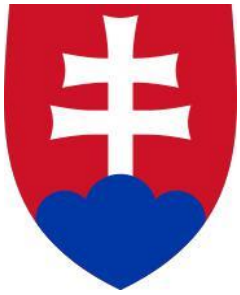
PUBLIC DEFENDER OF RIGHTS



Public defender of rights' special report concerning the facts indicating a severe violation of the fundamental rights and freedoms of children by authorities of social and legal protection of children and social guardianship

Submitted to the National Council of the Slovak Republic by:

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Bratislava, January 2017

Special Report by the Public Defender of Rights

concerning the facts indicating a severe violation of the fundamental rights and freedoms of children by authorities of social and legal protection of children and social guardianship and a proposal that the report be discussed at the next session of the National Council of the Slovak Republic

Pursuant to §24 of Act No. 564/2001 Coll. on the Public Defender of Rights, as amended, "[if] the public defender of rights ascertains facts indicating that the violation of a fundamental right or freedom is a severe one, or that it affects a larger number of individuals, he/she may submit a special report to the National Council. The special report may also include a proposal that the report be discussed at the next session of the National Council."

As already known from the previous reports by the public defender of rights, I have repeatedly found, during the discharge of my official duties, violations of the fundamental rights of children caused by actions or omissions to act by some of the authorities responsible for the social and legal protection of children and social guardianship. Some of the violations have been caused by an individual error, workflow organisation and/or excessive workload of an understaffed department. Others, however, have shown signs of a system-level error, an error which always requires more radical measures and changes. The system-level shortcomings already identified with respect to actions taken by authorities in charge of the social and legal protection of children and social guardianship – which even result in violations of some of the fundamental rights of children – include, for example, a failure to respect the child's right to be heard in any judicial and administrative proceedings affecting the child, the pursuit of the child's rights and legitimate interests with all the due care in proceedings where the child's rights are in conflict with the rights of the child's guardians, placement of children in schools and access to education and training, the legislative framework for the placement of children into the re-educational system, and conditions of re-education.

In 2016, I commissioned the Office of the Public Defender of Rights to conduct an investigation concerning the protection of the fundamental rights and freedoms of children subject to re-education, as well as in other domains of the system for the social and legal protection of children. The purpose of the investigation was to ascertain whether the system of the social and legal protection of children under its current setup and rules of operation is capable of providing the full protection of, and compliance with the rights of the child guaranteed under the Convention on the Rights of the Child, and whether the system-level setup and operation also serves as a guarantee of the constitutional right of the child to special protection.

The findings made with respect to the operation of the social and legal protection authorities in the areas under review indicate that the procedures currently applied by those

authorities lead to severe violations of the fundamental rights and freedoms of children. These procedures have a systemic character, therefore, they affect a large number of individuals – children.

The fact that the consequences of the identified procedures followed by public authorities affect the defenceless children and that the children's rights are severally violated by the public authorities which are responsible for the protection of the rights of children constitute both the legal and moral grounds for the submission of this special report. The fact that the violation of fundamental rights affects a large number of children constitutes both the legal and moral grounds for my request to have this report discussed at the next session of the National Council of the Slovak Republic (hereinafter only referred to as the "National Council").

I hereby submit to the National Council the special report accompanied by a proposal to have it discussed at the National Council's next session.

I.

Pursuant to Article 12(1) of the Constitution of the Slovak Republic (hereinafter only referred to as the "Constitution"), all people are free and equal in dignity and rights, their fundamental rights and freedoms are vested, inalienable, imprescriptible and irrevocable. According to Article 14 of the Constitution, everyone has the capacity to have rights.

The fundamental rights and freedoms are not a gift donated by the state, but are vested in a person at birth, some rights are even vested in a nasciturus, i.e., the child inside the body of his/her mother provided that the child will be born alive. The above consideration implies that the children, too, are entitled to enjoy all fundamental rights and freedoms. According to our civil law, however, a person acquires the full legal capacity only upon attaining the legal age of majority, i.e., 18 years of age. The Slovak legislation also reflects this fact; the last sentence of Article 14(1) of the Constitution provides that **the special protection is guaranteed to the children and juvenile persons.** The special protection is provided and ensured by the state through its bodies.

§6 of Act No. 305/2005 Coll. on social and legal protection of children and social guardianship, as amended, (hereinafter only referred to as the "Act on Social and Legal Protection of Children and Social Guardianship") specifies the basic principle to be followed by the **authorities of social and legal protection of children and social guardianship, the Centre for International Legal Protection of Children and Youth, municipal authorities, higher territorial units, legal or natural persons, accredited entities and entities implementing measures of social and legal protection of children and social guardianship** under which **all these entities are obliged to make sure that the rights of the child are not endangered or violated.**

By implementing measures, all aforementioned bodies, legal and natural persons provide the protection and care to the child that are necessary for the child's wellbeing and protection of his/her legally protected interests, **while respecting the child's rights granted under the international convention.**

For children temporarily or permanently deprived of their family environment, or in whose own best interests cannot be allowed to remain in that environment**, Article 20 of the Convention on the Rights of the Child specifically stipulates** that they **shall be entitled to special protection and assistance provided by the state.**

I have been pointing at the shortcomings in social and legal protection of children and social guardianship, which often even result in a violation of the fundamental rights and freedoms of children, since 2012. To give a more comprehensive picture I consider it important to recall, for example, the following:

a) **The 2012 report by the public defender of rights** presenting the results from an investigation which revealed that social and legal protection authorities have for several years failed to act in a number of cases involving children of Slovak parents who had found themselves abroad without parental care. Due to such omissions to act, Slovak children ended up abroad without appropriate assistance, including even in such cases where their situation was addressed by competent foreign authorities by proposals for their adoption, which were then referred to courts for decision. Following my notification, both the approach and procedures changed, including thanks to personnel changes in the management and administration of the Centre for International Legal Protection of Children.

b) The 2013 report by the public defender of rights concerning the fulfilment of the state's obligation to protect the child's rights and interests in the case of conflict of legitimate interests – conflicting rights. The investigation showed, among other things, that, in proceedings affecting the child, not all children had been given an opportunity to be heard in the proceedings and/or present their view of the matters affecting them. They were usually not heard directly by courts, and guardians ad litem had sought the child's opinion only when requested by a court to do so, which was not always the case. At the same time, comments provided by the children's guardians showed that if they had been asked by a court to seek a child's opinion they had usually presented their own opinion which they had formed based on their conversations with children, that is, they had presented the court with their own interpretation of the child's opinion. Even the courts did not see this practice as a problem.

c) **The 2014 summary report on the investigation concerning the compliance with the fundamental rights and freedoms of minor children placed in re-educational centres in the Slovak Republic,** which proved the long-lasting system-level

deficiencies in the organisation and performance of re-educational programmes for children and youth. One of the major issues is that re-education is provided in Slovakia solely in an institutional setting. No consideration is given to the child's interests or talents upon their inclusion in a re-educational programme. The use of inadmissible practices and punishments was identified, including long-outdated educational practices and measures, including a 24-hour solitary confinement of children not due to health but due to "educational" reasons. In addition, education provided by re-educational institutions was of low quality, they did not work at all with the families and the environment to which a re-educated child is to return. Success in re-education is not measured and assessed.

d) **The 2015 report by the public defender of rights** which highlights the shortcomings identified during unannounced on-site inspections carried out in order to assess the quality of care, education and nutrition provided to children in re-educational centres in Vráble and Trstín, in children's home in Dobšiná and children's home Satelit in Rožňava, and in the diagnostic centre for children in Bratislava.

e) **The 2016 report by the public defender of rights on the exercise of the fundamental right of the child to be heard in civil judicial proceedings** which clearly shows that the practice currently followed by courts in civil law proceedings does not ensure the opportunity for all children who are capable of formulating their own opinions on matters affecting them to express their opinions in the respective proceedings. To see a court directly hear the child in judicial proceedings is very rare. The investigation also proved that the long accepted and regular judicial and legal practice in the Slovak Republic is that courts interact with children indirectly – through their guardians, counsels and written documents. Direct interactions between the court and the child are a rare exception. Another established practice is that the child is not represented by a legal counsel before the courts, save for criminal proceedings. Administrative and judicial authorities act and decide about the child, not with the child. The child is an object, rather than a subject of their proceedings.

Even though the above reports examined different aspects of the social and legal protection of children, their findings show that the practices applied by competent authorities have one crucial thing in common – the authorities responsible for the protection of the rights of the child **usually act so as to make sure that the functioning of their institution is undisturbed.** Their conduct and practice were not shaped and determined by the right of the child, but it was their institutional need that had a decisive influence on their actions. Their official procedures were thus characterised by a mechanical approach and the actions they took were merely formal. **The best interests of the child were only verbally described as their priority, but their actual conduct and actions did not live up to that.** The examination of petitions filed in 2016 also led to similar findings.

