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## Comparative study on enforcement procedures of family rights

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Annex 8 National Report Czech Republic

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# STUDY ON THE ENFORCEMENT OF FAMILY LAW JUDGEMENTS

## Czech Republic Report

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### PART 1. ENFORCEMENT IN DOMESTIC CASES

#### 1A. Procedures and practices for enforcement in domestic cases

##### 1. Description of the general law for enforcement of:

##### a. decisions on custody, including orders on the place of residence of the child

*Czech law does not distinguish a different legal status of children born in wedlock or out of wedlock. Act on the Family stipulates parental responsibility (rodičovská zodpovědnost) regardless of the fact whether the parents are married or not. It is most important whether the parents live together with their child or not.*

*Parental responsibility belongs to the both parents of the minor child ex lege (see § 31 Act No. 94/1963 Coll., Act on the Family).*

*The woman, who delivered a child through childbirth, is considered to be the child's mother (§ 50a Act on the Family).*

*Fatherhood in regard to a child is established on the basis of three legal presumptions which are refutable (pater est quem nuptiae demonstrant, §§ 51 – 62a Act on the Family): (1) Mother's husband is deemed the father; (2) the man whose paternity was established by the both parents' common affirmation is deemed the child's father; (3) the man, who had an sexual intercourse with the mother is deemed the father unless his paternity is excluded by significant circumstances. The fatherhood is determined by court proceeding.*

*Parentage can be established by an adoption as well (adoptione natura imitatur). A child may be jointly adopted only by spouses. Adoptive parents have a parental responsibility in upbringing of children (see § 63 Act on the family).*

*Parental responsibility belongs to the parents of the child only if they have full capacity to legal acts (§ 34 Act on the Family).*

*If one of the parents has not a full capacity to legal acts, the parental responsibility shall be exercise by the other parent. The same rule shall apply if one of the parents was deprived of his or her parental responsibility or if exercise of his or her parental responsibility was suspended (see § 34 and 44 Act on the Family). Such a parent must not be entrusted with any kind of custody of the child.*

**The parental responsibility is an aggregate of rights and duties** concerning (a) care of a minor child including in particular care of his or her health, psychical, emotional, intellectual and moral growth, and (b) representation of the minor child, and (c) management of his or her property (§ 31 Act on the Family).

In exercising these rights and duties, the parents must rigorously protect the child's interests, manage his or her behaviour and exercise a surveillance over him or her in accordance with the level of his or her development. The parents may use adequate upbringing measures so that the child's dignity is not violated and his or her health, emotional, intellectual and moral development are not endangered.

If the child is able to have his or her own opinion and to consider consequences of measures concerning him or her, the child has the right to obtain necessary information and express his or her opinion about all decisions of the parents concerning essential affairs of his or her person and to be heard in every proceedings in that such affairs are decided on.

**If the parents want to exercise their parental responsibility, they must live with the child or have at least contact rights** (the child lives with another parent, with grandparents, in foster care etc).

There doesn't have to be issued any decision of custody when the parents live together.

**Decision of custody (Rozhodnutí o svěřeni dítěte do výchovy – Decisions on the upbringing of minor children) may be done by judgements or by approved agreements when the parents of the child entitled with parental responsibility do not live together** (§ 26 Act on the Family regulating divorce, § 50 Act of the Family regulating separation of the parents).

The court may decide even without a petition to whom the child shall be put into custody (who of the parents will care for the child in his/her household and who will be participating in care during access with the child):

a) the court shall determine who – mother or father - shall be entrusted with **individual custody** of the child;

b) if both parents are able to bring up the child and are interested in the upbringing, the court may put the child into a **common custody** of both parents if it is compatible with the child's interest and if it leads to a better security of his or her needs;

c) if both parents are able to bring up the child and are interested in the upbringing, the court may put the child into an **alternative custody** of both parents if it is compatible with the child's interest and if it leads to a better security of his or her needs.

In all the above mentioned cases of individual, common and alternative custody, **both parents keep on their parental responsibility.**

*Note: The spouse of the mother or father who is not parent of the child - **the stepmother or stepfather** - takes part in the child's upbringing provided that she or he lives with the child in a common household. The stepmother or stepfather has never parental responsibility nor custody nor visitation rights.*

**Czech legal order does not know terms “orders on the place of residence of the child”** as court decisions regulating individual, common and alternative custody when both parents keep their parental responsibility decide “who of the parents of the child will live with him/her”. It is upon the parents to decide “where the child will live”.

**The court decision shall become enforceable** as soon as the time limit fixed for the respective fulfilment (performance) has lapsed. If the judgement does not stipulate any duty which has to be performed (fulfilled), it shall become enforceable as soon as it becomes final (takes legal effect) (see § 161 Civil Procedure Code). **The decision of custody is therefore enforceable as soon as it becomes final.** A judgement which has been duly served and which can no longer be appealed against becomes final (§ 159 Civil Procedure Code).

**Interlocutory enforceability of judgements** either ensures **from law** (judgements ordering they payment of alimony or remuneration for work for the last three months prior to the day when the respective judgement was pronounced) **or from a judicial decision**, in the latter case, it must be expressed in the verdict. **Acting on a motion to this effect, the court may rule in its verdict that the decision should have interlocutory enforceability**, if the respective party would otherwise be at risk from a detriment which would be reparable only with difficulty or considerable effort.

**If one of the parents suggests, the decision of custody or the decision of returning of the child can be accompanied by the verdict of interlocutory enforceability.** In the case of judgement with interlocutory enforceability the time limit set for performance (fulfilment) begins to run as of the day such judgments are served on the party (§ 162 Civil Procedure Code).

The court shall guide the parents of minors towards proper performance of their duties in taking care of a minor. It shall consider suggestions and reports of individuals and legal entities regarding the upbringing of a minor and take appropriate measures in this respect. With regard to the suitability and expediency of proposed or intended measures, the court shall, as a rule, ascertain the opinion of the organ concerned with the care of children and the municipal organ acquainted with the situation. If appropriate, it shall also seek the minor's opinion on such measures (see § 178 Civil Procedure Code).

If the liable party fails to perform voluntarily what it is ordered to do under an enforceable decision, **the entitled party may file a motion for judicial execution** for the decision. Decisions on the upbringing of minor children and or decisions on the return of the child are enforced under §§ 272 and 273 Civil Procedure Code.

Before issuing a writ of execution, the presiding judge shall **in writing invite a person who refuses to observe the judicial decision**, or who does not fulfil a court-approved agreement on the upbringing of minor children or the decision on the return of a child, to observe the judicial decision or fulfil the court-approved agreement. In such invitation (call), the presiding judge shall also advise the party of the consequences of non-fulfilment of the duties stipulated in the judicial decision or agreement. Such a invitation does not have to be done, if there are no doubts, that the invitation will not lead to voluntarily fulfilment of the judicial decision or the court-approved agreement on the upbringing of minor children or the decision on the return of a child, or if there is risk that the execution of the judicial decision or the court-approved agreement might be of jeopardy (vain).

As a rule, the presiding judge shall also ask the organ concerned with care of children (authority of socio-legal protection of children) to encourage the liable party to voluntarily implement the judicial decision or court-approved agreement on the upbringing of minor children and the court's decisions on return of a child, without the having to issue a writ of execution.

If the call (invitation) made by the presiding judge mentioned above does not bring positive results, **the presiding judge shall impose successive fines** on the party not voluntarily implementing the court's decisions or the court-approved agreement on the upbringing of

minor children and the decision on return of a certain child. Individual fines may not exceed CZK 50,000 (cca EUR 1,666) and shall fall to the state.

Acting in co-operation with the respective organ or state organs, **the presiding judge may arrange for a child to be withdrawn from a party** who is not authorized by the judicial decision or court-approved agreement to take care (to have custody) of the child. The presiding judge shall see to it that the child is placed into the care (custody) of the person stipulated in the said decision or agreement.

**Competence to execute a judicial decision or a court-approved agreement on the upbringing of minor children belongs to the court of general jurisdiction according to the child's permanent address.**

Before commencement of proceedings, the presiding judge may issue an **interlocutory injunction**, if this is necessary to regulate the parties' relationships in the interim, or if there is concern that the execution of a court decision might be in jeopardy (see § 74 Civil Procedure Code). The court may enjoin a party in particular **to place a child into the care of the other parent**, into the care of a person determined by the court (§ 76/1b Civil Procedure Code) and to pay alimony to the necessary extent (§ 76/1a Civil Procedure Code). Such a interlocutory injunction may be issued after commencement of proceedings as well.

The time limit within the court is to issue an interlocutory injunction is: as soon as possible, no later than **7 days** since the filing of the motion (§ 75c/2 Civil Procedure Code).

In the interlocutory injunction the court may enjoin the plaintiff to file within a time limit fixed by the court a motion to initiate the proceedings. The court may also determine that the interlocutory injunction will be effective only for a fixed period of time (§ 76/3 Civil Procedure Code).

