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## SUBSTITUTE FAMILY CARE IN THE CZECH REPUBLIC AND ITS ASPECT IN SPECIAL-NEEDS PEDAGOGY

ABSTRACT. Stárek Lukáš, *Substitute Family Care in the Czech Republic and its Aspect in Special-needs Pedagogy* [Rodziny zastępcze w Czechach w kontekście pedagogiki specjalnej]. *Studia Edukacyjne* nr 54, 2019, Poznań 2019, pp. 311-333. Adam Mickiewicz University Press. ISSN 1233-6688. DOI: 10.14746/se.2019.54.18

The text focuses on the definition of substitute family care and its basic forms that are applied and used in the Czech Republic. The historical progression of substitute family care is also mentioned to demonstrate that this issue is a part of human society. An integral part of the text is the statistical information. Furthermore, the purpose of the text is to point out the need for experts and professionals who are engaged with this problem and are working with this targeted group. Last but not least is the need for reflection on those changes that had to be made because of the change in attitudes concerning substitute family care.

**Key words:** legislation, substitute family care, family, special-needs education

### Introduction

If all the needs of the child are satisfied, then this is a good prerequisite for proper development and growth. Building a sense of security and a loving environment on the part of parents provides the basis for the child's stability and development. For some of us, these may be ordinary human needs, but there are people and children who do not have or have not experienced this "ordinariness". Unfortunately, we still come across parents who, for various reasons, cannot, do not want or lack the skills to look after their children. These children miss out on a solid family background, confidence, security and love. It may even happen that a parent abandons their child. The reasons for this may vary - for example, indifference, illness, psychological problems, lack of ancho-

ring or personal instability. Such a parent or family cannot fulfil their parental roles, fulfil their parental responsibilities and provide a favourable educational environment for the child. The emergence of this situation/fact is when substitute family care comes into play.

### Definition of substitute family care

Substitute family care is an umbrella term for all types of non-institutional childcare a child is placed in when, for various reasons, his/her biological parents cannot provide care.<sup>1</sup> They are thus raised by persons other than their biological parents in an environment that is most similar to living in a "real" family.

The definition of substitute family care is not uniform, although the meanings are similar. A uniform indicator is always the legal/legislative framework that defines foster family care. The diversity of the authors' views (Benešová, Bubleová, Dunovský, Dytrych, Matějček) is evident in the starting points of psychological or social aspects of substitute childcare.

Matejcek and Dytrych state that "*substitute family care can be defined as social measures in favour of a child whose parents cannot or do not want to provide care for, or for serious reasons, it is not desirable that they provide care*".<sup>2</sup> The authors also add that this form of childcare is intended primarily to ensure the child's harmonious development, to enable the child to grow up in a family environment that satisfies his/her basic psychological needs and prepares him/her for suitable social inclusion.

Bubleová and Benešová define substitute family care in the following way:

substitute family care is a form of childcare where the child is brought up by 'substitute' parents in an environment that is most similar to life in a natural family. This mainly means adoption and foster care in this country.<sup>3</sup>

Dunovský explains that:

substitute family care means care for abandoned, orphaned children who for some reason lost their own family or did not find it at all, in a new family environment or a similarly organised small group resembling or approaching the family.<sup>4</sup>

However, the diversity of views/definitions of substitute family care is more due to the use of the definition within the many and varied fields that address the topic of substitute family care. At the same time, it must be noted that all fields, be it psychology, pedagogy, paediatrics, family education, co-

<sup>1</sup> J. Nožířová, *Náhradní rodinná péče*, Praha 2012.

<sup>2</sup> Z. Matejcek, Z. Dytrych, *Děti, rodina a stress*, Galén, Praha 1994, p. 166.

<sup>3</sup> V. Bubleová, L. Benešová, *Hledáme nové rodiče*, Středisko náhradní rodinné péče, Praha 2001, p. 4.

<sup>4</sup> J. Dunovský, *Sociální pediatrie vybrané kapitoly*, Praha 1999, p. 227.