The best interests of the child is one of the most important principles that need be followed in order to achieve the full and effective realisation of all rights of the child. Under §3(3) of the Act on Social and Legal Protection of Children and Social Guardianship, the best interests of the child shall be a primary consideration when choosing and implementing measures for the social and legal protection of children and social guardianship. The best interests of the child are governed by **Article 3(1) of the Convention on the Rights of the Child** which stipulates that in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

The UN Committee on the Rights of the Children emphasises that the child's best interests need be perceived as a threefold concept:[1]

a) **A substantive right of the child.**
   The **right** of the child to have his or her best interests assessed and taken as a **primary consideration** when different interests are being considered in order to reach a decision on the issue at stake, and the guarantee that this right will be implemented whenever a decision is to be made concerning a child, a group of identified or unidentified children or children in general. **The best interests of the child are hence his/her right as well.**
b) **A fundamental, interpretative legal principle.**
   If a legal provision is open to more than one interpretation, the interpretation which most effectively serves the child's best interests should be chosen.
c) **A rule of procedure.**
   Whenever a decision is to be made that will affect a specific child, an identified group of children or children in general, the decision-making process must include an evaluation of the possible impact (positive or negative) of the decision on the child or children concerned. Assessing and determining the best interests of the child require procedural guarantees, including mechanisms to evaluate the results. States must put in place a transparent and objective process for all decisions concerning children that are made by a legislator, judges or administrative bodies. The justification of a decision must clearly show what circumstances and criteria were considered by the state when deciding on what is in the best interests of the child and how the child's interests have been weighed against other considerations, including that the child's bests interest was taken into consideration.

In addition, the justification of a decision taken by a decision-making authority should also include arguments reflecting the opinion presented by the child, the decision should be delivered to the child, and the child should be notified of the outcome of the proceedings. The decision, including its consequences, should also be explained to the child in an appropriate manner.

[1] The UN Committee for the Rights of the Child, General comment No. 14 of 29 May 2013 on the right of the child to have his or her best interests taken as a primary consideration, pg. 2.

II.

In 2016, in light of the findings obtained from previous petitions, I looked into the protection of the rights of children who were left without parents, who were taken away from their family environment, who had been abandoned by parents or whose parents' parental rights and obligations had been temporarily restricted.

One of the petitions I investigated in 2016 was a petition concerning **social rehabilitation centre Čistý deň**, with address at Hodská cesta 1228, 924 01 Galanta (hereinafter only referred to as "Čistý deň"). Similarly as was the case with re-educational centres, the findings from the investigation of this petition have proven that the problem is not just this particular rehabilitation centre alone, but that the system as such suffers from a multitude of deficiencies which result in the violation of the children's fundamental rights.

The purpose of a rehabilitation centre as defined by law:

Pursuant to §63(1) of the Act on Social and Legal Protection of Children and Social Guardianship, a rehabilitation centre "is established to actuate inner capacities of children and adults to recover from mental, physical and social consequences of drug-related or other addictions and to reintegrate into a natural community setting."

The foregoing provision clearly implies that the only purpose of social rehabilitation centres defined by law is to **actuate inner capacities of** children and adults **to recover from** mental, physical and social **consequences of addiction.** It follows from the above definition of the purpose of rehabilitation centres that they are exclusively intended for **individuals** (both children and adults) who **are recovering from mental, physical and/or social consequences of addiction.** It means that in order for a child and/or adult to be placed in a rehabilitation centre, he/she must be recovering from the consequences of addiction. This condition – i.e., whether the individual is recovering from the consequences of addiction – constitutes a demonstrable fact. Where an individual wishes to be admitted to a rehabilitation centre, it also gives raise to legal implications. The reason is that proving and/or a failure to prove that the individual is recovering from the consequences of addiction (pursuant to §63(1) of the Act on Social and Legal Protection of Children and Social Guardianship) carries legal implications in the form of an establishment of a legal relationship arising from the placing/non-placing of that individual in a rehabilitation centre. In accordance with said legislative provision, the centre may only admit an individual who is recovering from the consequences of addiction.

The Constitution grants children the right to special protection (Article 41(1) of the Constitution). The state has undertaken to provide this special protection to children and juveniles through its bodies. Legally protected interests are the ones granted the special protection by the law, i.e., interests supported by a positive legislative norm, unlike mere factual interests. For the sake of the protection of the child's fundamental right to personal liberty (Article 17(1) and (2) of the Constitution), to personal integrity and privacy (Article 16(1) of the Constitution), and to protection from arbitrary interference with private and

family life (Article 19(2) of the Constitution), the competent authority, when deciding about the placement of a child in a rehabilitation centre, must have a clear proof that the child is recovering from the consequences of addiction.

Neither the Office of Labour, Social Affairs and Family (hereinafter only referred to as the "labour office") nor the rehabilitation centre are treatment facilities, that is, they do not provide treatment or diagnostic services to addicted persons, therefore, they are not in the position to prove, by own judgment and conduct, that a child or any other individual is/is not addicted and recovering/not recovering from the consequences of addiction. It is a specific issue that needs be assessed by experts in medicine.

My findings, however, have shown that **some children** who were placed in Čistý deň rehabilitation centre by a court decision **had, unfortunately, not been previously diagnosed as addicts and, on top of that, they had not undergone the necessary detoxification programme at all.** If their previous addiction had not been established, it could hardly be proved in a legally relevant manner that the children were recovering from the consequences of addiction at the time when the decision was made. This fact, along with the fact that the children's rights and legitimate interests were not afforded an independent legal representation before administrative and judicial authorities and that no proper and due care was given to the protection of their rights raise not only the question of how it is possible that the children enjoying the special protection have been under these circumstances and in breach of §63(1) of the Act on Social and Legal Protection of Children and Social Guardianship placed in the rehabilitation centre, but, in particular, the question of how the system of social and legal protection is actually applied in the work of our institutions. Who does it protect?

The pattern in the investigated cases was as follows - a majority of children were placed in Čistý deň based on a statement by their legal guardian (parent) who had confided to a social counsellor (worker) that the child was aggressive, played truant, did not respect parents' authority and probably **experimented** with drugs (the parent had a **suspicion**). The child's truancy was also supported by a report on the number of skipped classes provided by the school. The counsellor then interviewed the child in order to find out about persons in whose company ("gang") the child was spending time, i.e., if the child's gang mates were notorious for abusing addictive substances or not. In some cases, the child confessed to using addictive substances before the counsellor. In most of the cases, **this was followed by a proposal by a labour office to issue an immediate action by which the child was directly placed in Čistý deň. The family received no appropriate professional assistance and the child was not referred for a medical examination by a specialist.**

That some children were placed in Čistý deň without having been **properly diagnosed** beforehand has also been confirmed to me by two former young clients of the rehabilitation centre. I quote from their testimonials: "***We were admitted to Čistý deň without prior psychiatric examination, just based on a recommendation by a labour office employee."***

This course of action was chosen **even though the psychologist** whom the child regularly attended had recommended that the child first undertakes a detoxification programme in a hospital followed by treatment in a psychiatric hospital for children, and only afterwards is placed in the rehabilitation centre. The approach ultimately chosen was not in the best interests of the child or in the best interests of his/her family; quite the opposite. In whose interests it was then? It is hard to believe that the competent administrative and judicial authorities have repeatedly shown such a great deal of ignorance about how they are supposed to act in cases where a child is suspected of drug abuse.

A quote from chief addiction officer of the Ministry of Health of the Slovak Republic MUDr. Ľubomír Okruhlica: *"Rehabilitation centres are not supposed to provide treatment. And they should be well equipped and staffed – with well-educated professionals working there. They should not admit persons who have yet not undergone a full addiction treatment, who are abstaining for a short time only.* ***People who are not clean from drugs do not belong to a rehabilitation programme; they still need several weeks of medical observations, especially the juveniles.*** *Their diagnostics is more complicated, too.* ***In most cases, their use of drugs is only a symptom of mental disorder. They do not have capacities for that in rehabilitation centres.*** *A mental disorder, for example, is only revealed two or three weeks after they start abstaining. This involves depressions, obsessive disorders or even a schizophrenia that may be triggered by drug abuse. If someone gets to a rehabilitation centre directly from the street, which the law allows especially in the case of young people, they discover it too late or even not at all.* ***Such a person then suffers, because the centre staff perceives it as behavioural disorders that need be suppressed through re-education. But it is not about re-education."***[2]

Under §63(2) of the Act on Social and Legal Protection of Children and Social Guardianship, a rehabilitation centre

a) provides specialist assistance **solely on the basis of a recommendation by an addictionologist or psychiatrist** and provided that the conditions specified in a rehabilitation programme are met. The assistance is provided to **the child** based **on an agreement with a legal guardian** or a person who has the personal care of the child, or with an institution appointed to implement a court decision, in which the child has been placed upon a court decision ordering the institutional care of the child; the agreement also contains provisions about the method and amount of payments for the care provided;

b) implements a court decision on an educational measure;

[2] *Ľubomír Okruhlica*: V resocializačných zariadeniach končia aj ľudia bez závislosti (Even people with no addiction end up in rehabilitation facilities), an interview published in Denník N daily on 27 September 2016, https://dennikn.sk/568633/odbornik-na-zavislosti-okruhlica-v-resocializacnych-zariadeniach-koncia-aj-ludia-bez-zavislosti/

c) implements a court decision on an immediate action if a proposal to impose an educational measure has been submitted.

For those cases when the child **voluntarily** enters the rehabilitation centre, upon an agreement with the child's legal guardian, not by a court decision, the legislator has specified a condition that the child may **only** be placed in the centre **based on a recommendation by a psychiatrist or addictionologist**; it means that the child undergoes at least the basic diagnostics. **This approach, by which the legislator ensures the protection of the child's rights, is in the child's best interests.** The expert opinion provided by MUDr. Okruhlica also implies that if rehabilitation facilities admit children who do not belong there at all, this is likely to cause a considerable harm to, and have serious health consequences for the children.