If a minor child is without any care, or if its life or favourable development is seriously at risk or impaired, the presiding judge may issue an **interlocutory injunction** enjoining that the child be placed into the care of a person determined in the ruling concerned (§ 76a/1 Civil Procedure Code).

The decision on such motion must be issued without any delay, no later than **24 hours** after the filing of the motion (§ 75c/2 Civil Procedure Code). The ruling on an interlocutory injunction shall be served on the parties only when the act is performed. The presiding judge shall see to it that such **injunction is implemented without delay** (§ 273a/1 Civil Procedure Code).

**The competent court for the purposes of execution shall be the court which ordered the interlocutory injunction.**

## **b. orders on contact and/or access rights**

When one of the child's parents does not live together with the child (the child lives with another parent in his/her **individual custody** after divorce or just separation), such a parent has contact rights with the child.

**The agreement between the parents about contact with the child does not require a court's consent.** However, the court shall regulate the contact of the parents with the child if such measure is required by the interest of his or her upbringing or by condition of the family. A repeated groundless prevention of the entitled parent from the contact with the child is considered change of condition requiring a new decision on the custody. **If it is necessary and in the child's interest, the court shall restrict or prohibit contact of the child with his or her parent.** If it is required by the child's interest and by condition of the family, the court may regulate the child's contact with grandparents and brothers and sisters (§ 27 Act on the Family).

When the child's parents do not live together with the child (the child lives in foster care etc.), such parents have contact rights with their child. If it is required by the child's interest and by conditions of the family, the court may regulate the **child's contact with grandparents and brothers and sisters** (see § 27/4 Act on the Family).

**Decision of contact with minor children may be done by judgements or by approved agreements** (§ 26 Act on the Family regulating divorce, § 50 Act of the Family regulating separation of the parents). The court may decide even without a petition.

**The court decision in general shall become enforceable** as soon as the time limit fixed for the respective fulfilment (performance) has lapsed. If the judgement does not stipulate any duty which has to be performed (fulfilled), it shall become enforceable as soon as it becomes final (takes legal effect) (see § 161 Civil Procedure Code). **The decision of contact is therefore enforceable as soon as it becomes final.** A judgement which has been duly served and which can no longer be appealed against becomes final (§ 159 Civil Procedure Code).

**Interlocutory enforceability of judgements** either ensures **from law** (judgements ordering they payment of alimony or remuneration for work for the last three months prior to the day when the respective judgement was pronounced) **or from a judicial decision**, in the latter case, it must be expressed in the verdict. **Acting on a motion to this effect, the court may rule in its verdict that the decision should have interlocutory enforceability**, if the respective party would otherwise be at risk from a detriment which would be reparable only with difficulty or considerable effort.

**If one of the parents suggests, the decision of contact with the child can be accompanied by the verdict of interlocutory enforceability.** In the case of judgement with interlocutory enforceability the time limit set for performance (fulfilment) begins to run as of the day such judgments are served on the party (§ 162 Civil Procedure Code).

The court shall guide the parents of minors towards proper performance of their duties in taking care of a minor. It shall consider suggestions and reports of individuals and legal entities regarding the upbringing of a minor and take appropriate measures in this respect. With regard to the suitability and expediency of proposed or intended measures, the court shall, as a rule, ascertain the opinion of the organ concerned with the care of children and the municipal organ acquainted with the situation. If appropriate, it shall also seek the minor's opinion on such measures (see § 178 Civil Procedure Code).

If the liable party fails to perform voluntarily what it is ordered to do under an enforceable decision, **the entitled party may file a motion for judicial execution** for the decision. Decisions on arrangements for contacts with children are enforced under §§ 272 and 273 Civil Procedure Code. Other provisions regarding civil executions shall not apply.

Before issuing a writ of execution, the presiding judge shall **in writing invite a person who refuses to observe the judicial decision**, or who does not fulfil a court-approved agreement on arrangement for contacts with children, to observe the judicial decision or fulfil the court-approved agreement. In such invitation (call), the presiding judge shall also advise the party of the consequences of non-fulfilment of the duties stipulated in the judicial decision or agreement. Such a invitation does not have to be done, if there are no doubts, that the invitation will not lead to voluntarily fulfilment of the judicial decision or the court-approved agreement on the arrangement for contacts with children, or if there is risk that the execution of the judicial decision or the court-approved agreement might be of jeopardy (vain).

*As a rule, the presiding judge shall also ask the organ concerned with care of children (authority of socio-legal protection of children) to encourage the liable party to voluntarily implement the judicial decision or court-approved agreement on the arrangement made for contact with children, without the having to issue a writ of execution.*

*If the call (invitation) made by the presiding judge mentioned above does not bring positive results, **the presiding judge shall impose successive fines** on the party not voluntarily implementing the court's decisions or the court-approved agreement on the contact with children. Individual fines may not exceed CZK 50,000 and shall fall to the state.*

*Acting in co-operation with the respective organ or state organs, **the presiding judge may arrange for a child to be withdrawn from a party** who is not authorized by the judicial decision or court-approved agreement to take care of the child. The presiding judge shall see to it that the child is placed into the care of the person who, under the decision or agreement, has a right of contact for a limited period with the child concerned.*

***Competence to execute a judicial decision or a court-approved agreement on the contact with minor children belongs to the court of general jurisdiction according to the child's permanent address.***

## **2. Comments as to the practice of the law with respect to:**

### **a. decisions on custody, including orders on the place of residence of the child**

*Courts in the Czech Republic follow in cca 90% of cases "traditional model" in which the minor child is put in individual custody of his/her mother. See statistics at part III Empirical Study.*

*"Pattern" of the judgement:*

- 1. The minor child is put into **individual custody** of the mother.*
- 2. The father shall contribute children's **maintenance** the amount of 2 000 CZK (cca EUR 70) monthly in advance.*

*The Constitutional Court of the Czech Republic in its Judgement from 20. 1. 2004, No. II. ÚS 363/03, stated: "From constitutional point of view it is not possible to superior models of functioning relationships between separated parents and minor children, which organs of public authority have experienced, over the best interest of the child regulated by Art. 3 of the UN Convention of the Rights of the Child."*

### **b. orders on contact and/or access rights**

*Still, a lot of fathers do not see their children very much because courts in the Czech Republic follow "traditional model".*

*"Pattern" of the judgement:*

- 3. The father is entitled to have a **contact** with the child once a 14 days, from Friday 4 p.m. till Sunday 6 p.m. in his place. The father is entitled to have contact with the child during the summer holiday for 14 days in his place. The father is to inform the mother about his plans. The father is entitled to have a contact with the child one day at Christmas time and one day at Easter in his place. The mother is obliged to prepare the child for the contact.*

*In addition, it happens very often, that the mothers do not respect judgements and make “problems” within the process of enforcement. Czech psychologists give a warning against the “fatherless family”.<sup>1</sup>*

### **3. Supporting orders**

**a. what supporting orders** (i.e. ‘compliance orders’ or ‘measures to further the effect of the family law judgment’) are available under domestic law?

*The decision of custody of the child, the decision of contact with the child and the decision of returning of the child can be accompanied by **the verdict of interlocutory enforceability**. If one of the parents suggests, the decision of custody, the decision of contact with the child and the decision of returning of the child can be accompanied by the verdict of interlocutory enforceability.*

*Both, before and after commencement of proceedings, the presiding judge may issue an **interlocutory injunction**, in particular to **place a child into the care of the other parent**.*

*For details see above.*

**b.** can you make any remarks as to legal practice (i.e. what supporting orders are practicable, what is the usual content)

***Verdict of interlocutory enforceability** may be pronounce on the motion of one of the parents. It happens rarely, mostly when the parents have legal representatives.*

***Decision of interlocutory injunction** (to place a child into the care of the other parent) may be issued when one of the parents suggests so and when he or she provides the court by all the necessary evidence supporting the motion (for instance report of psychologist, police etc.).*

***Decision of interlocutory injunction should not prejudice the final decision in the case (the custody of the child).***

## **1B. Specific issues relating to the enforcement of family law judgments in domestic cases**

### **1. The organisation of organs and institutions involved in enforcement of family law**

**a. Regulation under substantive law** (legislation that establishes the organ or institution and regulates its tasks and powers)

***Constitution of the Czech Republic** (Constitutional Act from 16 December 1992 No. 1/1993 Coll.) states that the judicial power shall be exercised in the name of the Republic by independent courts. The court system comprises the **Supreme Court, the Supreme Administrative Court, superior, regional and district courts**. It is comprehensive judicial system. The jurisdiction and organisation of the courts is provided for by statute (Art. 91).*

*The **Constitutional Court** is according the Constitution the judicial body responsible for the protection of constitutionality (Art. 83).*

***Act on Courts and Judges** (Act No. 6/2002 Coll.)*

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<sup>1</sup> For details see case *Koudelka v. the Czech republic*, European Court of human rights decision from 20. 7. 2006 (art. 8 of the Convention) available on [www.justice.cz](http://www.justice.cz).