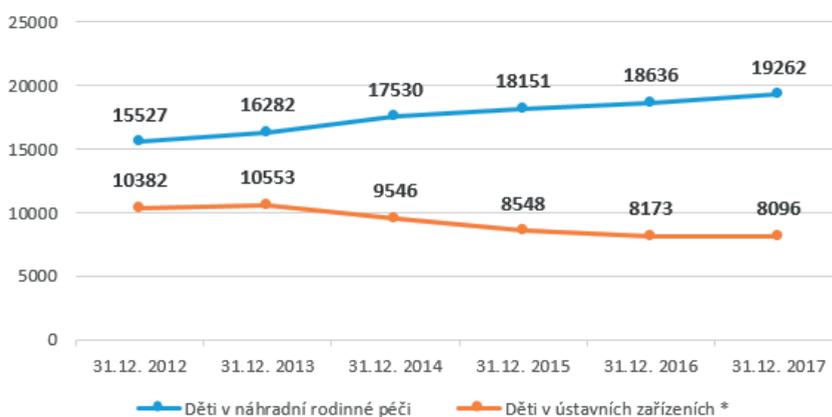
unselling, etc., intertwine and try to address the problem competently from their unique perspective, albeit always in relation to other fields.

Current legislation, primarily Act No. 89/2012 Coll., The Civil Code; Act No. 359/1999 Coll., on Social and Legal Protection of Children, clearly states the principle of prioritising substitute family care over institutional care, where the system is set up so that if the child cannot stay in his/her family environment, substitute family care will be the solution next in line.

The aim of the new legislation was to create legal conditions for systematic work with families that will ensure that the child remains in a family or alternative family environment. The system is now more oriented towards child risk prevention and timely solutions. The rules for the activities of employees of the social and legal protection of children, especially at the level of municipalities with broader powers, have been amended. Municipalities should, after evaluating the situation, look for an optimal solution for each child individually within the framework of multidisciplinary cooperation and by using the network of services. Quality standards and binding procedures are now clearly set in the system. The quality standards apply both to the bodies of social and legal protection of children and to persons authorised to exercise social and legal protection. Foster care is now carried out on a professional basis, and the conditions for providing care are set by a decision or agreement on the provision of foster care. The system of preparation and selection of foster parents has been unified, as well as the method of their material provision (including temporary foster care). A network of support and relief services is now available to foster parents.<sup>5</sup>

## Substitute family care in numbers within the CR

Number of children living in foster care and institutional care since 2012:



Source: Virtual Library NRP.

<sup>5</sup> Child and Family Association, online, citation 2019-03-12.

At the end of 2017, 19,262 children were placed in substitute family care. The growth of children in substitute family care is increasing every year. This fact indicates an attempt to place children in substitute family care rather than institutional care. The number of children living in institutions is decreasing, but still very slowly. In comparison, at the end of 2017, a total of 8,096 lived in institutional facilities.

## **There are different forms of substitute family care in the Czech Republic**

### **Placing a child in the care of a natural person other than a parent**

Legislative definition – Act No. 89/2012 Coll. Civil Code, Sec. 953 – Sec. 957.

If neither the parent nor the guardian can personally care for the child, the court may place the child in the personal care of another person... The decision to place the child in custody must be in accordance with the child's interests. Placing a child in the caregiver's personal care does not replace foster care, pre-foster care or care that must precede adoption. It takes precedence over the care of a child in institutional care.<sup>6</sup>

The court decision always defines the scope of rights and obligations in relation to the child. Most often it is the provision of care for the child and its representation in ordinary matters. When choosing the appropriate caregiver, the court takes into account the family relatives of the child. Furthermore, the guarantee of proper upbringing must be ensured, and the caregiver must agree to the custody of the child.

Spouses can also become caregivers. If a married couple who have custody of the child divorce, the rights and obligations of the spouses to the child must be adjusted. If, during the divorce, the court intends to place the child in the custody of one spouse, it may do so only with the consent of the other. In the event of the death of one of the spouses, the child remains in the custody of the other spouse.

