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## Kontakt/Contact

ZBW – Leibniz-Informationszentrum Wirtschaft/Leibniz Information Centre for Economics  
Düsternbrooker Weg 120  
24105 Kiel (Germany)  
E-Mail: [rights\[at\]zbw.eu](mailto:rights[at]zbw.eu)  
<https://www.zbw.eu/econis-archiv/>

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## **SUBSTITUTE FAMILY CARE IN THE SELECTED MEMBER STATES ON THE EUROPEAN UNION**

**Jiří Bílý**

*Metropolitan University Prague*

**Zuzana Horváthová**

*Metropolitan University Prague*

### **Abstract**

*At present, in most of the EU countries a system to adopt a baby represents a very slow and legislatively demanding process. The reasoning is that the process is about a possibility of getting a child into a foster family, which has an impact on his future development as well as on overall integration into the society. Due to this reason, all Member States of the European Union approach this step with very serious concerns.*

*Our paper aims to highlight the various differences in legal regulations of selected Member States, to assess the state-of-play of this element of social policy and to create a comprehensive comparison of foster care in the Czech Republic, France, and Great Britain. We conclude that each system of substitute family care in the examined countries is based on different social systems and from this point of view there are also differences that should be taken into account when assessing and examining the adoption and foster care policies.*

**Keywords:** substitute family care, institutional/residential care, foster care, adoption, family policy, social system, European Union

**JEL Classification:** I18, J1

### **Introduction**

Even today there are many families in the economically rich nations that fail to fulfil their basic functions, which is why the institutions dealing with family policy decide to take the child away from his biological parents. Every step is always discussed with social workers and on their recommendation, children are either committed to residential care, foster care or to the adoption. However, the whole process is time-consuming and in terms of law very challenging, but most demanding seems it to be in the psycho-social field.

The purpose of foster care is to offer a given minor all the things needed in order to make things work in the best interests of the child when his own family does not want to or cannot take care. We can say that foster care is currently understood as a substitute for family environment and all associated facilities, with respect for keeping all the experiences of the child to such an extent as he would be grown up by his own biological family.

The most common term in the system of social care is the concept of family. Family can be defined depending on what the scientific point of view is taken into account while looking at it. Thus we can characterize it in terms of sociology, demography, education and psychology.

Furthermore, a family can be defined in terms of completeness to single-parent or full family; in terms of functionality on a functional and dysfunctional one and from the perspective of ownership on adoptive or biological one. According to Odehnal (1998), a family is the most versatile kind of the family socialization factor, which provides an individual with the identification patterns and makes him familiar with a behaviour expected from the male and female role. It teaches individuals to react in the desired manner in the process of interaction and allows him to verify the practical skills acquired within the family. The family is used as a regulator of individual behaviour and gives child socially desirable norms. Under the influence of the family a person creates his attitude to the personal surroundings, to oneself and society in general.

### **Czech and international institutions for social and law protection of children**

In the Czech Republic as well as in the European Union there are several institutions that deal with the protection of children and young people, with their education and the possibility of integrating them into society. Bubleová (2011) discloses that the obligations to defend the interests of the children are kept by many subjects. The protectors of children are all those who come across a vulnerable child. Everyone has an obligation to help the child and deal with the situation directly (e.g. if he finds a child in need, such a person has an obligation to provide him with the assistance) or indirectly (e.g. if he is aware of an abused or neglected child, he has a duty to report that situation).

Among the three main institutions that deal with the protection of children in the Czech Republic belong:

- courts,
- ministries,
- legal and social bodies of the protection of children.

#### ***Courts***

These are the institutions, which deprive irresponsible parents of their parental responsibility and actually take the children away and place them into institutional or other care, and we can say that they decide about the child's future. The courts decide in what family a given child lives his childhood. The other activities provided by courts are official referees, court guardianship, medical examiners and social workers. Another element, which is decided by courts, is the option of abolition of institutional care, or vice versa, its regulation or prolongation.

#### ***Ministries***

Among the fundamental institutions dealing with the protection of children belong five Czech ministries, specifically:

- Ministry of Education, Youth and Sports;
- Ministry of Interior;
- Ministry of Health;
- Ministry of Labour and Social Affairs;
- Ministry of Justice.