The decisions in **the first instance** in family law cases are made by **districts courts**. They are given a different denomination, for instance in Prague. **The second instance** in family law matters are **regional courts**. They are also given a different denomination, for instance in Prague. **The Supreme court** acts mostly as **a court of cassation**.

**Enforcement of family law judgements (custody, contact, return of the child) is done by district courts.**

- **Act on Arbitration and Execution of Arbitration Award** (Act. No. 216/1994 Coll.) enables the parties of a property dispute to bring their case to the arbitrators. **The Act does not allow to transfer the court jurisdiction in family law matters (custody, contact, return of the child) on the arbitration.**
- **Act on Judicial Executors and their Activities** (Act. No. 120/2001 Coll.) **does not allow the executors to make execution of decisions or approved agreements on the upbringing of minor children and arrangements for contacts with them and the execution on the return of a child. Such an execution may be done only by the court according the Civil Procedure Code.**
- **Act on the Social and Legal Protection of the Children** (Children Act, Act No. 359/1999 Coll.): **Authorities of the socio-legal protection of children (mainly municipalities) are to “help” the judge with enforcement of the decision (see § 4).**

As a rule, the presiding judge shall also ask the organ concerned with care of children (authority of socio-legal protection of children) **to encourage the liable party to voluntarily implement the judicial decision or court-approved agreement on the arrangement made for contact with children, without the having to issue a writ of execution (§ 272/3 Civil Procedure Code).**

The organ of socio-legal protection of children may **fill a motion for interlocutory injunction** by the court (see above). The post of custodian of the child as a party of the proceedings even in such cases is in praxis usually exercised by an authority of socio-legal protection (the same person), which is not in harmony with the best interest of the child.

- **Act on the Public Defender of Rights** (“Ombudsman”, Act No. 349/1999 Coll.): **Ombudsman defends persons against acting of state bodies in contrary with law and principles of democratic and legal state, against state bodies’ non-acting, and helps to protect the fundamental rights and freedoms (Art. 1). Ombudsman fulfils very important roles in the field of family law and enforcement of family law judgements.**

For details see [www.ochrance.cz](http://www.ochrance.cz)., mainly the press statement regarding the case *Fiordalisi* (see Appendix as well).

**b. Procedural law rules relevant for the functioning of these organisations (procedural rules on the role of these organisations in the enforcement of family law decisions)**

- **Civil Procedure Code** (Act. No. 99/1963 Coll.) regulates proceedings concerning matters falling within the **jurisdiction** of the civil courts and the standing of the courts and parties involved in such proceedings. In civil

*proceedings courts consider and decide matters arising from civil, labour, family relationships, as well as from co-operative and business and commercial relationships, unless such matters are considered and decided under the law by other agencies (authorities).*

*Competence in the **first instance** in family law cases belongs to the **district courts** (“okresní soudy”).*

*The **regional courts** (“krajské soudy”) are **courts of appeal** in family law matters.*

*The **Supreme Court** (“Nejvyšší soud”) acts as a **court of recourse** (court of cassation). The final decision of a court of appeal may be contested by recourse, if the law so admits. Regarding family law matters, the admissibility of recourse is quite limited (see § 237/2b Civil Procedure Code).*

*The court competent to order and provide execution of a decision is the court of general jurisdiction of the liable party – the district court, within whose area the individual has his permanent (residential) address, if he does not have a permanent address, the court within whose district (area) he is staying (§ 252/1, § 85/1 Civil Procedure Code).*

*This provision shall not apply to cases involving execution of decisions or approved agreements on the upbringing of minor children and arrangements for contacts with them and to execution on the return of a child (see § 272 Civil Procedure Code).*

*The court competent to order and provide execution of a decision of custody, the decision of contact with the child and the decision of returning of the child and interlocutory injunction ordering to place a child into the care of the other parent, is the district court within whose jurisdiction (area) a minor child has his or her permanent address on the basis of an agreement between his or her parents, or a court decision, or other decisive facts (see § 88/c Civil Procedure Code).*

*The **presiding judge, higher judicial official** or within the delegation other **employee (servant, bailiff) of the district court** orders on the motion the execution and provides other proceedings. Employees (servants, bailiffs) of the court are under control of the presiding judge. They have to follow his or her directions.*

*As a rule, the presiding judge shall also ask the organ concerned with care of children (authority of socio-legal protection of children) to encourage the liable party to voluntarily implement the judicial decision or court-approved agreement on the arrangement made for contact with children, without the having to issue a writ of execution (§ 272/3 Civil Procedure Code).*

### **c. Practical aspects relevant for the legal position of these organisations**

*The court of the first instance is to order execution and provide execution, even when the court of appeal has changed its judgement.*

## **2. Time limits relevant for enforcement proceedings**

### **a. Time limits for appeal, both against family law decisions and against decisions supporting their enforcement**

**The appeal is the only ordinary remedy** against a judgement or ruling issued by a court of the first instance. The decision of the court of the first instance may be contested in an appeal by one of the parties.

**An appeal may be filed within 15 days** of service of the decision of the court whose decision is contested (§ 204/1 Civil Procedure Code). This rule applies for both judgements and rulings. There is no special rule for family law decisions.

If a remedial (corrective) ruling was issued, the time limit shall run anew from the day when such ruling is served.

An appeal shall be considered to as having been filed in time if it is filed after the 15 day time limit, because the appellant followed the erroneous advice given by the court regarding an appeal. If a decision does not include any advice on an appeal, or if it contains erroneous advice, stating that no appeal is admissible, the appeal may be filed within 3 months of the day when the decision was served (§ 204/2 Civil Procedure Code).

#### **b. Any other time limits that have an effect on enforceability**

*There are no time limits for the courts appeal to decide family law case.*

#### **c. The effect of appeal on enforceability**

*The effects of appeal on the court decisions are two:*

- **suspension** – the legal effect (force) of the decisions (judgements, rulings) is suspended till the court of appeal decides (the decision is not final). **Enforcement of judgements is suspended** (see § 160 Civil Procedure Code). There are exceptions, for instance for judgements accompanied by the verdict of interlocutory enforceability (see above). **Enforcement of rulings is not suspended, only in special cases** (see § 171/3, 151/4 Civil Procedure Code).
- **devolution** – power to decide is devolved to the court of appeal.

#### **d. The effect of the passing of time on the enforceability of a family law judgement**

*Both before and after commencement of proceedings regarding custody of minor child, the presiding judge may issue an **interlocutory injunction**, if this is necessary to regulate the parties' relationships in the interim, or if there is concern that the execution of a court decision might be in jeopardy (see § 74 Civil Procedure Code) (see above).*

*The court may enjoin a party in particular **to place a child into the care of the other parent** (§ 76/1b Civil Procedure Code) and to pay alimony to the necessary extent (§ 76/1a Civil Procedure Code). **Such a ruling is enforceable, but not final.***

*Note: When an appeal is filed, the court of appeal decides very often after a long time (sometimes after 1 year). In the meantime, the court of the first instance is "blocked", as all the pleadings (papers of the whole case) are send to the court of appeal. As a rule, ruling should not anticipate judgement. However, due to the run of time, the judgement of custody in praxis many often follows the ruling of placing a child into the care of the other parent.*

#### **e. The effect of change of circumstances on the enforceability**

*Judgements on custody (upbringing) and maintenance of minor children and restriction of parental responsibility **may be emended**, even in the absence of a motion to this*

effect, **if the respective situation has changed** (see § 163/2 Civil Procedure Code). The court decides on amendment of the initial judgement in a new judgement.

The court exercising an execution of decisions or approved agreements is not in general allowed to take account of the change of respective situation (*clausula rebus sic stantibus*), although such a change has occurred and should have an effect on new court decision. A change of a respective situation can be topic only in a new proceedings.

**The court exercising an execution of decisions or approved agreements on the upbringing of minor children and arrangements for contacts with them and execution on the return of a child is allowed to take account of the change of respective situation (*clausula rebus sic stantibus*).**

The courts may order hearing. If a change of a respective situation is proved, the court may:

- a) **suspend proceeding** of enforcement of decisions or approved agreements on the upbringing of minor children and arrangements for contacts with them and execution on the return of a child (see § 109/2/c Civil Procedure Code) and
- b) **start in the absence of a motion to this effect (ex offio) proceeding in the matter** of upbringing of minor children and arrangements for contacts with them and on the return of a child (see § 81 Civil Procedure Code) and
- c) **pronounce a new judgement.**

### **3. Coercive measures to ensure enforcement**

#### **a. Measures available by law**

If the liable party fails to perform voluntarily what it is ordered to do under an enforceable decision, **the entitled party may file a motion for judicial execution** for the decision. Decisions on the upbringing of minor children, arrangements for contacts with them and decisions on the return of the child are enforced under §§ 272 and 273 Civil Procedure Code. Other provisions regarding civil executions shall not apply.