Unless the court decides otherwise, the child's parents remain liable for parental responsibility, continue to be the legal guardians of the child and maintain an obligation towards the child. Carers have the right to maintenance from the child's parents, which they can enforce. The amount of maintenance is determined by a court decision. The maintenance should be in accordance with the child's needs and interests.

The caregiver is not entitled to foster care benefits or other special benefits.

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<sup>6</sup> Act No. 89/2012 Coll. Civil Code, Sec. 953.

### **Types of adoption**

Legislative definition – Act No. 89/2012 Coll. Civil Code, Sec. 794 – Sec. 854.

Adoption means accepting a non-family member as one's own.<sup>7</sup>

The prerequisite for adoption is a relationship between the adoptive parent and the adoptee as there is between a parent and child, or that there are at least the foundations of such a relationship. The adoption of a minor must be in accordance with his or her interests.<sup>8</sup>

In the case of adoption, a relationship exists in legal terms between the adoptive parent and the adopted child identical to the one between biological parents and their children. This changes the ties of the child with regard to his or her original parents, and all rights and obligations in relation to the original family, as determined by a court decision, are nullified.

The adoptive parents are registered on the child's birth certificate and must assume complete parental responsibility. The adoptive parents are thus the legal representatives of the child. The child adopts the surname of his/her adoptive parents. By the start of schooling at the latest, the child should be informed of the fact that he or she is adopted. This is a legal obligation on the part of the adoptive parents.

Adoption is decided by the court. A child must be in the care of a future adoptive parent for at least six months at the expense of said parent.

An adoption cannot be revoked three years after the adoption decision of the court.

An adult can also be adopted, unless it is a violation of good morals.

There is no special oversight or supervision by the state in relation to adoptive parents.

### **International adoption**

International adoption means the adoption of a child abroad or from abroad. If it is not possible to find a substitute family for the child in his or her country of origin, international adoption is a possible solution. International adoption is governed, inter alia, by the Convention on the Protection of Children and Cooperation in International Adoption – the so-called Hague Convention on the Protection of Children, which defines the functionality of an authority/body in this field. The Office for International Legal Protection of Children, which is based in Brno, operates within the Czech Republic.

<sup>7</sup> Act No. 89/2012 Coll. Civil Code, Sec. 794.

<sup>8</sup> Act No. 89/2012 Coll. Civil Code, Sec. 795.

### **Foster care**

Legislative definition – Act No. 89/2012 Coll. Civil Code, Sec. 958–970; Act No. 359/1999 Coll., on Social-legal Protection of Children.

If neither the parent nor the guardian can personally care for the child, the court may place the child in the care of a foster parent. Foster care takes precedence over placing a child in institutional care.<sup>9</sup>

Foster care is applied to children who cannot be raised by their parents, but ties are maintained. This fact can be linked not only to parents but also to other relatives – e.g. siblings or grandparents. One of the duties of a foster parent is precisely to allow parents to contact the child, to develop a certain sense of belonging and to develop their mutual relations. The main aim of foster care is to provide care for the child and its upbringing in a family environment.

The foster parent has the right to represent the child and to manage his/her affairs only in normal matters and has no maintenance obligation. The foster parent may be an individual or a married couple. There is no family relationship between the foster parent and the child. Thus, the biological parent, who has parental responsibility over the child, remains the legal representative.

The court decides on foster care for the period of time that the obstacle preventing the child's parents from personally caring for him/her exists. Some children have been in the care of foster parents for several years; others remain in this form of care until they reach the age of majority. Foster care expires at the latest when the child acquires full legal capacity, otherwise by the child's age of majority.

Foster care is supported by the state in terms of foster care benefits, which are to ensure the basic material security of the child and at the same time take into account the difficulty of this care by providing foster care payments.