It is, therefore, clear that, for the same reasons, the child voluntarily entering a rehabilitation facility must be afforded the same level of protection as any other child, that is, the same level of protection as provided to a child subject to the enforcement of a court decision on an educational measure as prescribed under §63(2)(b) of the Act on Social and Legal Protection of Children and Social Guardianship, or of a court decision on an immediate action pursuant to §63(2)(c) of the Act on Social and Legal Protection of Children and Social Guardianship. It is only this approach that is in the best interests of any child. On that account, the administrative or judicial proceedings should properly establish that where a child is to be placed in a rehabilitation centre, he/she clearly needs help with actuating his/her inner capacities to recover from the consequences of addiction as defined in §63(1) of the Act which sets out the purpose of a rehabilitation centre and also stipulates which groups of individuals the centre serves. Whether the child (or an adult natural person) to be placed in the respective facility is recovering from the consequences of addiction is a question that needs be assessed by medical experts, as already mentioned above. Administrative and judicial authorities and, in most cases, parents or a child's other guardian do not possess the qualification necessary to answer this medical question. Even if the parent or any other guardian of the child had the necessary qualification, they could not make use of it due to a possible conflict between their rights and legal interests and the rights and legal interests of the child.

If, when deciding about the placement of the child in a rehabilitation centre, the administrative or judicial authorities do not obtain an expert opinion on the child's health conditions, they are failing to provide the sufficient protection of the child's rights. In that case, the procedure followed by an authority for social and legal protection of children and social guardianship would not be in compliance with §3(1) of the Act on Social and Legal Protection of Children and Social Guardianship which sets out that the measures for social and legal protection of children and social guardianship shall be implemented through methods, practices and procedures based on the recent knowledge in social sciences and knowledge of the current situation and developments in social pathology phenomena in society. In addition, it would not be in line with the state's commitment to grant the child the

special protection pursuant to Article 41(1) of the Constitution, and with several articles of the Convention on the rights of the Child (e.g., Article 3 and Article 24).

The placement of the child who has no addiction, or whose use of addictive substances is the consequence of other mental disorder, in a rehabilitation centre **does not meet the purpose of social rehabilitation as defined by the law. If the purpose of an educational measure is not satisfied, the placement of the child in the rehabilitation centre is, at the same time, a violation of the child's right to personal liberty guaranteed under Article 17(2) of the Constitution.**

The files kept on individual children show that courts have usually based **their decisions in the proceedings on the imposition of an immediate action on a proposal made by a social counsellor and on statements of the child's legal guardian.** In some cases, proposals submitted by the labour offices have actually contained the health records of the child which showed that the child had developed a dependence on an addictive substance or several substances. **In a number of cases, however, the health records only said the child experimented with addictive substances which, in and of itself, cannot be considered an addiction.**

Other examined files revealed that the child had been placed in a rehabilitation centre solely on grounds of a parent's suspicion of the child experimenting with drugs, and on an opinion of a social counsellor.

In all aforementioned cases, the courts issued an immediate action and decided that the child be placed in a rehabilitation centre. Hence, they ruled this way even when the child's health records only mentioned experimenting with addictive substances, not his/her true addiction, as well as in those cases when the proposal by a labour office contained no health records at all and was only based on assertions made by a legal guardian or social counsellor.

Even though it is clear that the courts are not required to take evidence in the full scope in the proceedings on the imposition of an immediate action, because the urgency of the situation requires that the decision is made as soon as possible, if the court is worried about the life and health of the child, it has an option to place the child in a hospital where the child will undergo detoxification and proper diagnostics. **I emphasise that the rehabilitation centres are not equipped to provide detoxification services, let alone to treat patients with addictions. It is, therefore, necessary, that the treatment is provided under the supervision of medical specialists prior to the placement of the child in a rehabilitation centre.**

The proceedings on the imposition of an immediate action is followed by the proceedings on the imposition of an educational measure by which the child is temporarily taken from the care of his/her parents and placed in a rehabilitation centre for a period of time specified by the court.

The provided files have indicated that these proceedings also show serious shortcomings. First of all, I wish to note that **the right of the child guaranteed under Article 12(2) of the Convention on the Rights of the Child was repeatedly violated in the proceedings under review. Under this article,** the states have committed to **assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.**

Even in those rare cases when the court did obtain the child's views, it always did so indirectly – through a social counsellor. However, it is clear from the content of the statements provided by the counsellors that they did not present the child's views to the court, they merely stated whether the child understood why he/she was placed in the rehabilitation centre. They usually briefly stated that ***"the child accepts the fact that he/she must stay in the rehabilitation centre".***

These findings are all the more alarming in view of the fact that the proceedings on the imposition of an educational measure are proceedings on the merits; hence, the court should conduct proper evidence-taking. However, nearly in all cases, the courts relied instead on the information provided by a counsellor, legal guardians and on reports on the child provided by the rehabilitation centre. According to the UN Committee on the Rights of the Child, the child's right to be heard is one of the fundamental procedural guarantees of the child's right to have his/her best interests considered, as well as the basic step in the prevention and protection of children against all forms of violence.[3] Because if we omit children from the decision-making that affects them, our decision on what is in their best interests will never have such an integrity as it would have if we took the trouble to do so.

Improvements are only visible in proceedings that have continued after the effective date of Act No. 161/2015, the Code of Civil Extra-litigation Procedure, which stipulates that where the party to the proceedings is a minor child capable of autonomously expressing his/her views, the court shall take his/her views into consideration.

With respect to the reports on children provided by Čistý deň centre that played a crucial role in decision-making on whether an educational measure would actually be imposed, and if yes, for how long, I have also made a number of alarming findings.

From the documents I had at my disposal I have arrived at the conclusion that reports by Čistý deň raise questions concerning their impartiality and objectivity. As I have previously noted, the children are not diagnosed prior to their placement in the rehabilitation centre. **The diagnostics is usually performed after their placement in the centre.**

[3] The UN Committee for the Rights of the Child, General commentary No. 13 (2011) regarding Article 19, pg 24, para. 63, CRC/C/GC/13.

However, the diagnostics in Čistý deň was provided by a psychiatrist-addictionologist who is, according to the data provided to me by the Social Insurance Agency and also confirmed by the documents presented by the centre itself, a centre employee. Being employed by the centre, he has to follow the instructions of his employer. Every child, without exception, placed in Čistý deň was diagnosed either with dependence on addictive substances, with behavioural disorders caused by the use of addictive substances, or both.

Under §89(11) of the Act on Social and Legal Protection of Children and Social Guardianship, a rehabilitation centre receives a financial contribution for the implementation of a court decision, paid by the Central Office of Labour, Social Affairs and Family (hereinafter only referred to as the "Central Office"). It is, therefore, in the centre's interest that a court decides to impose an educational measure and that the measure is imposed for the longest possible time. The financial contribution provided to the centre is approximately EUR 12,200 per child and year. The financing system set up this way is likely to create a conflict between the centre's financial interests and the interests of persons placed in the centre.

On that account, it is not at all surprising that the Čistý deň centre proposed in all cases that an educational measure be imposed for a period between 18 and 24 months, and/or until the child attains the legal age of maturity. This fact has been confirmed by Čistý deň reports that were at my disposal. Save for a few, the reports always concluded with the same general observation (regardless of individual talents and problems of a particular child) that the rehabilitation is a long-term systematic process and, therefore, Čistý deň recommends to carry on with the rehabilitation programme in its full length (18-24 months) to achieve the optimum final rehabilitation effect. As far as the duration of educational measures in concerned, **the courts accepted Čistý deň's proposals nearly in all cases, without having examined individual needs of the child.**

Hence, the Act on Social and Legal Protection of Children and Social Guardianship currently permits to **automatically** (without the proper diagnosis) place a child who has educational difficulties and, at the same time, is suspected of experimenting with drugs, in a rehabilitation centre without requiring the competent authorities to make any effort to find the real cause of the child's problematic behaviour and/or his/her use of addictive substances.

As follows from what has been said above, the right of the child to have his/her best interests taken as a primary consideration is breached right at the very beginning of the entire process, that is, in decision-making on the child's placement in the rehabilitation centre.

The actual process of **selection of a facility where the child is to be placed** is governed by Central Office internal regulation No. IN – 030-2011, "Coordination of the placement of children in facilities of legal and social protection of children and social guardianship designated for the implementation of court decisions and reporting on available

vacancies in facilities of legal and social protection of children and social guardianship designated for the implementation of court decisions", which stipulates that the rehabilitation facility is chosen by a Central Office coordinator upon agreement with the respective facility while taking into account the current amount of financial resources specifically earmarked to ensure the implementation of court decisions in social rehabilitation centres.

However, interviews conducted with counsellors have shown that the selection process differs from what the Central Office internal regulation prescribes: it is the counsellor who contacts the facility by phone in order to find out whether there are any vacancies and whether the child can be placed in the facility. Subsequently, the counsellor requests the Central Office to designate a facility, and proposes the specific facility he/she considers the most appropriate for the child. Interviews have also shown that the Central Office always approves the proposed facility. There was only one counsellor who said the Central Office had not approved her choice of the facility in many cases and proposed a different facility. She did not give any specific reason for this.

In my opinion, the aforementioned approach is a model which better respects the child's bests interests, because it is the counsellors who should have the best knowledge of the child and his/her family background, which makes them most competent to choose a facility in which the child is to be placed. Since this approach seems to be uniformly applied by all labour offices, it is necessary that it also be reflected in the internal regulation governing the placement of children in social rehabilitation facilities. The internal regulation needs, therefore, be amended to reflect the actual situation in this respect.

Interviews conducted with counsellors have confirmed that they genuinely endeavour to choose facilities which best fit the individual needs of the child. On the other hand, however, one could feel that ensuring institutional needs still plays a very important role in this respect. For example, the interviews have shown that labour offices, when proposing a facility in which the child should be placed, particularly consider whether the facility has a vacancy and whether the cooperation with the facility is good.