Before issuing a writ of execution, the presiding judge shall **in writing invite a person who refuses to observe the judicial decision**, or who does not fulfil a court-approved agreement on the upbringing of minor children, arrangements for contacts with them and the decision on the return of a child, to observe the judicial decision or fulfil the court-approved agreement. In such invitation (call), the presiding judge shall also advise the party of the consequences of non-fulfilment of the duties stipulated in the judicial decision or agreement. Such a invitation does not have to be done, if there are no doubts, that the invitation will not lead to voluntarily fulfilment of the judicial decision or the court-approved agreement on the upbringing of minor children, arrangements for contacts with them and the decision on the return of a child, or if there is risk that the execution of the judicial decision or the court-approved agreement might be of jeopardy (vain).

As a rule, the presiding judge shall also ask the organ concerned with care of children (authority of socio-legal protection of children) to encourage the liable party to voluntarily implement the judicial decision or court-approved agreement on the upbringing of minor children, arrangements for contacts with them and the court's decisions on return of a child, without the having to issue a writ of execution.

If the call (invitation) made by the presiding judge mentioned above does not bring positive results, **the presiding judge shall impose successive fines** on the party not voluntarily implementing the court's decisions or the court-approved agreement on the upbringing of minor children, arrangements for contacts with them and the decision on return of a certain child. Individual fines may not exceed CZK 50,000 and shall fall to the state.

*Acting in co-operation with the respective organ or state organs, **the presiding judge may arrange for a child to be withdrawn from a party** who is not authorized by the judicial decision or court-approved agreement to take care (to have custody) of the child. The presiding judge shall see to it that the child is placed into the care (custody) of the person stipulated in the said decision or agreement.*

***Competence to execute a judicial decision or a court-approved agreement on the upbringing of minor children belongs to the court of general jurisdiction according to the child's permanent address.***

#### **b. Measures usually taken in practice**

*All the measures mentioned above are taken in practice (invitation, pecuniary fines and physical force against one of the parents).*

#### **c. Taking of coercive measures when the child opposes enforcement**

- *The Czech Republic is a member state of the **United Nation's Convention on the Right of the Child** (in the Czech Republic officially published under No. 104/1991 Coll.). The Convention is based on **the child's best interest and welfare and mainly on the right of the child to express his or her views in all matters effecting the child** (Art. 12 of the Convention).*
- *According to Art. 10 of the **Constitution of the Czech Republic**, all the promulgated treaties, to the ratification of which Parliament has given its consent and by which the Czech Republic is bound, form a part of the legal order; if a treaty provides something other than what a statute provides, the treaty shall apply.*

*Nevertheless, so called child's rights of participation were implemented expressis verbis into the Act on the Family, the Act on the Social and Legal Protection of the Children (Children Act) and Civil Procedure Code.*
- ***Act on the Family (Act No. 94/1963 Coll.): If the child is able to have his or her own opinion and to consider consequences of measures concerning him or her, the child has the right to obtain necessary information and express his or her opinion about all decisions of the parents concerning essential affairs of his or her person and to be heard in every proceedings in that such affairs decided on (see § 31/3).***
- ***Act on the Social and Legal Protection of the Children (Children Act, Act No. 359/1999 Coll.): If the child is able to have his or her own opinion has for the purpose of social and legal protection the right to express his or her attitudes and opinion while his or her respective affairs are dealt with, even without his or her parents or other persons responsible for the child's care present. The child's attitudes and opinions as expressed must be paid reasonable attention to, consistent with the age and level of the child's mental development. The child has the right to ask the authority of socio-legal protection of children for help, even without consent (notice) of the parents or other persons responsible for the child's care (upbringing) (see § 8/2).***
- ***Civil Procedure Code (Act. No. 99/1963 Coll.): In proceedings, where the minor child is a party, that is able to have and express his or her opinion, the court shall proceed to obtain his or her opinion on the case. The child's opinion shall be ascertained by the court via his legal representative or via the authority of socio-legal protection of children, or via questioning of the***

***child. The questioning of the child may be done even without presence of his or her parents or other persons responsible for the child's care (upbringing). The child's opinion as expressed must be paid reasonable attention to, consistent with the age and level of the child's mental development (see § 100/3).***

*In practice, the minor child's opinion is often obtained via the opinion of an expert. Some judges (for instance from the Municipal court in Brno) invite children older than 8 – 10 years to the court to express his or her opinion directly in court's section. Parents of the child are not presented when the court examines evidence, but their legal representatives are mostly allowed to stay in courtroom. The child may be questioned by the presiding judge and, with consent of the presiding judge, by the parties' (parents') legal representatives and by experts.*

***The court decision – judgement - should be in harmony with the child's opinion.***

***Regarding taking of coercive measures when the child opposes enforcement of the judgement, the child is a party to the execution proceedings and has the right to express his or her opinion. The courts may order hearing within execution proceedings and child's opinion should be respected.***

*Note: The judge has to consider whether the child's opinion is really his or her own opinion or whether the child follows the opinion of the parent who he or she lives with. The judge has to contemplate the child's opinion is not always in harmony with his or her best interest.*

*It happens very often in praxis, that between the day of the filing of the motion and the day when the decision becomes final is more than one year.*

***Then, the courts' decision is at discretion of the judge.***

*The court may:*

- a) suspend proceeding of enforcement of decisions or approved agreements on the upbringing of minor children and arrangements for contacts with them and execution on the return of a child (see § 109/2/c Civil Procedure Code) and*
- b) start in the absence of a motion to this effect (ex officio) proceeding in the matter of upbringing of minor children and arrangements for contacts with them and on the return of a child (see § 81 Civil Procedure Code) and*
- c) contact Association of Mediators or*
- d) examine expert and*
- e) pronounce a new judgement.*

#### **4. The impact of other legal or practical conditions relevant during the enforcement e.g. the hearing of the child**

*The hearing of the child is the basic condition during the enforcement of family law judgements – see above the right of the child to express his or her views in all matters affecting the child (3/c).*

## **PART 2. ENFORCEMENT IN CROSS-BORDER CASES**

### **2A. Enforcement of return orders issued under the 1980 Hague Convention, and after 1 March 2005, Regulation 2201/2003**

#### *1. Legal bases for enforcement.*

#### LEGAL BASIS FOR THE ENFORCEMENT OF RETURN ORDERS

1. Please give details of any *specific* legislative provisions which exist in your State concerning the enforcement of return orders under the 1980 Hague Convention. Please specify the title of the instrument, its legal nature (law, decree, administrative regulation or rules of court etc.) and short description of content.

*Answer of Ministry of Justice of the Czech republic to the Hague Conference's q. from 2004: Art. 176 of the Code on Civil Procedure. In matters of court care for minor children, including return of a child the court has to decide by a judgement. The enforcement of return orders is governed by the same provisions of the Code on Civil procedure as enforcement of custody orders (Art. 272 – 273 a). So the court has first to invite the person refusing to follow the order to follow it voluntarily. The court also may ask the competent social authority to convince the person retaining the child to remove him or her voluntarily. If this fails the court shall make the offender guilty to pay a fine not exceeding 50.000,-crowns. If also this fails the court orders a forced surrender of the child to the applicant. The court is not obliged to make the two above steps if they obviously would be vain.*

*Comment:*

*There are no special legislative provisions concerning the enforcement of return orders under the 1980 Hague Convention. See Part I Enforcement in Domestic cases.*

2. Please give details of any *general* legislative provisions which exist in your State concerning the enforcement of court orders in the area of family law and govern the enforcement of return orders under the 1980 Hague Convention (either in the absence of specific provisions under question I.1 or in addition to any such specific provisions). Please specify the title of the instrument, its legal nature (law, decree, administrative regulation or rules of court etc.) and the content of the relevant provisions.

*Answer of Ministry of Justice of the Czech republic to the Hague Conference's q. from 2004: See 1. Some specific provisions are in the Directive issued by the Ministry of Justice Nr. 56/2004-MO-J on the practice of the Czech Authorities of justice in relations to abroad in the civil and commercial matters (Art. 45 – 46).*

*Comment:*

*There are no special legislative provisions concerning the enforcement of return orders under the 1980 Hague Convention. See Part I Enforcement in Domestic cases.*

3. Please give details of any judicial decisions, practice directives or guides concerning the enforcement of court orders in the area of family law that govern the enforcement of return orders under the 1980 Hague Convention (either in the absence of specific

provisions under question I.1 or in addition to any such specific provisions).

*Answer of Ministry of Justice of the Czech republic to the Hague Conference's q. from 2004:  
See 1 and 2.*

4. Do you have any other comments relating to the law governing enforcement of Hague return orders, including any comments on the effectiveness of these rules?