Foster care benefits include the Child Benefit Allowance; Foster Care Allowance; Foster Parent Payment; Acceptance Allowance; Personal Motor Vehicle Purchase Allowance.<sup>10</sup>

The process of mediation and custody of a child is defined under Act No. 359/1999 Coll., On Social and Legal Protection of Children, which includes, *inter alia*, the process of mediation and custody of a child:

1. Submission of an application for inclusion in the register of applicants eligible to become foster parents to the municipal office of a municipality with broader authority

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<sup>9</sup> Act No. 89/2012 Coll. Civil Code, Sec. 958.

<sup>10</sup> Ministry of Labour and Social Affairs of the Czech Republic, online, cit. 2019-02-12.

where the applicant has his/her permanent residence (in the case of spouses at the permanent residence of one of them). The application form can be obtained directly from the office or downloaded from the MoLSA website.

2. Assessment of applicants by the municipal office with broader authority – the municipality will carry out a social investigation into the family of the applicants in the place of their actual residence. After gathering the necessary documentation (report on the state of health, property conditions, etc.), which is a prescribed part of the application, the municipal authority will forward the application to the relevant regional authority. It shall attach its opinion to the application.

3. Assessment of applicants by the regional authority – the regional authority will ensure the psychological examination of the applicants and the assessment of their application by an assessment doctor. At the same time, it will include applicants in preparatory courses for the admission of a child to foster care. The professional assessment of applicants focuses primarily on the characteristics of their personality, their psychological and health condition with regard to the prerequisite for raising a child. It also assesses the applicant's motivation that led to their application for custody of a child, the quality of their relationships and the stability of their family environment. Among other things, the attitude of other family members in accepting a child in this form of foster care is also examined. The expert assessment also includes an assessment of the preparation for the adoption of a child into foster care.

4. Decision on inclusion or non-inclusion in the register – based on the findings of a previous expert assessment, the regional authority will issue an administrative decision on the inclusion or non-inclusion of applicants in its foster parents register for the purpose of mediation of foster family care. If the applicants' disagree with the outcome of the decision, there is a possibility of appeal.

5. Choosing a family for a child – the regional authority also keeps a record of children whose situation requires foster care. The choice of family for a particular child depends on the needs of the child and the ability of future foster parents to meet those needs.

6. Establishing contact with the child – the selected family is approached by the regional authority, acquainted with the child's situation and documentation in detail, and is subsequently provided with personal contact.<sup>11</sup>

### **Temporary foster care**

Legislative definition – Act No. 89/2012 Coll. Civil Code, Sec. 958; Act No. 359/1999 Coll., on Social-legal Protection of Children.

The court may place the child in foster care for a temporary period.<sup>12</sup>

The aim of temporary foster care is primarily to provide time for biological parents to adjust their circumstances, which would then allow the child to be taken back into care. This time can also be used to find a different, more suitable family for the child.

It is therefore primarily an emergency measure and only temporary, with the maximum length of stay being one year at the most. This option allows the child to avoid being placed in an institution.

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<sup>11</sup> Foster Care Centre, Society, online, citation 2019-02-15.

<sup>12</sup> Act No. 89/2012 Coll. Civil Code, Sec. 958.

Temporary foster parents are financially supported by foster care payments (Child Benefit Allowance; Foster Care Allowance; Foster Parent Payment; Acceptance Allowance; Personal Motor Vehicle Purchase Allowance) and are provided with expert assistance and support from accompanying organisations or the Department of Social and Legal Protection of Children of a municipality.

### **Guardianship**

Legislative definition – Act No. 89/2012 Coll. Civil Code, Sec. 928 – Sec. 942.

If there is no parent who has full parental responsibility over the child, the court will appoint a guardian to the child. The guardian has, in principle, all the duties and rights as a parent of the child but has no maintenance obligation regarding the child. With regard to the guardian's person or the circumstances of the child, as well as to the reason for which the parents do not have all the duties and rights, the scope of the guardian's duties and rights may in exceptional cases be different.<sup>13</sup>

The court will appoint a guardian to the child if: the child's parents have died; the parents have been denied parental responsibility; their parental responsibility has been suspended; they do not have full legal capacity (and therefore do not possess parental responsibility).