The Ministry of Education, Youth and Sports runs in this area a system of the overall operation and utilization of diagnostic centres, orphanages and reformatories. They provide a guarantee of the expertise of the institutional care and the integration of the released children and young people into normal life and society.

The Ministry of Interior works in the area of child protection on the clarification of the crimes against children, preventing crime committed by youth and on crime prevention of children. Also under the delegated competence the Ministry ensures the protection of children within the agenda of the regional offices.

Regarding this issue, the Ministry of Health is engaged in the area of the existence and ensuring nursing homes and medical and preventive care. Under the behalf of this ministry belong the prevention of addictive substances, inclusion of persons in society, support for parents of children with physical disabilities and the general management of practitioners.

The Ministry of Labour and Social Affairs monitors the numbers of children and the minors in foster families and exercises control activities in these families, carries out statistics and ensure compliance with the implementation of the United Nations Convention on the Rights of the Child.

The Ministry of Justice is an authority that guarantees the validity and functionality of family law and criminal law and takes care of protecting young people. Within the competence of the Ministry fall also prisons or detention centres for youth for juveniles and the oversight over the functioning of a civil procedure law.

### ***Legal and social bodies for protection of children***

Within this group of the protection of children and youth belong regional authorities, including municipal and regional offices and supranational bodies such as the Office for International Legal Protection of Children. Luňáčková (2013) defined this issue in a way that the state should pay more attention to prevention and education in the cases of families where relationships are still not broken. Given that the State is committed by its international obligations and its own laws to protect the interests of the minors, it should fulfil its commitments and should be more interested in the education of future generations. The state should be interested to know how and by whom the children are brought up and how a family works.

Municipal offices deal with children who have lost both parents, where parents abuse them or where parents do not exercise the privileges of their responsibilities towards their children, e.g. where children do not attend a school, live on prostitution, are dependent on addictive substances, have committed a crime, have repeatedly run away from families and have repeatedly committed the offense. Municipal offices can help parents in the upbringing of both healthy and handicapped children. A step that follows is a petition to the court for the adopting a child. After the release of the child from institutional care, the local authority (municipal office) supervises a quality of the integration of that child in the family and society.

Regional authorities (offices) keep records of children and applicants; ensure training of foster parents and adoptive parents, within the training focus on social and psychological area of potential adopters, carers and people who want to engage in foster care. The office gives suggestions and proposals to the Ministry of Labour and Social Affairs for possible adoption or foster care.

Office for International Legal Protection of Children ensures the protection of children in foreign countries in the field of social protection of children and young people. The Czech Republic is represented via the framework of international agreements. In practice the office

deals mainly with problems of child abduction and kidnapping abroad, the recovery of child alimony from abroad and the possibility of international adoption a child.

### **System of substitute family care in selected EU Member States**

The recent legislation protecting children is based on the laws and regulations that began to conceive at the beginning of the last century. The development of the legislation in the last century was largely influenced by the social policy of a given state which stemmed out of the specific political and ideological organization of the state. For this reason, we will deal with this issue in three selected states. While in the last century the Czech Republic for many years acted as the state with the communist regime, France and Great Britain were, vice versa, capitalist countries.

All forms of substitute or foster care of a minor fall within the area of social policy. In every Member State, this policy must endeavour to ensure that a young person who does not have adequate family support by his biological parents might get a chance at a better life in a foster family or institutional care.

Krebs (2005) characterizes the activity of social policy in a way that an active social policy has a preventive character of protecting before the emergence of social problems through various specific measures. The aim of the passive social policy is to find solutions to social problems already created.

#### ***Czech Republic***

Already after the First World War, the country issued a law which characterized a carer and foster parent. Only a wealthy and healthy person could qualify and that person had to be independent on public support. In that period up to the beginning of the Second World War up to 15,000 minors were placed in foster care annually.

During the communist era the institutional care was preferred, when the minor was sent to an institution and foster care at home was preferred only in case of relatives willing to care of the underage.

The current law on social and legal protection of children is of the year 2000 and cash benefits to support fostering in this period are based on the act of 2013. The amount of benefits is determined by several criteria and the main rule is the age of the child. If the child is disabled the degree of disability is taken into account and the state also pays the cost of the needs of a disabled or handicapped child. The amount of the foster benefit is taken into account in the calculation of retirement of the carer and, of course, the state pays social security and health insurance for the child in foster care. After a completion of foster care when a young person leaves the family, he receives a one-off financial assistance in the amount of one thousand euros.