*Answer of Ministry of Justice of the Czech republic to the Hague Conference's q. from 2004:  
Some cases especially with abductors Czech mothers and little children become subject to the interest of media and the authorities involved in the abduction cases are reported in a very negative way.*

*Comment:*

*If one of the parents suggests, the decision of custody or the decision of returning of the child can be accompanied by the **verdict of interlocutory enforceability**. In the case of judgement with interlocutory enforceability the time limit set for performance (fulfilment) begins to run as of the day such judgments are served on the party (§ 162 Civil Procedure Code). For details see Part I Enforcement in Domestic cases, 1A, 1. Description of the general law for enforcement.*

*The problems is, that parents and their lawyers (!) do not know provisions on interlocutory enforceability.*

### 3. Enforceability and legal remedies of return orders

#### II ENFORCEABILITY AND LEGAL REMEDIES

1. a) Is a Hague return order subject to appeal or other forms of challenge? Please give details (number and character of legal remedies, possible time-limit for them, possible time-limit for appellate court or court of appeals to decide etc.).

*Answer of Ministry of Justice of the Czech republic to the Hague Conference's q. from 2004: The return order is subject to appeal which time limit is 15 days. There is no specific time limit for the court of appeal to decide.*

*Comment:*

*The appeal is the only ordinary remedy against a judgement issued by a court of the first instance - district court. The decision of the court of the first instance may be contested in an appeal by one of the parties.*

*An appeal may be filed within 15 days of service of the decision of the court whose decision is contested (§ 204/1 Civil Procedure Code). There is no special rule for family law decisions.*

*If a remedial (corrective) ruling was issued, the time limit shall run anew from the day when such ruling is served.*

*An appeal shall be considered to as having been filed in time if it is filed after the 15 day time limit, because the appellant followed the erroneous advice given by the court regarding an appeal. If a decision does not include any advice on an appeal, or if it contains erroneous advice, stating that no appeal is admissible, the appeal may be filed within 3 months of the day when the decision was served (§ 204/2 Civil Procedure Code).*

*The regional courts are courts of appeal in family law matters. There is no time limit for decision. The presiding judge shall order a hearing to be held to consider the appeal in question (there are exceptions see § 214/2 Civil Procedural Code).*

*The appellate court may (a) dismiss an appeal (§ 218), (b) confirm a decision (§ 219), (c) amend a decision (§ 220) or (d) revoke a decision (§ 221).*

*The Supreme Court acts as a courts of recourse (court of cassation). The final decision of a court of appeal may be contested by recourse, if the law so admits. Regarding family law matters, the admissibility of recourse is quite limited (see § 237/2b Civil Procedure Code).*

*The Supreme court shall (a) dismiss a motion for recourse if it is groundless (b) deny a motion for recourse if it concludes that the decision of the appellate court was correct, otherwise (c) revoke the contested decision (see § 243b Civil Procedure Code).*

b) Please specify whether any such challenge may only be made once, and which court or body has jurisdiction to hear the appeal.

*Answer of Ministry of Justice of the Czech republic to the Hague Conference's q. from 2004: The appeal may be made only once. The jurisdiction has the court of appeal (regional court).*

2. a) Please give details of any authorisation or other decision required for the actual enforcement of the Hague return order (e.g. registration for enforcement, declaration of enforceability, order of a specific enforcement measure or other).

*Answer of Ministry of Justice of the Czech republic to the Hague Conference's q. from 2004:  
There is no need for it as the return order is a judgement made by the Czech court and is immediately enforceable.*

*Comment*

*The decision on return of the child is enforceable as soon as it becomes final. A judgement which has been duly served and which can no longer be appealed against becomes final (§ 159 Civil Procedure Code).*

*There is no other authorisation or decision required to enforce a decision on return of the child. There is no requirement to register, seek a declaration of enforceability or obtain an order of specific enforcement.*

2 b) Which is the competent organ for these decisions?

*Answer of Ministry of Justice of the Czech republic to the Hague Conference's q. from 2004:  
See 2a).*

*Comment*

*Not applicable as no such organ does not exist.*

3. Does the Hague return order have to be final and no longer subject to ordinary appeal before any authorisation for enforcement or other measure specified under II.2 may be ordered?

*Answer of Ministry of Justice of the Czech republic to the Hague Conference's q. from 2004:  
The court may decide that the return order shall be enforceable irrespective whether or not it is final. Otherwise it must first become final.*

*Comment*

*Interlocutory enforceability of judgements either ensures from law (judgements ordering they payment of alimony or remuneration for work for the last three months prior to the day when the respective judgement was pronounced) or from a judicial decision, in the latter case, it must be expressed in the verdict. Acting on a motion to this effect, the court may rule in its verdict that the decision should have interlocutory enforceability, if the respective party would otherwise be at risk from a detriment which would be reparable only with difficulty or considerable effort.*

*If one of the parents suggests, the decision of contact with the child can be accompanied by the verdict of interlocutory enforceability. In the case of judgement with interlocutory enforceability the time limit set for performance (fulfilment) begins to run as of the day such judgments are served on the party (§ 162 Civil Procedure Code).*

4. a) Are any of the decisions specified under II.2.a) (authorisation to enforce or other decision) subject to appeal independent of any appeal against the merits of the return order? Please give details (number and character of legal remedies, possible timelimit to lodge them, possible time-limit for appellate court or court of appeals to decide etc.).

*Comment:*

*Not applicable as there is no such authorisation or further decision required for enforcement.*

b) Please specify whether any such challenge may only be made once, whether it suspends the enforceability / enforcement of the order and which is the court or body to decide the appeal.

*Comment:*

*Not applicable as there is no such body or organ exists.*

5. If in your State both types of legal remedy as specified under II.1 and II.4 (i.e. against the order on the merits and against any decision taken at or required for the enforcement stage) exist, can they be lodged simultaneously? Is it the same court that deals with them if they are lodged (a) simultaneously, and (b) at different times?

*Comment:*

*Not applicable as there is only appeal body.*

6. Do you have any other comments relating to legal remedies and the enforcement of Hague return orders?

*Comment:*

- *Czech mothers who married foreigners and lived with them abroad are mostly subjects of the international child abduction.*
- *After break-down of the marital relationship and leaving the fathers with children and without consent of the fathers, mother very often accused fathers of aggressive behaviour (see [www.umpod.cz](http://www.umpod.cz) available in English).*
- *The employees (mostly female) of the organ of socio-legal protection of the child do not fully understand the main aim of the Convention on the Civil Aspects of International Child abduction. They do not distinguish between the final decision on the child's custody and between the return order. They support opinion of the mothers "the child belongs to the mother".*
- *Public Defender of Rights (ombudsman) has criticised the praxis in the case "Children Fiordalisi" in his press report, mainly not equal treatment of the men and the women regarding common children. See [www.ochrance.cz](http://www.ochrance.cz) (and the Appendix).*
- *Fathers (their lawyers), when filling a motion for a return order, do not suggest the verdict of interlocutory enforceability.*
- *If one of the parents suggests, the decision returning of the child can be accompanied by the verdict of interlocutory enforceability. In the case of judgement with interlocutory enforceability the time limit set for performance (fulfilment) begins to run as of the day such judgments are served on the party (§ 162 Civil Procedure Code). For details see Part I Enforcement in Domestic cases.*
- *Czech district courts are very often dilatory: they do not make any decision for a long time, neither issue a return order nor reject a motion to this effect.*
- *When the district courts issue a return order, they do not pronounce the interlocutory enforceability of the decision of returning the child.*

- *The decision of the court of the first instance is very often contested in an appeal by mothers.*
- *An appeal may be filed within 15 days of service of the decision of the court whose decision is contested (§ 204/1 Civil Procedure Code). There is no special rule for family law decisions.*
- *The effects of appeal on the court decisions are two:*
  - *suspension – the legal effect (force) of the decisions (judgements, rulings) is suspended till the court of appeal decides (the decision is not final). Enforcement of judgements is suspended (see § 160 Civil Procedure Code). There are exceptions, for instance for judgements accompanied by the verdict of interlocutory enforceability (see above). Enforcement of rulings is not suspended, only in special cases (see § 171/3, 151/4 Civil Procedure Code).*
  - *devolution – power to decide is devolved to the court of appeal.*
- *There are no time limits for the courts of appeal to decide family law case.*
- *Public Defender of Rights (ombudsman) has criticised the law and the praxis in the case “Children Fiordalisi” in his press report. See [www.ochrance.cz](http://www.ochrance.cz) (and the Appendix).*
- *The final decision of a court of appeal may be contested by recourse, if the law so admits. Regarding family law matters, the admissibility of recourse is quite limited (see § 237/2b Civil Procedure Code)). Anyway, Czech mothers mostly fill a motion to the Supreme Court as to a court of recourse (court of cassation). Before making its decision on recourse, the Supreme court may stay (defer) execution (enforcement) of the contested decision. The procedure takes a long time. Finally, the Supreme court denies a motion for recourse as non admissible (see Annexes).*
- *Public Defender of Rights (ombudsman) has criticised the praxis of Supreme court in the case “Children Fiordalisi” in his press report (the decision making took 13 month - the motion was denied). See [www.ochrance.cz](http://www.ochrance.cz) (and the Appendix).*
- *Sometimes Czech mothers fill a motion to the Constitutional Court. The Court denies motions as not admissible.*
- *In the case “Cristine Couderc” (District court of Prague 4, No. 14 Nc 584/98), the Czech mother contacted even the Supreme State Prosecutor to deny paternity of the French father of the child – without success (see Annexes).<sup>2</sup>*
- *In another anonymous case (District court of Prague-West, No. 76/2004), Czech mother submitted in the proceeding of return of the child to the American father the written “opinion” made by the expert witness obtained (and paid ?!) by the mother. The court dismissed the petition of the father due to Art. 13 of the Hague Convention (see Annexes).<sup>3</sup>*

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<sup>2</sup>Source: Králíčková, Z. : *K problematice občanskoprávních aspektů mezinárodních únosů dětí (Towards Problematic on the Civil Aspects of International Child Abduction)*. *Právní rozhledy*, 8/2000, p. 335 ff.).