By "good cooperation" they particularly meant whether the facility was accommodative towards them; for example, whether centre employees are willing to come and collect the child or, when some official paperwork needs be done for the child, if they bring the child to the labour office or whether the office employees have to go pick up the child themselves, and/or whether it is easy to schedule visits with the centre. **It means that the labour offices assess the quality of cooperation from the perspective of their own institutional comfort rather than from the point of view of the quality of the care provided to children.**

I have also observed that counsellors tend to place children in one and the same facility, as this simplifies paying personal visits to the facility. However, I wish to note in this respect that the files at my disposal have shown that a majority of counsellors usually visit the

facilities in which children are placed more frequently than as required by the law, i.e., more often than once in six months.

On the other hand, preferring institutional needs over the needs of children can be seen in this respect, as well. All inquired labour offices have confirmed that counsellors always make visits after scheduling an appointment. The reason is that they do not want to risk that the child would be, for example, attending therapeutic outdoor activities or school classes at that time and they would come to the facility to no avail. One of the counsellors said in this respect that they (counsellors) do not visit the rehabilitation facilities to inspect them but to speak with children.

Even though unannounced visits may indeed be inconvenient for public authorities, as they entail the risk that it would not be possible to interview all children that need be interviewed, they still represent a very effective means of obtaining objective information about the overall situation prevailing in the facility. This fact is also confirmed by a statement given by one of the labour offices in 2014 in which a counsellor describes the strong reluctance and arrogance he encountered during an unannounced visit in Čistý deň. This unannounced visit ultimately ended up with the counsellor not being allowed to speak with the child without the presence of the centre's employees (!).

Interviews with the counsellors have also shown that outpatient treatment is almost never considered. Judging from their own experience, the counsellors are extremely sceptical over the success of outpatient treatment.

Equally, the interviews have shown that no system is in place to monitor whether **children relapse to using drugs after they complete a social rehabilitation programme**, mainly due to the fact that the labour offices, so to speak, loose the sight of children once they attain the legal age of maturity and have no possibility to find out whether the child has again started using addictive substances or not. I consider it extremely alarming from the long-term point of view because the lack of such data makes it impossible to objectively assess whether the social rehabilitation system in its current shape is at all successful, that is, **whether it meets its purpose.**

III.

The lack of control by authorities responsible for the social and legal protection of children is yet another deficit identified by the investigation.

The documents provided by the Central Office show that the Central Office received several complaints from the parents of children staying in Čistý deň already in 2014. The complaints particularly mentioned inappropriate treatment of clients by the centre staff, forms of punishment of children, as well as unreasonably restricted contacts between parents and/or legal guardians and children.

The Central Office subsequently concluded that, pursuant to the Act on Social and Legal Protection of Children and Social Guardianship, it did not have sufficient powers to inspect the implementation of measures for social and legal protection of children and social guardianship because it was only entitled to assess the compliance with the conditions specified in "The agreement on the provision of financial contribution to implement a court decision in the rehabilitation centre" concluded between the Central Office and the centre (hereinafter only referred to as the "Agreement").

For this reason, the Central Office referred the complaints to the Ministry of Labour, Social Affairs and Family of the Slovak Republic (hereinafter only referred to as the "Ministry"). However, similarly to the Central Office, **the Ministry did not feel to have sufficient competence and personnel capacities to conduct the inspection, either**.

Quite the contrary, the Ministry believed the Central Office had the necessary powers to inspect the scope and quality of social rehabilitation care services provided by the centre to its minor clients, namely pursuant to Article IV(2) of the Agreement, as well as through competent authorities for social and legal protection of children and social guardianship which, among other things, are also responsible for measures implemented under §32(3) of the Act on Social and Legal Protection of Children and Social Guardianship, i.e., through labour offices.

In view of the fact that, pursuant to Article IV(2) of the Agreement in the wording effective in 2014, the Central Office was indeed entitled to only carry out a financial inspection in the centre, the inspection conducted in Čistý deň in 2014 consisted of the Central Office requesting the competent labour offices to present reports on whether the life, health or mental, physical and social development of children placed in the centre were at risk.

Even though the reports presented by a majority of labour offices were largely neutral and did not contain any severe allegations, some of them reported a number of very alarming facts about physical violence used by the centre's staff against clients, disproportionate punishments and restricted contacts between parents and/or legal guardians and children In one case, the use of physical punishments was even confirmed by the director of Čistý deň centre who noted, however, that the wrongdoer was no longer their employee.

In light of these findings, a competent Central Office employee arrived at the conclusion that the facts contained in the reports were severe enough to constitute grounds to notify the Ministry's accreditation committee and to examine the quality of measures for social and legal protection of children and social guardianship implemented in the centre. The available documents also contained an email from 2014 in which a labour office employee informed the Central Office they had received complaints against other rehabilitation centres, as well, and that it would be desirable to arrange a meeting with them.

I wish to emphasise that **Article 19(1) of the Convention on the Rights of the Child requires the states to protect children from all forms of violence**. States shall take all appropriate legislative, administrative, social and educational measures to protect the child from **all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse**, while in the care of parent(s), legal guardian(s) or **any other person who has the care of the child**.

The obligation imposed on the states under Article 19(1) of the Convention on the Rights of the Child covers the obligation of state authorities to ensure due diligence and the obligation to prevent violence or violations of human rights, the obligation to protect child victims and witnesses from human rights violations and, last but not least, **the obligation to investigate** any violations of human rights and to **punish their perpetrators**.[4] I wish to note that the "obligation to investigate" cannot be understood as applying to law enforcement authorities only, but it is an obligation that must be observed by all authorities having controlling powers.

Despite these very clearly articulated obligations, the documents provided to me by the Central Office do not show that the Ministry has taken any steps even though the conclusions from the inspection conducted by the Central Office in Čistý deň were delivered to the Ministry on **15 October 2014.**

Less than a year after the Ministry received the said information from the Central Office, another complaint related to Čistý deň was delivered to the Ministry. **On 12 October 2015, a notice addressed to the accreditation commission regarding the suspicions of sexual abuse in Čistý deň was sent to the Ministry.** On 15 October 2015 the Ministry referred this complaint to the Central Office, requesting it to verify compliance with the terms and conditions for the provision of the financial contribution and the manner in which the measures of social and legal protection of children and social guardianship were implemented and, at the same time, requesting information from the documentation maintained by the competent authority in charge of social legal protection of children and social guardianship as regards the performance and progress in the fulfilment of measures of social and legal protection of children and social guardianship.

The inspection carried out by the Central Office in Čistý deň commenced on 30 November 2015 and covered the period from 1 January 2015 to 31 October 2015. **But even though the inspection was initiated on the basis of suspected sexual abuse, this fact did not constitute its subject-matter.**

[4] The UN Committee for the Rights of the Child, General commentary No. 13 (2011) regarding Article 19, pg. 4, para. 5, CRC/C/GC/13.

The inspection was aimed at examining the selected case files of children staying in the facility during the period under review, individual rehabilitation plans, rehabilitation programme and the provision of psychological care in the centre.

As stated in the inspection protocol of 29 April 2016 (hereinafter as the "Protocol"), no psychologist was employed in Čistý deň in the period from 1 May 2015 to 31 July 2015 and the facility also failed to keep records of the evaluation of details concerning the progress made within the individual social rehabilitation process once in three months in cooperation with the authority in charge of social and legal protection of children and social guardianship.

The protocol also implies that employees carrying out the inspection had doubts whether social rehabilitation in Čistý deň was performed in a manner targeted at the individual needs of children. The chapter titled "Findings" of the Protocol actually reads that "*The rehabilitation centre Čistý deň regularly prepares individual social rehabilitation plans for its clients once a month pursuant to the section referred to above. These plans contain the basic identification data of the client, the period for which the data is prepared, the specified adaptation phase and/or the phase of the social rehabilitation process which the client is currently undergoing, the long-term targets as well as the client's target for the respective month, the methods of working with the client and his/her family for the respective month. The plans are evaluated once a month.* ***The methods and forms of work are identical in all plans.***"

Čistý deň has lodged an appeal against the findings of the Central Office and submitted a list of employees for the period between 1 January 2015 and 31 October 2015 to the Central Office, including their job descriptions. As indicated in the above list, Mgr. Mário Kolesár and Mgr. Peter Tománek were employed as psychologists in Čistý deň during the period between 1 May 2015 and 31 July 2015. In this connection I would like to point out several discrepancies.

As indicated by the stamp on the accompanying letter, to which the list of employees was attached as an annex, the accompanying letter was delivered to the Central Office already on 29 February 2016. However, the Central Office prepared the protocol as late as on 29 April 2016 while Čistý deň has drawn up its objections on 15 June 2016. It is therefore questionable how Čistý deň knew already on 29 February 2016 that it was supposed to send the list of employees to the Central Office.

Furthermore, it is not clear why the Central Office considered the list referred to above as relevant evidence attesting to the fact that both employees were working as psychologists at the given time if their employment contracts were not submitted. If both of them actually worked in those job positions at that time, it is not clear why Čistý deň did not submit their employment contracts already during the inspection, but only as part of submitting its objections to the protocol.

Pursuant to Article 3(3) of the Convention on the Rights of the Child, the States Parties undertook to ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the **number and suitability of their staff, as well as competent supervision**.

As regards the manner in which the measures of social and legal protection of children and social guardianship are actually implemented in Čistý deň, this aspect was examined only on the basis of case files of selected children. The Central Office's employees who carried out the inspection did not actually speak to the children, even though they were authorised to do so. Pursuant to Article IV(2)(d) of the agreement, the beneficiary (*of the financial contribution*) undertakes to *allow the authorised employees of the provider to meet with the child placed in a social rehabilitation centre based on the court's decision.*

As implied by the protocol, the Central Office's employees did not note any breach of the children's fundamental rights.

