 (1), 28 (1), 29 (1), 37 (b) and 39 of the Convention and declares them inadmissible under article 7 (f) of the Optional Protocol.

7.4 However, the Committee is of the opinion that, for the purposes of admissibility, the authors have sufficiently substantiated their claims under articles 3 (1), 9 (1-3), 12, and 37 (b) of the Convention in that the decision of the Regional Court in Brno of 28 May 2019, by granting an interim measure motion which ordered their forced removal from their home and their placement in institutional care, violated their rights under the Convention. The Committee therefore declares these claims admissible and proceeds with their consideration of the merits.

[5]See in this regard the Committee's decision in *S.K. v Denmark* (CRC/C/90/D/99/2019), para. 6.2.

Consideration of the merits

8.1 The Committee has considered the communication in the light of all the information submitted to it by the parties, in accordance with article 10 (1) of the Optional Protocol.

8.2 The main issue before the Committee is whether, in the circumstances of the present case, the forced removal of the authors from their home and their placement in institutional care to ensure their psychological and psychiatric care and their school attendance resulted in a violation of their rights under articles 3 (1), 9 (1-3), 12 and 37 (b) of the Convention.

8.3 The Committee recalls that under article 9 (1), of the Convention, "States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child". The Committee also recalls that "given the gravity of the impact on the child of separation from his or her parents, such separation should only occur as a last resort measure, as when the child is in danger of experiencing imminent harm or when otherwise necessary; separation should not take place if less intrusive measures could protect the child. Before resorting to separation, the State should provide support to the parents in assuming their parental responsibilities, and restore or enhance the family's capacity to take care of the child, unless separation is necessary to protect the child.[6]" The Committee also notes that according to the Guidelines for the Alternative Care of Children, "removal of a child from the care of the family should be seen as a measure of last resort and should, whenever possible, be temporary and for the shortest possible duration. Removal decisions should be regularly reviewed and the child's return to parental care, once the original causes of removal have been resolved or have disappeared, should be in the best interests of the child […].[7]"

8.4 Concerning the ECHR jurisprudence referred by the State party, the Committee notes that the Court, in its Grand Chamber decision on the case of Strand Lobben and Others v. Norway, found that the refusal to discontinue the public care of the child X and the deprivation of X's mother's parental responsibilities and the authorisation granted to X's foster parents to adopt X had violated X's right to respect for family life under Article 8 of the European Convention on Human Rights. While the criteria for violation of this provision is different from that of article 9, paragraph 3 of the Convention, the Court stated that "[i]n so far as the family life of a child is concerned, [it] reiterates that there is a broad consensus, including in international law, in support of the idea that in all decisions concerning children, their best interests are of paramount importance."[8]

8.5 Regarding adolescents in alternative care, the Committee recalls that "there is significant evidence of poor outcomes for adolescents in large long-term institutions, as well as in other forms of alternative care, such as fostering and small group care, albeit to a much lesser degree. […] States are urged to ensure that institutionalization is used only as a measure of last resort […].[9] It also recalls that, regarding mental health and psychosocial problems of adolescents, "States should adopt an approach based on public health and psychosocial support rather than overmedicalization and institutionalization.[10]"

8.6 The Committee considers that decisions ordering the removal of a child from his/her family are extreme measures that should be taken only after having assessed the social support measures adopted before by the domestic authorities and any viable alternative measure that could still be taken to avoid the child's placement. The best interests of the child should be a primary consideration in such decisions, which have a particularly significant impact on children's lives and development. The Committee also considers that the removal orders should be issued for the shortest duration, be subject to regular review and appeal, and be discontinued as soon as possible. The continued contact of a child with the parents should be ensured during the placement period. unless it is considered against the child's best

[6] CRC/C/GC/14, para. 61.
[7] A/RES/64/142, para. 14.
[8] Strand Lobben and Others v. Norway (Application no. 37283/13), para. 204.
[9] CRC/C/GC/20, para 52-53.
[10] CRC/C/GC/20, para 58.

interests in accordance with article 9, paragraph 3 of the Convention. States parties should take measures to support families with a view of their reunification with the child as soon as it is deemed in their best interests.

8.7 In the present case, the Committee notes the authors' claims that, by placing them in institutional care, the domestic authorities relied on a "welfare approach" in breach of their right to have their best interests taken as a primary consideration; that they disregarded the fact that they were already adolescents at the time of the decision (B.J. was nearly 13 years old and P.J. was 15 years); that the authorities should have never resorted to coercion as a means of their protection to force them to live in an institution to ensure their right to education and health; and that during the first weeks of their placement they were subjected to restrictions on the contact with their parents.

