

## Semester grant and grant for short-term stays of the "Aktion" Austria-Czech Republic

### SCHOLARSHIP REPORT

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During my meetings with my supervisor prof. Mattias Klatt we discussed topics such as legal theory, children's rights, constitutional legal theory and also ethic and philosophical issues. Prof Klatt was very willing to help me and thanks to him I could bring into my thesis many legal theories I did not know before. I could use also RESOWI library where could I do a research in Austrian legal sources which really helped me with the comparative part of my work, because Austria law is a step forward in an alternative medicine regulation and a public health insurance regulation. The fact I could also meet phd. degree students helped to build my overview in legal philosophy. During my stay in Graz I also participated in prof. Klatt course focused on balancing rights which were also very helpful for improving my knowledge of law. I find my stay in Austria very inspiring and helpful, thanks to my supervisor I feel my master thesis has for sure a better quality than it could have had if I write it in Czechia only.

#### ABSTRACT:

In Czech Republic the legal environment is very unclear when it comes to children's rights and mainly the alternative and complementary medicine. Children's rights are not violated often, Czech Republic respects all the international conventions and European law protecting children's rights. But as our society as a whole is evolving, we should also react in a certain way by law. Children are a weaker party and need special protection by law, that's undeniable. But in the barrier of freedom society as a whole has to protect not just children as an object but also their freedom and right to integrity as much as their right to free decision about their health care which is a part of right to integrity as well (speaking of several interferences into human's body during surgeries etc.). In my thesis I did a research about philosophical approaches to children's rights, such as paternalism, liberationism, welfarism, emancipation model, approach based on children's rights. In the scientific articles and documents, we can find a tendency to leave the paternalistic approaches and a certain direction towards a more liberal approach seeing children as a subject of law with their rights not just as an object whose best interest society protects and decides what the best interest is as well.

I also made a research *lege lata*, concerning legal personality, intellectual and free maturity, partial and limited rights of minors in terms of health care, informed consent in the area of minors, parental responsibility and representation of child as the most important legal tools for finding out what is the negative dimension of children's right to decide about his/her health care. In the next part of my thesis I analysed Czech legislation and approaches of alternative and complementary medicine and I found it very poor, insufficient, not reflecting the development and requests of society. I also found inspiration in Austrian and German legal systems.

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I compared Czech legal regulation of these topics with regulation in Germany and Austria and from the very beginning I was sure that this topic has more than one legal level. This topic is very important from the private law point of view as well as from the public law point of view. Right to health is one of the obligations of the state which must be fulfilled as much as a ceiling not just as a floor for citizens (more in legal theory about constitutional law and in Alexy's theory of principles) and I am criticising Czech state for lack of effort to reflect society's needs and requirements to that level, that medicine in Czech Republic would be provided not just as an evidence-based medicine care but in compliance with alternative and complementary methods. This cooperation could work either as a complementary approach (alternative medicine fulfils evidence-based medicine and it works "hand in hand") or alternative medicine would be another way of health care which can be chosen by a patient assuming that doctor or a specialist will provide all information to the patient. Plural health care is a sign of a modern developing society and many EU states have already accepted alternative and complementary medicine as a part of health care (Switzerland, France, Germany etc.).

I have analysed the legal regulation of children's right to freely choose a health care and a Czech approach of adopting society's request for another ways of health care, because if there is a possibility for a child to choose, all health care options should be also safe as much as they guarantee the least possible damage of a patient. This is a responsibility of the state which has to provide legislation for professional requirements for either doctors or specialists in alternative and complementary medicine. After analysing the lack of legal regulation and comparison with other EU states I made an outcome as a proposal lege ferenda.