On the other hand, the investigation carried out by the Office of the Public Defender of Rights has shown multiple cases of undue punishment and degrading practices which were applied in Čistý deň between 2013 and 2016 and which, in addition to being incompatible with the purpose of social rehabilitation, also constituted a breach of several basic rights and freedoms of the children.

For instance, several girls said that, after escaping from the facility, they were forced to **cut their hair by a hair trimmer – electric hair clipper** as a punishment. They either had to cut their hair themselves or, if they refused to do so, their hair was cut by the staff.

Several clients also described **wearing pyjamas or 'shirts of shame' and placement into solitary confinement as a punishment** after their escape. Solitary confinement, as the clients called it, consisted of several rooms, but there was no toilet, all doors were locked and, when the clients needed to go to the toilet, they had to bang on the door to call the staff who might, or might not, show up. The furniture of this room consisted of a table, a chair and a sofa.

Allegedly, forcing them to wear shirts or pyjamas was aimed at preventing them from fleeing. Their own clothes were returned to them only after one of the children filed a complaint with regard to a criminal offence. Also, one of the children said that, on returning to Čistý deň from holiday later than expected, the child was placed in **solitary confinement for 3 days** despite that fact that its late return had been duly reported and justified to the centre, and was forced to write a 100-page essay about holiday, while adding that the punishment order was imposed/conveyed by one of the therapists. This fact was also confirmed to us by the labour office having jurisdiction over that child.

As was the case with re-educational centres, some of the clients in Čistý deň also complained about **insufficient and monotonous food**. Some of them said they were permanently hungry in the centre, while **deficiency of food was also used as a form of punishment**. One of the children noted that, if the clients were under the so-called "second chance" regime, they were given a bowl of food that they were supposed to share. (The "second chance" regime was applied to clients who breached the principal law, e.g., when they left the facility without permission.) The child did not provide more details.

These sanctions are absolutely unacceptable, because they are incompatible with the right to human dignity and prohibition of degrading, inhuman and cruel treatment (Article 16(2) and Article 19(1) of the Constitution, Article 19 of the Convention on the Rights of the Child and Article 3 of the European Convention on Human Rights). I wish to emphasise that these sanctions are not acceptable even in a situation when they are chosen by the community itself. In this case, the expert personnel are required to guide the approach of the clients and help them propose such sanctions which do not humiliate human dignity and do not interfere with other basic rights and freedoms.

Several children also complained about the **neglect of health care**. For the most part, this involved health problems being downplayed by the facility, with medical treatment arranged only for those clients who were in acute health condition. One of the children was prevented from seeing a dentist when suffering from acute toothache, another child complained about being denied regular visits to a surgeon due to problems with toenails, as a result of which the medical condition had worsened. In another case, the child complained about late treatment of a fracture. **There were no complaints only in the case of those children whose health care was arranged by their parents.**

Pursuant to Article 24(1) of the Convention on the Rights of the Child, children have the right to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties are also required to strive to ensure that no child is deprived of his or her right of access to such health care services.

Some children also complained about **problems with the application and implementation of the right to education.** These children said that Čistý deň did not provide a sufficiently enabling environment for studying, and noted that attending the school was only seen as "*a reward*". For instance, Čistý deň stated in the child evaluation report that the child was allowed sufficient time for studies including pedagogical supervision by the expert staff. On the other hand, the child had repeatedly complained to the social counsellor about being given insufficient time for studying and that there was no person available to provide guidance on subjects such as mathematics, physics and chemistry. However, the 10% success rate achieved by that child in mathematics within the framework of student performance tests rather indicates that Čistý deň did not really provide sufficient conditions for studying.

One child **was forbidden to take the end-of-year exam** and, therefore, could not complete the school year. In this context, Čistý deň argued that children can study even at the age of 25 and that the most pressing thing at the moment was to focus on their recovery from addiction.

This line of argument is unacceptable. The right of the child to education is explicitly guaranteed by Article 28(1) of the Convention on the Rights of the Child. Article 42(1) of the Constitution guarantees the right to education for all, and that includes children as well. By virtue of Article 28(1)(e) of the Convention on the Rights of the Child, States Parties are also required to take measures aimed at encouraging regular attendance at schools and the reduction of drop-out rates.

In connection with the right of a child to education, the UN Committee on the Rights of the Children states that any decisions, measures or actions taken in connection with the right to education must respect the best interests of the affected child or children.[5] The Committee also notes that an adult's judgment of a child's best interests cannot override the obligation to respect all the child's rights under the Convention.[6]

An adult's judgment that the implementation of a certain right guaranteed by the Convention is not in the child's best interests cannot be used as an argument justifying the restriction of this right or other right guaranteed by the Convention. **In fact, all rights afforded under the Convention on the Rights of the Child are in the best interests of the child**.[7] This means that a judgment of any person in Čistý deň saying that the possibility to attend school represents some kind of a benefit which the child is supposed to deserve or that not attending the school was in the best interests of the child because school may provide an opportunity for coming into contact with improper environment, does not justify such interference with the right of the child to education and constitutes a violation of this right.

Furthermore, it is necessary to emphasise that, in many cases, a visit to the school may have a positive impact on the child and, consequently, on the actual social rehabilitation of the child. As implied by several case files, children liked going to school but they were frustrated about having insufficient time for studying and were sad when they were not allowed to go to school which, in turn, affected their social rehabilitation process.

Several clients, as well as their parents, complained about **unreasonable restrictions on mutual communication**. For instance, children were not allowed, as a punishment, to write letters to their parents and, vice versa, their parents could not talk to them over the phone. In this connection I wish to point out the fact that, according to the website of the

[5] Committee on the Rights of the Children, General comment No. 14 of 29 May 2013 on the right of the child to have his or her best interests taken as a primary consideration, p. 8.
[6] Committee on the Rights of the Children, General comment No. 14 of 29 May 2013 on the right of the child to have his or her best interests taken as a primary consideration, p. 2.
[7] Committee on the Rights of the Children, General comment No. 14 of 29 May 2013 on the right of the child to have his or her best interests taken as a primary consideration, p. 2.

Čistý deň rehabilitation centre, Wednesday is the only day reserved for phone calls and that the duration of a phone call should not exceed three minutes.[8] Pursuant to Article 9(3) of the Convention on the Rights of the Child, States Parties respect the r**ight of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests**. Because cooperation between parents, children and the rehabilitation centre plays a key role in the social rehabilitation process of the child as the parents are the best support to a child who will return back to the family environment after completing the social rehabilitation process, **restricting the contact between the child and its parents** cannot be considered a measure that is in the best interests of the child. This holds especially true when it is used as a form of punishment.

As shown by the investigation, one child was **transferred** from Čistý deň **to another centre** based on an **"inter-centre agreement"**, because the staff at Čistý deň were not able to handle that child. This transfer has also been confirmed to the lawyers of the Office of the Public Defender of Rights during an interview with the child's social counsellor.

Where a child is placed by means of a court decision into a certain facility, that child may not be simply transferred to another facility only the basis of an arbitrary decision and an agreement of unknown nature. Had **our legislation permitted such a course of action, it would not constitute legislation that is in the best interests of the child**.

I deem it necessary to clearly determine, at an expert level, whether it is appropriate to place minors as clients into rehabilitation centres for adults. The risk of "mixing" adult clients with minors is also confirmed by a record in the report by Čistý deň which states that the child had a relapse after an adult client failed to hand in the psychopharmaceuticals to the staff after returning from a visit to the doctor, and instead gave them to the child who consumed the drugs in an excessive quantity.

IV.

Pursuant to §85(1)(a) of the Act on Social and Legal Protection of Children and Social Guardianship, the Ministry shall revoke the accreditation "if the accredited entity, its statutory representatives, responsible person or other employees, or the manner in which it operates or carries out the measures, methods, techniques and procedures for which its accreditation has been granted, put the life and health of the child or its sound mental, physical and social development at risk or if the life and health of the child or its sound mental, physical and social development **may be** at risk".

[8] http://www.cistyden.sk.

As implied by the quoted provision, the **Ministry is obliged to revoke the accreditation even if there is a possibility that the life and health of the child or its sound mental, physical and social development may be at risk**. Based on available information, some of which has already been confirmed (e.g. sexual intercourse of a 14-year-old female client), **I deem it inexcusable** that the Ministry **has not yet complied with its obligation arising from the Act on Social and Legal Protection of Children and Social Guardianship and did not revoke the accreditation of Čistý deň.**

I also emphasise that the Ministry has been notified, as early as in 2014 and in 2015, of serious facts which would justify taking at least the action referred to in §85(2)(b) of the Act on Social and Legal Protection of Children and Social Guardianship, i.e. optional commencement of administrative proceedings concerning the revocation of accreditation.

Pursuant to §85(2)(b) of the Act on Social and Legal Protection of Children and Social Guardianship, the **Ministry may initiate the proceedings concerning the revocation of accreditation**, if it has been notified of serious facts related to the implementation of measures under the Act, in particular of the considerations indicating the violation of this Act and findings referred to in §7(3) (physical punishment and other harsh and degrading treatment) and §73(2)(c) of the same Act (ensuring continuous protection of life, health and sound development of the child).

In this connection I am repeatedly emphasising that the notifications by certain labour offices in 2014 contained the facts regarding the physical punishment and harsh and degrading treatment of minors.