Since 1990, the institutional care for youth has been abandoned and social policy is aimed at placing children in families. Macela (2013) describes this social problem in a way that children should be placed in institutional care only when there is no other solution. Always there should be an effort to return the child to its original family or to create a substitute family environment.

Czech legislation is currently based on the main idea, which puts a greater emphasis on both the prevention and work with vulnerable families, which would minimize the placement of children in institutional care. On the basis of this idea, a national action plan for the period 2012 - 2015 was created in order to fulfil the strategy of protecting the rights of children, where the main goal is the deinstitutionalization of foster care.

## ***France***

Another state where we describe the possibilities and forms of substitute care is France. In economic terms it is a highly developed state, where both the quality of life and overall standard of living are pretty high.

In France, foster care can be divided into two basic groups. The first, major one is a foster care covering around 90% of all children taken away from their biological families. The other is institutional care, which accounts for only 10% of children. Some contemporary politicians are trying to promote the fact that the institutional care is totally eliminated. For the time being the practice is that if you have a child already placed in institutional care, the state is trying to ensure that he remains there for the shortest time possible. A specific feature of French institutional care is that 85% of children, who are placed in institutional care, are those that have their biological parents, but these are now unable to care for their children and the institution creates a kind of a foster home. Parents have the opportunity to visit the child twice a week and at the same time they must be involved in the upbringing of their child, because the personnel of the institution seek to balance the neutrality in the relationship between the child and parents.

If there is an assumption that the length of stay in the institution would take too long, or if a child loses both parents, the authority immediately proceeds to a form of foster care. Substitute family care has two options where the first one is the adoption of a child while the second one is foster care. The adoption can be either incomplete adoption or a full one.

Regarding the adoption, according to the Qui peut Adopter portal (2014), anyone who applies for an adoption in France must, at first, have permission from the President of the General Council, must be resident in France, while he can be also a foreigner. Finally, a gay couple together may adopt a child, too.

As for an incomplete adoption (a kind of single-parent) the names of the adoptive parents are recorded in the registry at the same level as the names of the biological parents, thus the adoptive parents have the same rights and duties towards the child as his biological parents, but the child retains all rights in the original family, e.g. the right of heritage.

The full adoption is the only form of adoption, which is irrevocable and adoptive parents are referred in the registry as the only parents. Biological parents are deleted, then.

## ***Great Britain***

The last examined state is the United Kingdom. It is the first state in the Union where there has been a cancellation of the deinstitutionalization of a child care. There are also two types of substitute family care; it means foster care and adoption. Regarding the number of children, most of them are placed in foster care and the adoption is used only in the case where it is absolutely clear that the child does not come back to the biological parents any more.

Fostering has four variants. The first variant of foster care can be described as short-break and is assumed for disabled children or children with special needs or behavioural difficulties. In that case biological parents are themselves caring for a child, but ask social workers or foster carers for assistance and for providing short term stays for those children. Meantime the parents enjoy a short break for themselves.

The second option is kinship fostering, where the relatives help each other. The child is placed in a family that is related (to the grandmother, the aunt, the uncle). A very similar alternative is a system of private fostering where the child is placed in a family that is either friendly or family related, but most of the necessary procedures for fostering do not pass through the register of the applicants.

The last option is emergency fostering, where children find themselves in a situation when urgently need to be provided a foster home and a decision on their future is taken later. This is a kind of few-day fostering.

According to the Fostering Care portal (2009), British legislation does not see any problem in terms of adoption, whether the adoptive parent is single or married. Neither there is a condition that both new parents must be of the same ethnic race or that they were not allowed to have or vice versa had to have their own children. Finally, it is not prohibited by law, that the adoptive parents must not be a gay or lesbian neither it is required that they have to own the property (if they live in rent, which is appropriate for growing up a child then it is not an obstacle). The last reference concerns domestic animals. When such an animal is not dangerous for the child, it is seen as part of the family, which could also be helpful for the creation of the child's emotional ties to anything or anyone.