No legal relationship between the guardian and the child exists as it is between the parent and the child.

If the guardian personally cares for the child, he/she is entitled to foster care payments (Child Benefit Allowance; Foster Care Allowance; Foster Parent Payment; Acceptance Allowance; Personal Motor Vehicle Purchase Allowance).

The guardian is directly responsible to the court with local jurisdiction and is subject to regular supervision. The guardian reports to the court about the child in his/her care, usually at annual intervals. If the guardian wants to make a legal decision on a crucial matter relating to the child, the court's approval is required.

## **The history of substitute family care in our territory**

Within the historical legislative definition, the pivotal edition of the Imperial Law of the Home no. 105, of the Imperial Code from 1863 is crucial. This law was subsequently followed by the Provincial Poor Act for the Czechs, No. 59, the Provincial Code. Both legislative sources are one of the first measures introduced by the public administration for the benefit of the poor and

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<sup>13</sup> Act No. 89/2012 Coll. Civil Code, Sec. 928.

govern poor relief relatively broadly (medical treatment of the poor, nutrition and education of children from poor municipalities, facilities for reforming neglected youth). Poor relief for children provided compensation for absent parents, either in special institutions (orphanages) or in foster care. The family was the preferred form. The assumption was similar to today's thinking, i.e. the best environment for raising a child is a good family that ensures the child's physical and moral development. This care was provided by home communities. This arrangement, however, had its shortcomings, especially the insufficient funding from municipalities.

A partial improvement occurred at the beginning of the 20th century on the basis of Act No. 62/1901 of the Imperial Law, which laid the foundation for the establishment of the so-called land orphan funds. Provincial orphan funds have appropriately used the surpluses from the orphanage's coffers to provide for and raise orphaned and abandoned children. Along with poor relief, there were also voluntary organisations and institutions for children and youth.

Since 1904, the so-called "district commissions for youth care" started to be established, bringing together volunteers who helped orphaned children. After the establishment of the independent Czechoslovak Republic in 1918, the district commission for youth care was declared as the organisational unit for all voluntary youth care. An important document to be mentioned in connection with the development of district care was the Government Decree No. 20/1930 Coll., on Collective Guardianship, which was the statutory instrument of Act No. 256/1921 Coll. According to these standards, if a suitable guardian was not found, the court entrusted the guardianship to the district commission for youth care. Since 1924, the Central Social Committee and the Central Social Office has operated in Prague.

After the war, the tasks of youth care were transferred to the district and provincial national committees in 1947. Act No. 69/1952 Coll., on Social and Legal Protection of Youth brought about a substantial intervention in the protection of children. Socio-legal protection was limited to providing institutional guardianship and custody of children not in the care of their parents. From the time of poor relief until now, substitute family care has been given priority in cases of need to care for children outside their own family.

The Family Act of 1963 opened the way to a series of experiments, in particular the so-called "large families", whether living individually or concentrated in children's villages. Act No. 50/1973 Coll., on Foster Care, completely covered substitute family care at that time.

Before the Act No. 359/1999 Coll., on the Social and Legal Protection of Children came into effect, the activities of state bodies focused on child protection were regulated by the Family Act and, from the point of view of

defining the scope of power of individual institutions and social security regulations. However, this status did not meet the needs of children, in particular the protection of children in developing civil society was not sufficiently ensured. The key changes in the area of family law occurred at the end of the 1990s, especially in connection with the adoption of Act No. 91/1998 Coll., which substantially amends and supplements the Act on Family Act No. 94/1963 Coll., as amended. At that time, the foster care legislation was incorporated into the Family Act. The form of substitute family care is clearly preferred to institutional care. Furthermore, this led to the acceptance of the aforementioned Act on Social and Legal Protection of Children being adopted, which can be understood as the basis of public protection of children.<sup>14</sup>

The 21st century also brings changes. Since 2003, substitute family care in the sense of their own mediation of substitute family care has been provided by regional authorities, which maintain registers of suitable foster parents and of children who can be placed in substitute family care. The tasks are also carried out at the municipal level by municipal authorities with broader powers. This is where the individual applicants for foster family care first learn relevant information. Municipalities also provide all documents for the operation of the regional authority.