According to available information, the Ministry initiated the administrative proceedings concerning the revocation of accreditation for Čistý deň as late as in the autumn of 2016, i.e., **after** the whole affair **received extensive media coverage**. By the date of submission of this report, the Ministry did not provide to me any information as to whether the proceedings have already been completed and with what outcomes.

The investigation confirmed that the inspection bodies failed to act and downplayed the complaints of children placed in social rehabilitation centres or re-education centres. The downplaying approach is particularly manifested in that the individual complaints are typically considered groundless and untrue, and are taken into account only when submitted on a massive scale, i.e., if at least 90% children raise a complaint. This approach is in contrast with the obligations arising for the Slovak Republic from the Convention on the Rights of the Child.

Conclusions:

1) **Before being placed into social rehabilitation facilities, children do not undergo the necessary diagnostics and detoxification.**

2) **Within the proceedings concerning the imposition of an educational measure, the courts failed to obtain the views of the minors directly and rather did so through other persons.**

3) **Within the proceedings concerning the imposition of an educational measure, the rehabilitation centres are in a conflict of interests.**

4) **In selecting a suitable facility and during its subsequent control, the institutional needs of authorities in charge of social and legal protection of children and social guardianship are placed above the interests of the child.**

5) **The authorities in charge of social and legal protection of children and social guardianship have no standards in place to clarify which authority should carry out inspections in facilities, as well as how they should be carried out and what their subject-matter should be.**

6) **The possibility of outpatient treatment prior to being placed into an institutional facility is almost never offered.**

7) **The Ministry has been aware, at least since October 2014, of the serious facts concerning the violation of the rights of children which would substantiate the commencement of proceedings referred to in §85(1)(a) or §85(2)(b) of the Act on Social and Legal Protection of Children and Social Guardianship. The administrative proceedings were commenced as late as in 2016 and the Ministry has not provided the necessary information about its outcomes to date.**

8) **The inspection bodies tend to downplay the complaints submitted by individuals.**

9) **The relapse of children that have undergone social rehabilitation is not monitored as relevant data.**

V.

Another of the cases related to the social and legal protection of children and social guardianship involved a complaint expressing the concerns about a possible violation of the rights of children where children below six years of age were taken into a children's home instead of being provided personal care in a foster family.

Pursuant to §53(2) of the Act on Social and Legal Protection of Children and Social Guardianship, a children's home is required to create such conditions so that **every child below three years of age**, which is admitted to a children's home, be **placed into a foster**

family no later than after four-week diagnostics; **this does not apply in the case of children whose health condition** requires special care in a specialised separate group for children with mental disorders, based on an opinion issued in accordance with a separate regulation, with mental disability, physical handicap, sensory disability or a combination of disabilities and in the case of children whose health condition requires special care provided only in a residential facility based on an opinion issued in accordance with a separate regulation, in the case of a child of a minor mother, or where it is in the interests of the child for the purposes of preserving the sibling bond.

Pursuant to §100j(8) of the Act on Social and Legal Protection of Children and Social Guardianship, the founders of children's homes are required to ensure and create, until 31 December 2011, such conditions within the children's homes so that as of 1 January 2012 **every child below six years of age** be **integrated into a foster family** after its placement in the children's home no later than following the completion of diagnostics, with the exception of children whose health condition demonstrably requires special care in a specialised separate group, or with the exception of a child of a minor mother, or where it is in the interests of the child for the purposes of maintaining the sibling bond.

In this case, the lawyers of the Office of the Public Defender of Rights did not manage to verify reliably whether children of up to 6 years of age were placed with a foster mother or in a children's home and, therefore, they did not succeed in identifying the method and form of care provided to these children. For this reason I filed a petition with the courts which made the decisions regarding the placement of children in order to initiate the proceedings ex officio. Pursuant to §91(2) of the Administration and Office Rules of District Courts, Regional Courts, the Special Court and Military Courts, a **judge is authorised to examine the manner in which institutional upbringing is ensured also by making a visit to the facility in person. I proposed that the competent courts verify the manner, level and, in particular, the form of care provided to children in order to decide, based on their own findings, whether they should initiate ex officio proceedings concerning the change of an institutional facility.** A total of 9 requests were filed in order to review the care for two children. Within the process of examining the request, the director of the children's home told the lawyers of the Office of the Public Defender of Rights that the case was also being handled by the prosecution. As a result of this fact (which was verified as well), the public defender of rights was required by law to discontinue the request (pursuant to §15(1)(c) of Act No. 564/2001 Coll. on the Public Defender of Rights as amended and, therefore, it discontinued the request.

However, in the period prior to the discontinuation of the request, the lawyers of the Office of the Public Defender of Rights have ascertained such facts regarding the system of substitute care provision by foster parents to a child below 6 years of age that are casting serious doubts on whether this system is correctly set up and organised. Meanwhile, the need to examine whether this system is functioning in a way that benefits the interests of children or whether it pursues other interests has increased because even the courts failed to ascertain

the facts demonstrating how the care is provided to children whereas the prosecution did not mention this aspect in the outcomes of its proceedings either. In fact, the prosecution did not present any information as to how children are cared for, and only noted that no violation of the law has been ascertained. The courts, for instance, delivered the following outcomes:

- in the case of **three children,** the court did not find a reason to initiate the proceedings because, at the time when the court dealt with the request, the children were not staying in the children's home anymore but were in the care of their future parents, i.e., there would be no purpose in examining the conditions of institutional care in the children's home by the court when the children were not there anymore;
- in the case of another **two children**, the court also failed to find a reason to initiate the proceedings ex officio because the children were taken into the care of their aunt approximately one and a half months after the request has been lodged.
- in the case of another **five children,** the courts requested the competent labour office to provide a report about how the children are cared for and, also based on that report, they did not initiate the proceedings ex officio;
- In the case of **two children,** the judges carried out an on-site visit in person and made the following record in their report: "*After entering the children's home we have ascertained that the premises were clean and maintained to high hygiene standards, completely furnished with nice-looking and suitable furniture, and* ***tailored to the requirements of the care for minors***. *The children's rooms were furnished with beds for children, writing desks, built-in closets with neatly organized clothes, carpets, curtains, high-quality furniture and many high-quality toys. Bathrooms and toilets were* ***clean and neatly furnished. At the time of the visit, the minors were not at home because they were in school or in a kindergarten.*** *In light of the above findings, the court shall not take the submitted request into consideration, as the court has ascertained no circumstances that would justify the commencement of the proceedings ex officio pursuant to §8l of the Code of Civil Procedure in order to change the designated facility for the provision of institutional care for the minors*". As implied by the above notification, the **court failed to ascertain how** the care and upbringing is ensured for the children and by whom; it only ascertained the appearance of the premises where the care is (presumably) taking place.

At my own initiative, I instructed the Office of the Public Defender of Rights to investigate whether the existing system for the implementation of institutional care, immediate actions and educational measures for children under six years of age, which are performed by a foster family, is organised and ensured in the best interests of children, and whether its competent supervision is ensured as well. The results of the investigation have revealed major shortcomings in the current system in terms of ensuring the protection of the children's rights, as well as the fact that, in a system set up in this manner, the interests of children are not treated as a priority. The serious system-level shortcomings will be presented in a particular example.

In accordance with the law:

The legal relationships, which are **established by** public **authorities** (and courts) in placing children below six years of age into the care of foster families, are based on laws. Albeit in line with the law, these authorities may **create a conflict of interests between the best interests of the child placed into the care of a foster mother and the interests of the foster mother.**

As a result of measures adopted by authorities in charge of social and legal protection (and courts), as many as four children below one year of age are sometimes taken into the care of one person – foster mother – and this is taking place in line with the laws and regulations.

As one and the same person, the foster mother, in addition to ensuring the care for four babies simultaneously, **also discharges her duties as the director of the children's home** in line with the law**. This means that the foster mother is employed by the children's home and, in addition, she acts as both the director of the children's home and the managing director of a civic association which is the founder of that children's home. And all of this is in line with the law.**

The above enumeration implies that, as regards the discharge of her **duties of a foster parent, the foster mother is actually accountable to the director of the children's home, that is, herself.**

It is clear that the **absence of direct oversight** over the foster parent by the director of the children's home is **not in a child's best interests.** However, this is how our system has been set up – and this is also how it functions in practice and in line with the laws.

At the same time, the **overlap of functions** constitutes a serious system-level shortcoming even with regard to the number of children placed into the care of a foster family, as it lends itself to making use of the exemption referred to in §53(8) of the Act on Social and Legal Protection of Children and Social Guardianship conveniently. Under this exemption, it is **possible to increase the number of children in a foster family subject to the founder's consent**.

Therefore, if the founder of the children's home, its director and the foster parent are the same person, this means that, in order to be able to increase the number of children placed in his/her care in excess of the number established by the Ministry's decree of 18 December 2008[9] (hereinafter referred to as the "Decree")**, this person would only have to request, while acting in the capacity of the director of the children's home,**

[9] Pursuant to the Decree of the Ministry of Labour, Social Affairs and the Family of the Slovak Republic of 18 December 2008 implementing certain provisions of the Act on Social and Legal Protection of Children and Social Guardianship, a maximum of three children may be taken into the care of a foster parent as an individual.