8.8 The Committee also notes the State party's argument that the removal of the authors from their parent's care was lawful, pursued a legitimate aim - their placement in the crisis centre was necessary for protecting their healthy development -, was proportionate to the aim pursued and was decided taking into consideration the children's best interests. It also notes the State party's argument that the removal decision was only ordered on 28 May 2019 after the domestic authorities had attempted less invasive measures during a prolonged period of time. In that regard, the Committee particularly notes the State party's contention that since January 2018, the Office for the Social and Legal Protection of Children of the Šlapanice Municipal Office had been working intensively with the family cooperating with schools, attempting to arrange for professional help, and developing child protection plans; yet, despite all these measures, the cooperation with the family remained complicated and the situation of the children worsened as they continued failing to attend school and having serious mental health problems. In that regard, the Committee notes the authors' argument that the decision on their placement should not have been adopted even if less invasive solutions had failed, as the need for education and provision of psychological or psychiatric care to an adolescent does not constitute a sufficient ground for taking such a coercive measure, which should only be taken in exceptional cases, such as when the child would face severe violence, which was not their case. The Committee notes the State party's argument that as a result of their stay at the crisis centre the authors stabilised and underwent positive changes. However, the Committee also notes the authors' claim that the alternative care did not bring them any support, but only very intensive restriction of their autonomy and freedoms, including personal liberty and the right to family life, and that any act of coercion is a form of violence which can have repercussions also in their future lives. In this regard, the Committee notes that, according to the Ministry of Labour and Social Affairs, removal of the child from his/her family to ensure the child's school attendance or to correct the child's behaviour was "unacceptable", as such measures could never result in deprivation of the child's liberty (para. 2.10 *supra*).

8.9 The Committee takes note of the State party's efforts to ensure the realisation of the authors' rights to education and health. It recalls that, under article 4 of the Convention, States Parties shall undertake all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the Convention. The Committee also recalls that the interdependent nature of the rights recognized by the Convention and the holistic concept which must guide its implementation, in compliance with the general principles. In this regard, the Committee considers that decisions aimed at ensuring that children receive treatment and education need to carefully consider the potential infringement on other Convention rights, in particular when it comes to determining measures that have such a profound impact in children's lives as are placement measures.8.10. In the present case, the Committee observes that, according to the information available on the file, the Regional Court noted that the parents were failing in their upbringing role, in particular by failing to ensure access to psychological and psychiatric care for both authors and acknowledged that the separation from their mother would be detrimental for the authors. Yet, the Committee observes that the Court failed to assess the consequences that this separation could have on the authors, in the short and long term, particularly considering their mental health situation. The Committee notes that the Regional Court did not assess either the previous measures taken by the authorities to support the authors, and in particular, whether these measures were child-friendly, and adopted and implemented taking their best interests as a primary consideration, and whether the children's views had been considered and given due weight

in the choice of the measures taken so far. The Committee further observes that the Regional Court, when reaching a decision on the authors' placement, does not seem to have carefully considered any alternative options, or any other family-based or community-based type of care, which may have been more favourable to the children before resorting to institutionalization. The Committee hence concludes that the Regional Court failed to take the authors' best interests as a primary consideration when reaching its decision.

8.11 The Committee also notes the authors' argument that the order for interim measures for their placement was issued under the general rules of Act no. 99/1963, the Civil Procedure Code and not under Act no. 292/2013, on Special Judicial Proceedings and therefore could not benefit from important legal safeguards, such as the limitation of the duration of the interim measure and its regular review by the court. In that regard, it also notes that, while affirming that the applicability of the "regular interim measure" under the Code of Civil Procedure in the authors case was lawful, the State party acknowledged that it was unfortunate that this measure was not limited as to its duration and eventually led to the children's long-term stay in the crisis centre without the possibility of regular review by the court of the conditions for such an interference. In that regard, the Committee observes that the interim measures decision, by not setting a fixed duration of the placement nor a regular review by the court, resulted in the stay of the authors in the crisis centre for an unjustifiably prolonged period -from 26 June 2019 to 29 June 2020.

8.12 In the light of the foregoing, the Committee notes that the State party has not provided substantial explanations on the criteria used to assess the best interests of the child, nor information on the systematic monitoring of their best interests during the removal and placement procedures". The Committee is not satisfied that the decision of the Regional Court in Brno of 28 May 2019, ordering the placement of the authors in institutional care separating the authors from their parents and limiting the contacts with their parents to one hour a week, was accompanied by the safeguards required to protect their rights under the Convention, and commensurate with the gravity of the consequences of their separation from their parents. In the circumstances of the present case, in particular the lack of an adequate assessment of alternatives to the separation from the parents, the lack of an adequate child best interests assessment; and the fact that the court's decision did not contain important safeguards such as the limitation of the duration of the interim measure and its regular review by the court -which resulted in the children's placement in the Crisis centre for more than a year-, the Committee concludes that the author's separation from their parents and limiting the contacts with their parents resulted in a violation of their rights under articles 3 (1) and 9 (1-3) of the Convention.