### **Comparison of the EU Member States in the area of substitute care**

In case we want to compare all the three forms of substitute family care, such as adoption, foster care and institutional care, each EU Member State examined builds on different social sectors, social security, history and politics.

As for adoption, one can say that all the three countries have much in common in terms of the objective, that is complete the adoption, but on the other hand, the process of adoption has some differences. In the Czech Republic and France, there are two types of adoptions, specifically a cancellable, sometimes called incomplete and the irreversible one, which is full. In the UK there is only one type of adoption, and it is irreversible. There is also permitted a cancellable adoption but only in the very rare cases and mostly these are scarce exceptions.

The difference can be also seen in the age of the adopter, in the Czech Republic, the minimum age for the possibility of adopting a child is 18 years, in France it is 28 years and in the UK 21 years minimum. The decision about a possible adoption in our country and the UK is taken by a classical court whereas in France a special child court has been established for these purposes. The issue of adoption of children by homosexual couples, in the Czech Republic only a single person can adopt a child, but not a couple. In France from 2013 children can be adopted by gay couples. In the UK, where one of the homosexual partners is also a biological parent of the child, the other partner can adopt that child.

The issue of institutional care is much discussed. In the UK, at present a very small percentage of children are placed in institutional care, mainly those who are taken away from their biological families and this form of substitute care is not preferred at all. British social policy seeks to ensure that a minimum of children is placed in institutional care and for the shortest period of time possible.

Within the compared countries the largest percentage of children in institutional care can be found in our country. Another very negative phenomenon is that this form of substitute care covers so many children less than three years of age. For this reason, also the UN has already called upon the Czech Republic to put a greater number of children in family foster care. Here it is necessary to reconsider the present legislation, which causes that the child spends a long time in institutional care and it is impossible to move him swiftly in foster care or give back to biological family.

France also has a problem with institutional care as compared to the UK; a large percentage of children are placed there. The difference to our institutional care is that it is represented in a much lesser extent, due to the reason that family care is preferred there. Due to the modernization of the legislation some success has been achieved in reducing the numbers of children in institutional care at the expense of a family care.

As for the issue of foster care the Czech Republic is doing worst, because it has developed only one form and that is typical fostering. In the other countries there are multiple variants of foster care in order to take into account the needs of the child to the extent possible. This concerns particularly an effort to place a child with the family relatives as of the UK, or to secure a direct contact between the parents and the child and to make parents participate in the education, even when the child is placed outside the biological family as in France.

## Conclusions

The problem of substitute family care is dealt by every Member State of the European Union and each Member State has this issue legislatively anchored. As this issue creates a sub-part of the social policy, its financing and the overall handling of that kind of care depends on the financial possibilities of each State.

Each system of substitute family care in the examined countries is based on different social systems and from this point of view there are also differences. The main element as well as the factor why the States should endeavour to streamline and modernize this area of social policy, is a child. The underage shall be influenced by a given form of care to the least extent possible. The state must focus on the child to make him capable of being incorporated best into society and among a group of his peers, who are brought up in families with their biological parents.

The system in the UK puts very strong emphasis on the adoption and focuses mainly on fostering, even if primarily family fostering is preferred here. The reasoning is that the child is not cut off from their extended family and can grow with them. There is a great emphasis on the development of the child in a kind of family environment, in order to be brought up by his aunt, uncle, grandfather and grandmother with her cousins. This model of foster care in the Czech Republic is still missing, and in this respect, Czech legislation could be based on English legislation proved in practice.

French foster care suffers from the drawback similar to one in the Czech Republic and that is a great percentage of children placed in institutions. Unlike the Czech institutional care, the French one focuses on making the parent and his influence on the growing-up process essential for a child who is in institutional foster care. It is permitted and very positively understood that parents are allowed to entry that process, even when the child is placed in institutional care. This fact could be included in our legislation concerning the institutional care, especially in families where parents are interested in this way of entering the process of growing up and thus affect their child.

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### Information about the authors:

PaedDr.Zuzana Horváthová, Ph.D. (zuzana.horvathova(at)mup.cz) works at the Department of Law and Public Administration, Metropolitan University Prague, Czech Republic.

Assoc. Prof. JUDr., PhDr., Ph.D. Cand. Jiří Bílý works at the Department of Law and Public Administration, Metropolitan University Prague, Czech Republic.