<sup>3</sup>Source: Schulmann, F.: *Kdy soud (např.) nenařídí návrat nezletilého dítěte přemístěného jedním z rodičů do ciziny (When the court /for instance/ does’nt order the return of the child removed by one of the parents abroad)*. *Bulletin advokacie*, 5/6, p. 42 – 43.

## 2. Procedure and practice with regard to return orders

### III. ENFORCEMENT PROCEDURE

#### A. The order to be enforced and the aims of enforcement

1. If an application for return of a child under the 1980 Hague Convention is successful, what is normally ordered:
  - a) the surrender of the child to the applicant (if necessary, “for the purposes of returning the child to his / her State of habitual residence”)
  - b) the return of the child to State X
  - c) other?

*Answer of Ministry of Justice of the Czech republic to the Hague Conference’s q. from 2004:*  
a)

2. If such order has to be enforced, please specify which of the following is / are normally the aim of enforcing a return order:
  - a) to remove the child from the abductor or any other person
  - b) to hand the child over to the applicant or a person designated by him or her in the State where enforcement takes place
  - c) to ensure the child’s return to his or her State of habitual residence
  - d) other.

*Answer of Ministry of Justice of the Czech republic to the Hague Conference’s q. from 2004:*  
b)

3. Whose responsibility is it to organise the repatriation of the child?

*Answer of Ministry of Justice of the Czech republic to the Hague Conference’s q. from 2004:*  
*Of the court, Central Authority and applicant.*

#### B. Actors involved in enforcement

1. Once a return order is made, is a specific request for enforcement necessary?

*Answer of Ministry of Justice of the Czech republic to the Hague Conference’s q. from 2004:*  
*Yes it is necessary.*

#### *Comment:*

*If the liable party fails to perform voluntarily what it is ordered to do under an enforceable decision, **the entitled party may file a motion for judicial execution** for the decision. Decisions on the return of the child are enforced under §§ 272 and 273 Civil Procedure Code. For details see Part I Enforcement in Domestic cases, I A, 1. Description of the general law.*

2. Please specify who initiates enforcement of the court’s return order:
  - a) the applicant (in person or through his or her lawyer)
  - b) the Central Authority
  - c) the court

- d) the enforcement organ itself
- e) other.

*Answer of Ministry of Justice of the Czech republic to the Hague Conference's q. from 2004: Either the applicant or the Central Authority (if the applicant gave his power of attorney to the Central Authority).*

Where the law leaves choices or discretion, please give details concerning actual practice.

*Answer of Ministry of Justice of the Czech republic to the Hague Conference's q. from 2004: See 2. Both ways are common.*

3. a) Please give details of the persons, organs and institutions (e.g. enforcement organs, court, parties, psychologists, social workers, Central Authorities, other) involved in the enforcement of return orders under the 1980 Hague Convention
- i) according to the law

*Answer of Ministry of Justice of the Czech republic to the Hague Conference's q. from 2004: Courts.*

*Comment:*

*Before issuing a writ of execution, the presiding judge shall in writing invite a person who refuses to observe the judicial decision, or who does not fulfil the decision on the return of a child. In such invitation (call), the presiding judge shall also advise the party of the consequences of non-fulfilment of the duties stipulated in the judicial decision. Such a invitation does not have to be done, if there are no doubts, that the invitation will not lead to voluntarily fulfilment of the judicial decision on the return of a child, or if there is risk that the execution of the judicial decision be of jeopardy (vain).*

- ii) in practice.

*Answer of Ministry of Justice of the Czech republic to the Hague Conference's q. from 2004: All as mentioned above in the brackets.*

*Comment:*

*As a rule, the presiding judge shall also ask the organ concerned with care of children (authority of socio-legal protection of children) to encourage the liable party to voluntarily implement the judicial decision on return of a child, without the having to issue a writ of execution.*

*Acting in co-operation with the respective organ or state organs, the presiding judge may arrange for a child to be withdrawn from a party who is not authorized by the judicial decision to take care (to have custody) of the child. The presiding judge shall see to it that the child is placed into the care (custody) of the person stipulated in the said decision.*

*Competence to execute a judicial decision on return of minor children belongs to the court of general jurisdiction according to the child's permanent address.*

*Then, the courts' decision is at discretion of the judge.*

- The court may:*
- f) contact Association of Mediators or*
  - g) contact experts – psychologists.*

Please describe their respective roles and functions in enforcement, and whether their participation is mandatory. If this is not the case for some or all of the actors mentioned, please specify who decides about their respective participation and to what extent they are normally involved in Hague return cases (regularly or exceptionally and, in the latter case, depending on which conditions).

b) In particular, are any social or psychological services available in order to prepare the child and / or the defendant for the return in order to de-escalate or even avoid enforcement by coercive measures?

*Answer of Ministry of Justice of the Czech republic to the Hague Conference's q. from 2004: There are no specific services designated for these purposes. It could be managed for it if necessary.*

*Comment:*

*To prepare the child, the court may:*

- a) contact Association of Mediators or*
- b) contact experts – psychologists.*

c) Please specify also whether presence of the applicant (or a person designated by him or her) is required and, if this is the case, at which stage of the enforcement proceedings and for what purpose.

*Answer of Ministry of Justice of the Czech republic to the Hague Conference's q. from 2004: The presence of the applicant is required on the day when the child is to be taken from the abductor.*

4. a) Is there any supervision / control of the enforcement procedure by a court, the Central Authority or any other State authority? If a court is supervising / controlling the enforcement procedure, which court is it? The court that made the order or other (e.g. a specific enforcement court)?

*Answer of Ministry of Justice of the Czech republic to the Hague Conference's q. from 2004: The enforcement can be ordered and made only by the court (judge or bailiff) which ordered return in the first instance.*

*Comment:*

*Competence to execute a judicial decision on return of minor children belongs to the court of general jurisdiction according to the child's permanent address.*

b) What if the court of first instance refused return, and the appellate court or court of appeals ordered return? Would the court of first instance, the appellate court or court of appeals which ordered return, or any other court be the court supervising / controlling enforcement in such a case?

*Answer of Ministry of Justice of the Czech republic to the Hague Conference's q. from 2004:  
Also in such circumstances the enforcement can be made only by the court that made the decision in the first instance.*

*Comment:*

*Competence to execute a judicial decision on return of minor children belongs to the court of general jurisdiction according to the child's permanent address.*

C. The enforcement procedure proper

1. Is there a timeline for enforcement?

*Answer of Ministry of Justice of the Czech republic to the Hague Conference's q. from 2004:  
Yes, usually a timeline is determined in the decision of the court.*

2. Is it normal to allow a period of time for voluntary compliance with a return order or to allow appropriate practical arrangements for the return of the child to be made?

*Answer of Ministry of Justice of the Czech republic to the Hague Conference's q. from 2004:  
No, because of bad experiences with abductors who declare to be ready to return the child within a concrete time-limit and then they refuse to do so.*

3. Are any measures available in order to prevent the abductor from taking the child into hiding after the return order is made and before it can be enforced? In the affirmative, please give details.

*Answer of Ministry of Justice of the Czech republic to the Hague Conference's q. from 2004:  
No.*

4. What happens if the child is taken into hiding after the order was made and before it can be enforced? Which actors would be involved (e.g. Central Authority, police, public prosecutor, other) and which measures can they take to locate the child? What is the effect of the hiding on a possible timeline for enforcement?

*Answer of Ministry of Justice of the Czech republic to the Hague Conference's q. from 2004:  
The court, police and local authorities.*

*Comment:*

*There is no effect on the timeline for the enforcement of return arising from hiding of a child.*

5. When enforcement is initiated, what are the required steps (e.g. measures by the applicant, the court or any other supervisory authority, and the enforcement organs)?