8.13 The Committee notes the authors' allegation that they were never heard in the judicial proceedings leading to their placement in institutional care, and that their guardian ad litem did not respect their views since he found them not to be in their best interests and appealed the decision of the District Court of Brno-Province against their will. The Committee also recalls that the child has the right to be heard in civil judicial proceedings such as in those proceedings related to placement on alternative care.[11] The Committee recalls that the "assessment of a child's best interests must include respect for the child's right to express his or her views freely and due weight given to said views in all matters affecting the child"[12] and that "the evolving capacities of the child (art. 5) must be taken into consideration when the child's best interests and right to be heard are at stake".[13]

8.14 The Committee notes the State party's argument that the guardian ad litem fulfilled his role, which was to provide them with the necessary information about the courts proceedings and represent the children in the proceedings, and that the authors' right to be heard was also ensured by the Municipal Office and by the fact that the children were finally heard in the proceedings on the merits of the case on 24 August 2020. However, the Committee notes that the authors consider that the failure of the guardian ad litem by appealing the District Court's decision against their will could not be remedied by the role of the Municipal Office nor by the court hearing on the merits. The Committee recalls that

[11] CRC/C/GC/12, para. 53-54.
[12] CRC/C/GC/14, para. 43; see also CRC/C/GC/12.
[13] CRC/C/GC/14, para. 44.

"where the child wishes to express his or her views and where this right is fulfilled through a representative, the latter's obligation is to communicate accurately the views of the child. In situations where the child's views are in conflict with those of his or her representative, a procedure should be established to allow the child to approach an authority to establish a separate representation for the child (e.g. a guardian ad litem), if necessary.[14]" Taking into account that the guardian's views appeared to be in conflict with the authors' views, the Committee considers that the domestic authorities failed to appoint a separate representation for the children to ensure that their views were adequately expressed during the judicial proceedings. The Committee also considers that, in view of the age of the children, they should have been given the opportunity to be directly heard by the court and their views should have been given due weight. Failure to have heard the children during the domestic proceedings leading to their placement in institutional care amounts to a violation of article 12 of the Convention.

8.15 The Committee also notes the authors claims that during the first weeks of their placement in the Crisis Centre they were not allowed to leave the institution without being accompanied by a staff member, in violation of article 37(b) of the Convention. The Committee notes the State party's submission that, after an adaptation phase, the children could go out on their own outside the premises of the crisis centre every day and that, after the supervised contacts with their parents were terminated, the children regularly spent time outside the institution to stay with them. However, the Committee notes that the State party has not provided detailed information to rebut the authors' affirmation that during the stay in the Crisis centre, they have been deprived of their liberty, particularly at the beginning of their stay. The Committee notes that, considering the way care institutions operate, children in institutional care may be deprived from their liberty.[15] Having concluded that the decision to place the authors in institutional care violated their rights under the Convention, the Committee considers that such placement was an unlawful or arbitrary deprivation of their liberty, in violation of article 37(b) of the Convention.

8.16 The Committee, acting under article 10 (5) of the Optional Protocol on a communications procedure, finds that the facts before it disclose a violation of articles 3 (1), 9 (1-3), 12 and 37 (b) of the Convention.

9. The State party is therefore obliged to provide the authors with effective reparation for the violations suffered. The State party is also under an obligation to prevent similar violations in the future. In that regard, the Committee requests the State party to:

(a) Ensure that all proceedings aiming at removing children from their parents, including decisions on interim measures, are in conformity with the Convention and the findings contained in this Views and in particular that: (i) a best interests assessment is conducted; (ii) the children's views are considered and given due weight, including in relation to the type of placement under consideration, the medical treatments and access to education that will be provided, and the contacts with their parents during their placement; (iii) procedural safeguards to protect the rights of the children under the Convention are ensured.

(b) Ensure that the removal orders are a measure of last resort after having tried other child-friendly less invasive measures, in consultation with the children and their parents, by a multidisciplinary team of professionals. They should be issued for the shortest period of time, subject to regular review and appeal, and be discontinued as soon as possible. Regular contact of the children with their parents during the placement should be ensured. The State party should undertake measures to ensure the reunification of the child with his/her family as soon as it is deemed in their best interests.

(c) Ensure that the child always has appropriate legal representation during the proceedings. The child should be provided with a legal representative, in addition to a guardian or representative of his or her views, when there is a potential conflict of interest between the parties in the decision.[16]

[14] CRC/C/GC/14, para. 90.
CCPR/C/GC/35, paras. 5 and 62
[16] CRC/C/GC/14, para. 96

(d) Provide training to staff of social services, members of the Public Prosecution Service, judges and other relevant professionals on the rights of the children subjected to a removal order from their parents, including on the grounds of access to health services, in particular, on the Committee's general comment No. 12 (2009), No. 14 (2013), No. 15 (2013) and No. 20 (2016).

10. In accordance with article 11 of the Optional Protocol, the Committee wishes to receive from the State party, as soon as possible and within 180 days, information about the measures it has taken to give effect to the present Views. The State party is requested to include information about any such measures in its reports to the Committee under article 44 of the Convention. The State party is also requested to publish the present Views and to disseminate them widely.