### Possible professional employment

Professional employment is subject to valid legislation which shows that the graduate is a qualified educational worker or social worker.

In the framework of educational sciences, resocialisation and penitentiary education is now an independent **multidisciplinary field** that combines pedagogy, special and social education, psychological sciences, sociology, penology and penitentiary studies and other related social sciences.

The course is intended not only for employees of institutions under the authority of state administration:

Ministry of Finance of the Czech Republic (Customs and Excise, CR);

**Ministry of Labour and Social Affairs of the Czech Republic** (social services within outpatient, field and residential forms);

Ministry of Justice of the Czech Republic (Prison Service of the Czech Republic, Probation and Mediation Service of the Czech Republic, forensic detention centre);

**Ministry of Education, Youth and Sports of the Czech Republic** (educational institutes, diagnostic institutes, etc.);

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<sup>14</sup> Z. Matějček, *Náhradní rodinná péče: průvodce pro odborníky, osvojitele a pěstouny*, Praha 1999.

Ministry of the Interior of the Czech Republic (Police Services of the Czech Republic, municipal police, Refugee Facility Administration of the Ministry of the Interior);

possibly also the Ministry of Health of the Czech Republic (psychiatric facilities, emergency medical service) and the Army of the Czech Republic.

Regional authorities and municipalities with broader authority – authority over social and legal protection of children.

The course is thus intended for employees in the public sector, **in various school and non-school educational establishments**, as well as for workers in **non-profit organisations** (e.g. Fond ohrožených dětí [Fund for Children at Risk]; Asociace náhradních rodin ČR, z.s. [Association of Surrogate Families of the Czech Republic]; , Dobrá rodina o.p.s. [Good Family], Rozum a Cit, z.s. [Sense and Sensibility]; SOS dětské vesničky, z.s. [SOS Juvenile Remand Centre]; Sdružení pěstounských rodin, z.s [Association of Foster Families] and the **private sector that offers assistance through corporate foundations** (e.g. J&T Foundation; Sirius Foundation...).

Competencies: professional fields; social/special education; diagnostic; interventional; communication; personality cultivating.

Work activities of a foster family worker:

- works with children eligible for foster care and with foster parent applicants;

- provides complete documentation necessary for mediation of foster family care;

- accepts applications for foster care, provides information on the process of including applicants in the register of persons eligible to become foster parents. As part of this activity, it carries out a detailed social survey in families, provides counselling, and seeks persons suitable for becoming foster parents;

- monitors the development of children placed in foster families, cooperates with foster parents, biological parents, provides social and legal counselling, targeted assistance to all;

- represents children as guardians before courts, police, notaries and other institutions, protecting the interest of minors;

- cooperates with foster parents and guardians;

- oversees the proper development of children placed in foster or guardian care;

- knows current legislation and applies it in practice;

- uses his/her knowledge and skills for the benefit of the client/child;

- provides social and legal counselling in connection with exercising social and legal protection of children;

- provides social counselling to children and parents in solving their family, personal problems and acute crisis situations, mediates the assistance of

professional counselling and health care workplaces and other professional facilities;

- cooperates with institutions that have entered into a foster care agreement with carers or registered persons in the administrative district of the social-legal protection body;

- the locally competent regional authority makes notifications of children eligible for foster care;

- acts preventively and participates in preventive measures ensured by the BSLPC;

- provides field social work;

- member of a multidisciplinary team;

- observes the ethical principles of the social worker;...

Possible professional employment:

- authority for social and legal protection of children – MoLSA CR, regions and municipalities with extended powers;

- non-governmental non-profit organisations focused on support, assistance and counselling in the field of foster family care;

- foster care centres;

- foster family programmes;

- help centre for children at risk...

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