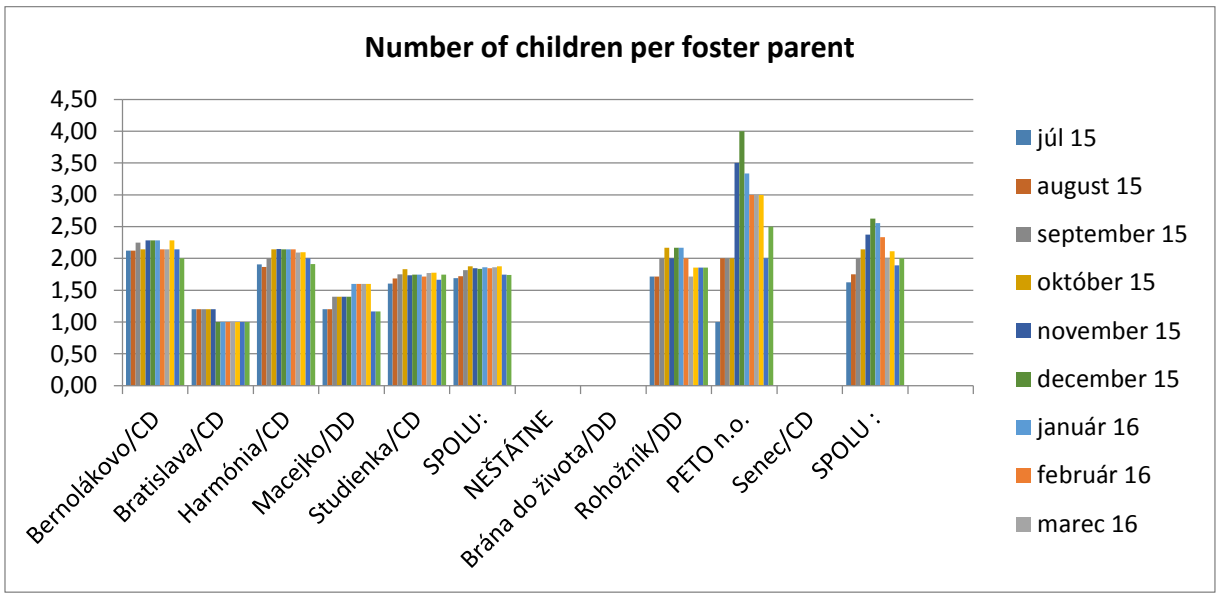
the consent of the founder of the children's home, i.e., to request the consent from himself or herself.

The **monthly reports on the number of children** and young adults confirm that **the number of children per foster parent**, as established by the Decree, **was indeed overrun** in the case of the children's home PETO, which is presented as an example taken from practice.

As implied by the provided data for the children's home PETO, there were 3.5 children per foster parent in November 2015, four children in December 2015 and 3.33 children in January 2016. **On the other hand, however, the capacity utilisation of foster families in other public or private children's homes was not reaching 100% during that period.** This means that the children could have also been placed into a different children's home in order to preserve the number of children per foster parent as contemplated by the Decree[10] (see the Chart below).

Because the purpose of placing children aged 6 or below into foster families is to ensure their sound mental, physical, emotional and social development in a family environment that will allow the children to develop the necessary relationship bonds for their future life, the question remains whether the placement of children into such children's home, despite free capacities being available in other children's homes, can be seen as a course of action that treats the best interests of the child as a primary consideration.

Chart 1



[10] Data taken from monthly reports on the number of children and young adults as per internal regulation IN – 065/2016 for the Bratislava region during the period between 1 July 2015 and 30 September 2016.

Because **children's homes are required**, under the Central Office's internal regulation IN 065/2016, to send "Monthly reports on selected statistical indicators of children's homes" to the Central Office regularly – on a monthly basis by the 5th day of the following calendar month, the **Central Office should have been aware** of the fact that no additional children below six years of age should be placed in the children's home PETO because it does not have a sufficient number of foster parents at its disposal. Therefore, the child must be placed into the so-called "group", i.e., into a children's home where the care is not provided by a foster family.

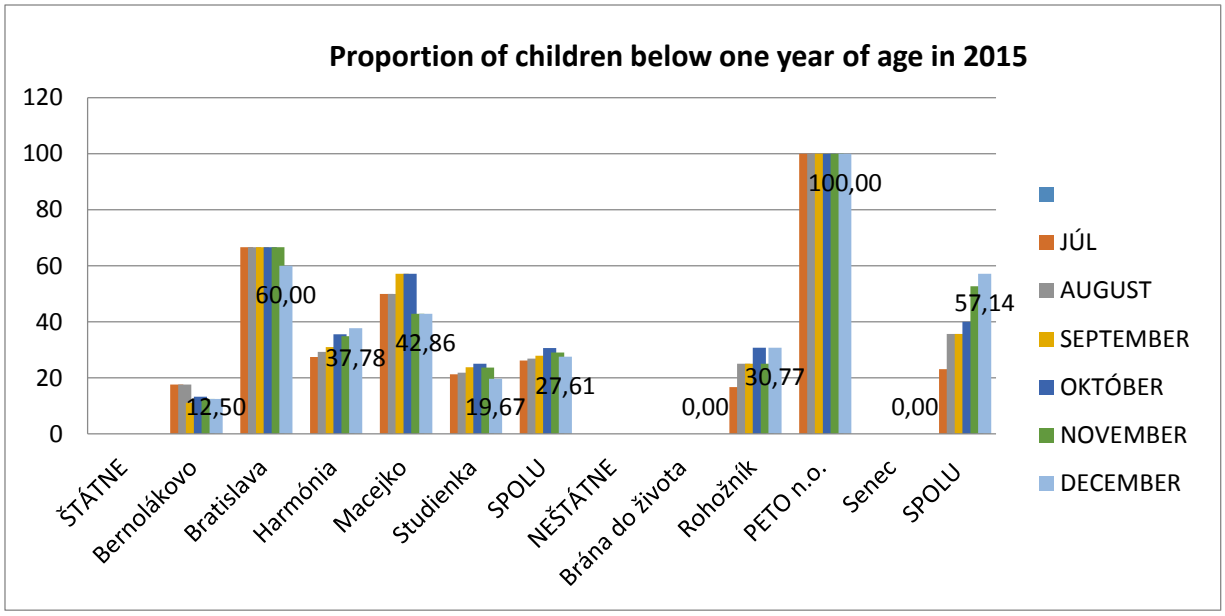
The purpose of this provision in the internal regulation is to monitor, inter alia, the statistical data regarding the utilisation of capacity in children's homes, the placement of children into children's homes and keeping track of the organisational structure of children's home (the number and structure of employees, the number of children and their placement into groups and foster families).

In a situation where the Central Office is already collecting such data, it would be logical to take that data into account when designating the facility into which the child is to be placed. In doing so, the Central Office is required to take the best interests of the child into account which means that, in such cases, the Central Office should not, as a principle, support the overrunning of the number of children placed in the care of a foster parent unless such an approach is inevitable. But **it has become evident that, within this system of substitute care, albeit being in line with the law and other regulations, children have no specific and particular guarantor appointed to protect their rights.**

However, as shown in the chart below, the reason why the Central Office collects the data from the children's homes is probably because it is required to do so by law, yet the law does not require the Central Office to be guided by such data in its actions and decisions. This approach would indeed be logical and in favour of the children. The findings from the investigation would have been different if the Central Office took into account the above data in its actions and decisions. A situation where **the only children placed into a single private children's home were children below one year of age**, even though the facility demonstrably did not have a sufficient number of foster parents at its disposal, would not have happened at all (see Charts 2 and 3).

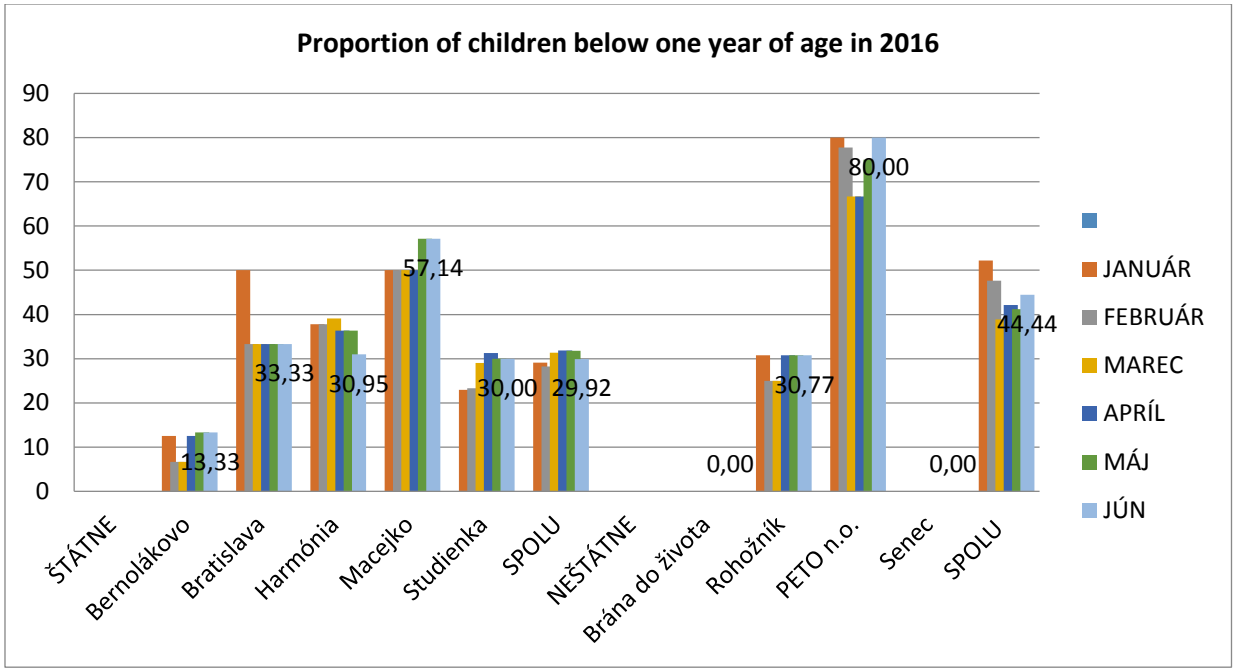
As revealed by the provided data, in the period between 1 July 2015 and 31 December 2015 the only **children placed with foster families of the children's home PETO were babies under one year of age**. This situation has not occurred in any of the other public or private children's homes. As shown by Chart 2, the proportion of children below one year of age in foster families was between 0% and 60% in other children's homes.