*Answer of Ministry of Justice of the Czech republic to the Hague Conference's q. from 2004:  
The enforcement runs in accordance with the provisions of the Code on Civil procedure.*

6. Which coercive measures are available and under what conditions (e.g. pecuniary fines, physical force [against whom? the child? the defendant? others?], detention)? Which of these are normally used in practice?

*Answer of Ministry of Justice of the Czech republic to the Hague Conference's q. from 2004:  
Pecuniary fines and physical force against the defendant. Both are normally used.*

7. a) Do they have to be ordered specifically (i.e. either "fine", "physical force", "detention")? If so, when and by whom?

*Answer of Ministry of Justice of the Czech republic to the Hague Conference's q. from 2004:  
Normally the judge should first invite the defendant to secure voluntarily the return of the child. If this fails the second step(not obligatory) is pecuniary fine ordered by the court and the third (or second) step is a forced taking the child.*

b) If problems occur during enforcement, may the enforcement organs unilaterally "upgrade" the intensity of coercive measures, or do they have to obtain authorisation from any particular higher authority (e.g. an enforcement court or other)? Please specify.

*Answer of Ministry of Justice of the Czech republic to the Hague Conference's q. from 2004:  
Alone the court through its bailiffs or/and judges is the enforcement organ.*

8. Please give details of any court orders which can be obtained in emergency situations. Can these orders be obtained after hours and ex parte?

*Answer of Ministry of Justice of the Czech republic to the Hague Conference's q. from 2004:  
Pure theoretically. There is no experience with such orders.*

#### D. Costs

1. Are costs incurred for the enforcement? If so, are they part of the costs of the court proceedings as a whole? How are they calculated? For which services are they charged?

*Answer of Ministry of Justice of the Czech republic to the Hague Conference's q. from 2004:  
Normally parties cannot be charged for any service. Only in exceptional cases when a party causes unnecessary expenses for the court or for other party it may be charged.*

2. Who has to pay the costs for enforcement? To whom? Is a reduction or exemption possible, e.g. under a Legal Aid Scheme? Under which conditions? In particular, is advance payment required in order for the enforcement organs to act? If legal aid was granted for the proceedings leading to the return order, would it cover the enforcement stage or would the application for legal aid have to be renewed?

*Answer of Ministry of Justice of the Czech republic to the Hague Conference's q. from 2004:  
The procedure for enforcement is ex lege free of costs in respect to all the parties. Of course if the applicant wishes to be represented by a lawyer outside of the Central Agency and is not able to pay for him, he can ask the court for legal aid.*

3. Are the costs of the actual repatriation of the child (e.g. airfare for child and possible accompanying person) considered as part of the enforcement costs? Who has to pay for the repatriation? Is advance payment a condition for enforcement?

*Answer of Ministry of Justice of the Czech republic to the Hague Conference's q. from 2004:  
Normally the applicants pay for it (for instance air tickets, new passports and so on) and do not ask for any reimbursement.*

*Comment:*

*The cost of repatriating the child is not part of the enforcement cost.*

4. Please specify how foreign applicants are provided with information about enforcement costs to be borne by them.

*Answer of Ministry of Justice of the Czech republic to the Hague Conference's q. from 2004:  
There are no enforcement costs.*

5. Please provide details regarding the enforcement organs' specific duties as they relate to the enforcement of Hague return orders concerning children.

*Answer of Ministry of Justice of the Czech republic to the Hague Conference's q. from 2004:  
No specific duties.*

6. Do you have any other comments relating to the enforcement procedure?

*Answer of Ministry of Justice of the Czech republic to the Hague Conference's q. from 2004:  
No.*

## **2B. Law and practice with regard to enforcement of family law judgments other than return orders**

1. Instruments and national legislation relevant for the enforcement of family judgments in cross-border cases

- *Luxembourg Convention of 20 May 1980 on Recognition and Enforcement of Decisions Concerning Custody of Children and on the Restoration or Custody of Children (No. 66/2000 Coll. Int. T.)*
- *Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-Operation in respect of Parental Responsibility and Measures*

*Operation in Respect of Parental Responsibility and Measures for the Protection of Children (No. 141/2001 Coll. Int. T.).*

- *Convention of 15 May 2003 on Contact concerning Children (No. 91/2005 Coll. Int. T.).*

2. National law relevant for cross-border enforcement of family law judgments under Brussels 2A

*No, nothing specific.*

3. National practice with regard to the enforcement of family law decision of your own courts in another member state

*In case the courts take a decision that is to be enforced in another member state, the courts do not take the 'cross-border' factor into account.*

4. National practice with regard to the enforcement of family law decisions of another member state in your own member state.

*No.*

5. Setting aside or amending of foreign judgments

*See Part I Enforcement in Domestic cases - the effect of change of circumstances 1B, 2e.*

## **2C. Specific issues relating to the cross-border enforcement of family law judgments**

1. The role of organs and institutions

*There are no specific organs or institutions involved in cross-border enforcement of family law judgements. The party wishing to enforce the judgement must initiate legal proceedings to enforce the judgement.*

2. Time limits relevant for enforcement proceedings and the effect of time

*There are no specific rules governing time limits for the enforcement of family law judgements.*

3. Coercive measures to ensure enforcement

*Again, there are no specific rules concerning coercive measures other than those as set out at Part I Enforcement in Domestic cases.*

#### 4. Other legal or practical conditions that may form obstacles to enforcement

*Again, there is no specific legal or practical obstacles to enforcement other than those mentioned above.*

#### 5. Issues of specific concern in cross-border cases

- Are rights granted under certain family law judgments (decisions on parental responsibility or on access/contact rights) limited in a geographical sense (e.g. the territory on one member state) or are they absolute (e.g. the right may be exercised world-wide).

*Rights granted under family law judgements are absolute. The rights may be exercised world-wide.*

- Is it necessary to obtain permission of a court to move to another member state without the consent of another holder of parental responsibility? Under what do the courts give permission to relocate?

*In case of individual care, one of the parents to who's **individual custody - care** the child was put, may change the place of residence.*

*Typical courts' decision:*

4. *The minor child is put into **individual custody** of the mother.*
5. *The father shall contribute children's **maintenance** the amount of 2 000 CZK (cca EUR 70) monthly in advance.*
6. *The father is entitled to have a **contact** with the child once a 14 days, from Friday 4 p.m. till Sunday 6 p.m. in his place. The father is entitled to have contact with the child during the summer holiday for 14 days in his place. The father is to inform the mother about his plans. The father is entitled to have a contact with the child one day at Christmas time and one day at Easter in his place. The mother is obliged to prepare the child for the contact.*

*When the mother, who wants to move to another state, should suggest new arrangement regarding visitation rights as follows:*

1. *The minor child is put into **individual custody** of the mother for 10 months from September till June.*
2. *The father shall contribute children's **maintenance** the amount of 2 000 CZK (cca EUR 70) monthly in advance.*
3. *The father is entitled to have a **contact** with the child in July and August.*
4. *The father is entitled to have a **contact** with the child one day at Christmas time and one day at Easter in his place. The father is to inform the mother about his plans. The mother is obliged to prepare the child for the contact.*

*The court will approve new arrangement or pass new judgement if is satisfied that such is in accordance with the best interest of the child.*

*In case of both **common or alternative care**, the parent, who wants to change the place of residence, should seek a new decision of individual care. No experience in such situations.*

- Are there specific issues that arise when enforcing foreign family judgements ?

*There are no specific issues arising in relation to the enforcement of foreign family judgement.*

- Are there specific conditions with respect to foreign family judgements that may form obstacles to enforcement ?

*There are no specific conditions which form an obstacle to enforcement of a foreign family judgement, except order public.*

- The influence of any bilateral or regional convention that is relevant for enforcement.

*There are neither bilateral nor regional conventions that are relevant to enforcement.*

#### 6. Mediation/Alternative dispute resolution

*There is no obligation to engage in alternative dispute resolution or medication in the enforcement of family law judgements. There is no obligation engage in alternative dispute resolution or medication at all (at court of the first or second instance). Nevertheless, the judge may “contact” the Association of mediators.*

*Public Defender of Rights (ombudsman) has criticised the praxis courts and social workers in the case “Children Fiordalisi” in his press report, mainly the lack of attempts of out-of-court settlement based on mediation. See [www.ochrance.cz](http://www.ochrance.cz) (and the Appendix).*

## PART 3

### NOTE ON THE EMPIRICAL STUDY

#### A. Statistical information

The statistical information that we have to collect relates to the following:

- a) the number of family law judgments on parental responsibility

*Note: The parents of the child have parental responsibility ex lege if they have full legal capacity, does not matter they are married or not; the court may parental responsibility of the parents restrict, suspend or deprived parents of it (see § 44 Act on the Family)*

Ukazatel	2000	2001	2002	2003	2004	Indicator
<b>Rodičovská zodpovědnost</b>	<b>1 024</b>	<b>941</b>	<b>872</b>	<b>966</b>	<b>1 180</b>	<b>Parental responsibility</b>
z toho rodičovské zodpovědnosti zbavena						Stripped of parental responsibility
Matka	121	132	123	159	136	Mother
Otec	207	168	173	173	202	Fater
oba rodiče	123	109	123	115	153	Both parents

Source: *Statistic Year Book of the Czech Republic published by Czech Statistic office, available on [www.czso.cz](http://www.czso.cz) (in English).*

- b) the number of family law judgments on custody

*Note: Czech legal order does not know term “the place of residence of the child”*

Ukazatel	2000	2001	2002	2003	2004	Indicator
<b>Celkem nezletilých dětí po rozvodu</b>	<b>28 236</b>	<b>31 398</b>	<b>31 681</b>	<b>32 824</b>	<b>22 516</b>	<b>Total number of minor children after divorce</b>
Z toho svěřeny do péče (v %)						Placed into custody of (in %)
Matka	91,6 %	92,0 %	92,8 %	90,3 %	90,1 %	Mother
Otec	6,8 %	6,1 %	6,1 %	7,2 %	7,7 %	Fater
Střídavá	1,6 %	1,9 %	1,1 %	2,1 %	2,2 %	Alternative custody

Source: [www.justice.cz](http://www.justice.cz) of Ministry of Justice (in English).

c) the number of family law judgments on entailing the return of the child

	2003	2004
<b>Total cases</b>	59	?
<b>New cases</b>	23	?
<b>Abroad ⇒ CZ</b>	8	2
<b>CZ ⇒ Abroad</b>	15	15

Source: Office for International legal protection of children of the Czech republic available on [www.umpod.cz](http://www.umpod.cz) (in English).

Some numbers from the Offices's report:

In 2003 the Czech Central authority received in total 23 cases:  
Requests **to** the Czech Republic (incoming): child abduction 10  
access: 5

Request **from** the Czech Republic (outgoing): child abduction 4  
access 4

Cases where the return order is not complied with voluntarily are quite often.

d) the number of family law judgments on contact/access

Ukazatel	2000	2001	2002	2003	2004	Indicator
<b>Styk rodičů s dětmi</b>	<b>7 804</b>	<b>8 144</b>	<b>8 066</b>	<b>7 891</b>	<b>7 800</b>	<b>Contact of parents with children</b>
Z toho:						
styk upraven (rozšířen, omezen, zakázán)						Contact modified (extended, limited, forbidden) to
Matce	590	607	515	594	572	Mother
Otci	4 590	4 589	4 337	4 251	4 243	Fater
oběma rodičům	57	35	67	33	41	Both parents

Source: Statistic Year Book of the Czech Republic published by Czech Statistic office, available on [www.czso.cz](http://www.czso.cz) (in English).

e) an indication of the proportion of the family law judgments referred to above that concerned the enforcement relating to a cross-border situation

*No statistics available.*

f) the average length of any such enforcement proceedings from the moment the relevant order was granted or enforcement was sought (whichever is the earlier) until the enforcement process is completed

*No statistics available.*

- g) the number of cases where the enforcement was achieved only with difficulties

*No statistics available.*

- h) the nature of and the reasons for the difficulties encountered (e.g. difficulties to locate the child, obstruction by a holder of parental responsibility, language problems, incomplete information, insufficient powers etc.)

*No statistics available.*

- i) the role of mediation in the enforcement procedure

*Mediation is not obligatory.*

- j) in those cases where enforcement was prevented or abandoned or could not otherwise take place, the reasons for this including specification of the difficulties encountered and their significance

**Other useful information from the Statistics Year Book of the Czech Republic.**  
**Source: www.szso.cz (available in English)**

**SODNICTVÍ, KRIMINALITA, NEHODY**

**JUSTICE, CRIME,  
ACCIDENTS**

**25-5. Rozhodnutí ve věcech občanskoprávních**

*Civil CASE*

Pramen: Ministerstvo spravedlnosti ČR

Source: Ministry of Justice of the CR

Dokončení

End of table

Ukazatel	2000	2001	2002	2003	2004	Indicator
<b>Rodičovská zodpovědnost</b>	<b>1 024</b>	<b>941</b>	<b>872</b>	<b>966</b>	<b>1 180</b>	<b>Parental responsibility</b>
z toho rodičovské zodpovědnosti zbavena						<i>Stripped of parental responsibility</i>
Matka	121	132	123	159	136	<i>Mother</i>
Otec	207	168	173	173	202	<i>Fater</i>
oba rodiče	123	109	123	115	153	<i>Both parents</i>
<b>Styk rodičů s dětmi</b>	<b>7 804</b>	<b>8 144</b>	<b>8 066</b>	<b>7 891</b>	<b>7 800</b>	<b>Contact of parents with children</b>
Z toho:						
styk upraven (rozšířen, omezen, zakázán)						<i>Contact modified (extended, limited, forbidden) to</i>
Matce	590	607	515	594	572	<i>Mother</i>
Otci	4 590	4 589	4 337	4 251	4 243	<i>Fater</i>
oběma rodičům	57	35	67	33	41	<i>Both parents</i>
pěstounská péče						<i>Foster care</i>
Povolena	647	657	663	656	748	<i>Allowed</i>
Zrušena	62	55	84	31	15	<i>Cancelled</i>
<b>Osvojení</b>	<b>2 244</b>	<b>2 031</b>	<b>1 992</b>	<b>1 900</b>	<b>1 880</b>	<b>Adoption</b>
Z toho povoleno osvojení						
Zrušitelné	164	158	123	125	143	<i>Reverzible</i>
Nezrušitelné	1 492	1 323	1 297	1 204	1 156	<i>Irreversible</i>
<b>Výživné dětí</b>	<b>107 967</b>	<b>105 010</b>	<b>107 893</b>	<b>108 157</b>	<b>112 441</b>	<b>Maintenance of children</b>
Z toho:						
první stanovení výživného						<i>First establishment of maintenance by</i>
Matce	3 885	4 082	4 260	4 343	4 393	<i>Mother</i>
Otci	50 743	51 865	55 122	56 277	57 558	<i>Fater</i>
zvýšení výživného						<i>Increased maintenance by</i>
Matce	329	298	245	251	205	<i>Mother</i>
Otci	8 831	7 198	6 591	6 272	6 494	<i>Fater</i>
snížení výživného						<i>Reduced maintenance by</i>
Matce	95	111	100	102	108	<i>Mother</i>
Otci	1 131	893	942	926	1 047	<i>Fater</i>
<b>Určení a popření otcovství</b>	<b>2 164</b>	<b>2 232</b>	<b>2 115</b>	<b>2 144</b>	<b>2 506</b>	<b>Affiliation and denial of paternity</b>
Z toho:						
otcovství určeno	334	342	315	303	330	<i>Paternity affiliated</i>
návrh na popření otcovství zamítnut	80	89	73	46	56	<i>Denial of paternity turned down</i>
otcovství popřeno na návrh						<i>Paternity denied following proposal by</i>
Matky	613	661	689	757	900	<i>Mother</i>
otce	382	342	311	313	347	<i>Fater</i>
jiného oprávněného	88	114	104	108	88	<i>Another authorised person</i>
<b>Schválení důležitých úkonů za nezletilého</b>	<b>10 418</b>	<b>10 164</b>	<b>9 243</b>	<b>9 144</b>	<b>8 971</b>	<b>Authorisation of important operation on behalf of juveniles</b>
Povolení k uzavření manželství Nezletilého	151	142	147	95	98	<i>Requests for permits to juveniles to enter into marriage</i>
z toho uzavření manželství povoleno	104	106	96	67	64	<i>Granted</i>
<b>Jméno a příjmení dítěte</b>	<b>1 580</b>	<b>1 462</b>	<b>1 399</b>	<b>1 300</b>	<b>1 410</b>	<b>First name and family name of the child</b>
<b>Řízení o rozvodu a neplatnosti Manželství</b>						<b>Divorce and annulment of marriage</b>
Počet vyřízených návrhů na rozvod	34 946	36 694	36 665	37 781	37 934	<i>Settled divorce petitions</i>
Z toho rozvedených manželství	29 704	31 586	31 758	32 824	33 060	<i>Dissolved marriages</i>

*Useful information from the Ministry of Labour and Social Affairs (for instance National report on Family) available at [www.mpsv.cz](http://www.mpsv.cz).*

*Useful information from the Ministry of Justice available at [www.justice.cz](http://www.justice.cz).*

*Useful information from the Office of international legal protection of children available at [www.umpod.cz](http://www.umpod.cz).*

## **B. Telephone interviews**

In the course of 2006, we will conduct an empirical study by telephone, contacting practitioners active in the area of family law enforcement: lawyers, judges, public prosecutors, enforcement officers and persons working for child protection agencies or central authorities. The number of persons we will have to interview varies per Member State: In order to contact this large group of people, we are currently drawing up a list of names.

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