Chart 2



Over the period between 1 January and 30 September 2016, the proportion of children below one year of age placed with foster parents of the children's home PETO has declined slightly, but remained unusually high in comparison with other children's homes. In the children's home PETO, babies below one year of age comprised 80% children placed with foster parents, whereas the number of children under one year of age in other children's homes was between 0% and 57.14% during the same period (see Chart 3).

Chart 3



I am not ruling out that, in individual cases, a foster parent can be an extraordinarily capable person who is able to care for three and more children under one year of age all by himself or herself in an exemplary manner. However, the question remains whether **a single**

foster parent is really able to provide sufficient care to each child to an extent that is necessary, in every individual case, for the child to develop a relationship bond with the foster parent as required by the child's healthy development in the future. It is generally acknowledged that children start developing their relationship bond already during the first days after their birth and, therefore, their placement with a foster parent is not the only important aspect, because the foster parent should also have enough time and energy to devote to every child as necessary in each individual case.[11] The foster mother presented in our practical example, who was regarded by the competent authorities as acting in line with the law, was simultaneously discharging the duties of the director of the children's home and the managing director of the founder.

The **child care system** which allows placing an unlimited number of little children into the care of a foster parent, who is not subject to any independent supervision, on the basis of an exemption which the foster parent, as an individual, may grant to himself or herself, is not capable of guaranteeing the child's right to special protection and is in contrast with the best interests of the child also for other reasons. A system set up in this manner does not actually respect the rights of the child. Of course, **it is not the material aspects of livelihood that become an issue of concern in the case of such a foster parent, because the state is providing financial contribution for caregivers.** The problem is rather in ensuring adequate personal upbringing and care for such a little child. **However, is it possible for a foster parent to handle the duties of upbringing and care for four children below one year of age simultaneously and as required? We are not referring to institutional care but rather a form of personal care.**

The course of action by the Central Office is governed in more detail by another of its internal regulations: IN– 030/2011 "Coordination of the placement of children into facilities of social and legal protection of children and social guardianship designated for the implementation of court decisions and reporting on availability of vacancies in the facilities of social and legal protection of children and social guardianship designated for the implementation of court decisions". **The very purpose of this internal regulation makes it obvious that the best interests of the child are not taken into account at all – neither as the child's right, nor as an interpretative legal principle and definitely not as a rule of procedure.**

The purpose of the standard is aimed at ensuring:

a) a uniform procedure to coordinate the placement of children into facilities and at determining a uniform method of communication between entities involved in this process;
b) the collection/storage/availability of data on vacancies in facilities;
c) the suitable processing of data and linking the outputs with the overall strategy for the implementation of judicial decisions;

[11] *Dr. Arthur Becker – Weidman,* Fulfilling the needs of children in institutional care, a conference organised by the OZ Archa civic association on 10 November 2016, www.archaoz.sk

d) updates of data enabling effective coordination with respect to the placement of children into facilities.

The internal regulation referred to above is therefore primarily aimed at ensuring a smooth process with regard to designating the facilities at institutional level. The only provision which indicates, at least partially, consideration for the best interests of the child is the provision which states that, in designating the facility, a labour office employee is to provide to the Central Office's coordinator, in addition to basic information about the child, also information about the child's special needs, basic information about the child's family, the reasons for the placement of the child in a facility designated for the implementation of the court's measure, as well as other serious facts.

Summary of the findings

I.

As was the case with the Čistý deň rehabilitation centre, the investigation also revealed shortcomings in inspections carried out in the children's home PETO, in particular as regards their independence.

A lack of independent control is based on the fact that, where the Central Office performs an inspection in a children's home, the Central Office is only checking itself again because, first of all, it is the Central Office which decides, in accordance with internal regulation IN 030/2011, in which children's home the child will be placed. It is therefore very unlikely for the Central Office to arrive, upon performing such inspection, at a conclusion that it had placed the child into an unsuitable facility, de facto noting that **it was, first of all, the Central Office which made a mistake in designating that facility**.

Pursuant to §73(1)(c) of the Act on Social and Legal Protection of Children and Social Guardianship, the Central Office is competent to carry out inspections in children's homes. However, in carrying out the inspection, the Central Office only proceeds in line with Act No. 10/1996 Coll. on control in state administration, as amended, which does not prescribe any detailed procedure to be followed during the inspection.

At the same time, the Central Office does not have at its disposal **any binding standards** enabling its employees to objectively and comprehensively verify whether the basic rights and freedoms of children are violated in facilities in which measures of social and legal protection of children and social guardianship are implemented. The inspection is therefore carried out in a similar manner as is the case with social rehabilitation facilities – only by inspecting documentary evidence, i.e., the children's case files, and by checking the material resources in the facility.

Even in this case, the **Ministry's inspection is almost non-existent as well** because it is obvious that the Ministry – in a situation where it fails to see that the conditions for obligatory revocation of accreditation of the Čistý deň rehabilitation centre have been met – would not consider revoking the accreditation "only" for infringing the law.

In Article 25 of the Convention on the Rights of the Child, the States Parties *expressly recognize the **right of a child** who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement* and in Article 3(3) of the Convention on the Rights of the Child the States Parties undertake to *ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as **competent supervision**.*

However, it is obvious that the described system of social and legal protection of children and social guardianship does not provide any reasonable argument to support a conclusion that the system is in the best interests of the child.

The investigations brought, inter alia, the following findings:

1) **The courts, save for a few exceptions, do not allow the child to be heard within all proceedings which affect that child.**

2) **The courts almost never check, in person, the facilities where children are placed.**

3) **By allowing the overlap of functions in the case of the founder of a children's home, the director of the children's home and the foster parent, the Act on Social and Legal Protection of Children and Social Guardianship provides the means for circumventing the ratio legis of this Act and, in combination with incompetent control, weakens the social and legal protection of children.**

4) **In designating the facility where the child is to be placed, it is rather the interests of the facility which prevail over the best interests of the child.**

5) **The inspection bodies are failing to exercise properly their control powers.**

6) **There are no binding standards in place for the inspection bodies as to what they need to check in the facilities and how.**

II.

In light of the above facts, I recommend that the following measures be adopted by the National Council:

A. **To amend the Act on Social and Legal Protection of Children and Social Guardianship in a way that children may only be placed into a social rehabilitation centre after undergoing proper diagnostics and detoxification, even in those cases where the decision on their placement is made by a court on the basis of an immediate action or educational measure;**

B. **To amend the Act on Social and Legal Protection of Children and Social Guardianship in a way that the number of mandatory visits in facilities for the implementation of the measures of social and legal protection of children and social guardianship is increased and that at least two of such visits must be unannounced;**

C. **To amend the Act on Social and Legal Protection of Children and Social Guardianship in a way that it no longer allows the overlap of functions in the case of the founder of a children's home, its director and the foster parent;**

D. **To reduce the number of children per foster parent or foster family as established by the Decree;**

E. **To provide an alternative to institutional care so that institutional care becomes the *ultima ratio;***

F. **To ensure that, within the proceedings in which the decision on the placement of a child into a facility for the implementation of the measures of social and legal protection of children and social guardianship is made, the views of the child are always taken into account and that the necessity and expediency of the child's placement into a facility for the implementation of the measures of social and legal protection of children and social guardianship be always reviewed and confirmed by an independent expert in child psychiatry;**

G. **To ensure that labour offices have sufficient personnel, expertise and material resources enabling the social counsellors to discharge their duties in the best interests of the child;**

H. **To ensure that social rehabilitation centres operate under the supervision of an expert guarantor whose professional guidance regarding the manner in which activities and measures are performed, including the methods, techniques and procedures, will be binding upon that rehabilitation centre;**

I. **To put in place more stringent requirements regarding the number, qualification and suitability of expert staff in children's homes and social rehabilitation centres, as**

well as the suitability of foster parents, and to ensure regular training and assistance in pursuing their occupation;

J. **To prepare binding standards which will determine – in detail, as well as in clear and comprehensible language – the manner in which inspections are to be carried out in the facilities for the implementation of the measures of social and legal protection of children and social guardianship;**

K. **To ensure the preparation of binding standards for working with children in the facilities for the implementation of the measures of social and legal protection of children and social guardianship;**

L. **To ensure independent and competent control over activities which are related to children and carried out by public or private facilities, as well as to prevent the inspection bodies from downplaying the individual complaints;**

M. **To ensure that the facility in which the child is placed corresponds to its individual needs to the maximum extent possible, while respecting its kinship bonds, previous education and the potential capacities for its further physical, mental, social and emotional development;**

N. **To ensure the statistical monitoring of relapses of minors with a view to ascertaining whether their social rehabilitation complies with the purpose declared by law;**

O. **To draw consequences, as quickly as possible, in connection with the accreditation of the Čistý deň rehabilitation centre due to the existence of justified concerns that this accredited entity, its statutory representatives, responsible person or other employees, or the manner in which it operates, may put the life and health of the child or its sound mental, physical and social development at risk".**