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Comparative study on enforcement procedures of family rights

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SLOVENIA

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ABBREVIATIONS:

MFRA – Marriage and Family Relations Act

CPA – Civil Procedure Act

NA – Notary Act

AFI - Act of fostership implementation

AEI - Act on Execution and Insurance

ANP - Act on non-litigious procedure

PART 1. ENFORCEMENT IN DOMESTIC CASES

1A. Procedures and practices for enforcement in domestic cases

1. Description of the general law for enforcement of:

The basic legal source of family law is the Matrimony and Family Relations Act adopted in 1976 and in force since 1.1.1977. In 1988 it was renewed by the Act on Alterations and Additions of the MFRA. In 1989 it witnessed the next alteration, already. In 1991, Slovenia became an independent state, what led to the fact that many new acts were passed in numerous fields. The field of family law, today, is one of the rare, where the act passed in the times of former Yugoslavia is still in force. MFRA was renewed in 2001 (novel of MFRA – B) and in 2004 (novel of the MFRA – C), when essential alterations were made especially in the field of custody, up-bringing and personal contact of children. Some provisions of the MFRA were later replaced by the provisions of acts from other fields of law, especially the NA, the CPA and the AFI.

The novel MFRA – B abolished and changed the provisions that became unsuitable or did not fit the new constitutional and legal circumstances in their diction or even their content. As contentiously unsuitable, we consider also the regulation of MFRA, after that the court of justice decided about custody and up-bringing of children in some cases, and in some cases the social care. After the opinion of the Constitutional Court this regulation was not conform to the constitution. By the novel, judicial competence was determined for the decision

making by the court of justice on custody and up-bringing in all cases. The novel of MFRA-C in 2004 regulated the problem of contact between the child and its parents, as well as other parents being close to the child, in a complex way. Since it is about a very burning theme, it was not possible to wait until the reform of the complete family law legislation running, as a completely new Family Law Code is being worked out.

Among the legal sources regulating the rights of children, also the Constitution of the Republic of Slovenia from 1991 has to be mentioned. The basic principles referring to matrimonial and family relations, are listed among Chapter II »Human Rights and fundamental freedom«. After article 35 of the Constitution, intangibility of human physical and psychic integrity, his or her privacy and personal rights are guaranteed, and this provision represents a fundamental ground for the protection of each individual's personality being formed also through contact with the parents. In article 53 it is determined that the state protects the family, motherhood, fatherhood, children and youth and creates the necessary preconditions for this protection. The state protects parents and children regarding the custody, up-bringing and personal contact in a way that it passes acts and executive regulations. The parents have the right and duty to maintain, educate and raise their children. This right and duty can be taken from the parents or limited only for reasons determined by the law due to the protection of the child's best interest. By this, the constitutional ground is given to the parental right. The parents are guaranteed the possibility to form the child's personality and represent the child in the relation to the outside world, but also personal contact to the child meaning the inner core of parenthood. The Constitution of the RS also guarantees the equal rights of children born in and out of wedlock. Article 56 of the Constitution of the RS provides that children enjoy special custody and care. Human rights and fundamental freedom are enjoyed by the child in accordance with their age and maturity. The children are guaranteed special protection from different forms of exploration and abuse. On the other hand are the duties of the parents deriving from the relation between parents and children. Due to its physical and psychic underdevelopment, the child is not capable to take care of its interests against the adult members of the living community, and therefore the state is obliged to protect the child's best interest. The named constitutional provisions mean the constitutional ground for the legal regulation and by this also the execution of rulings regarding the right to personal contact, what is going to be the subject of discussion also in continuation.

The provisions referring to execution – enforcement are enclosed also in the Act on execution and insurance that will be named in continuation at suitable places.

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

If the parents do not live together or are not going to live together, they have to meet an agreement on the custody and up-bringing of their common children in accordance with their interests. They can agree that they have or retain both the custody and up-bringing or that all children are in custody and up-bringing at one of them or that some children are at one and others at the other parent. If they do not meet any agreement by themselves, the center for social work helps them at the concluding of the agreement. If the parents agree on custody and up-bringing of their children, they can propose to the court of justice to file a conclusion in non-litigious proceedings on this. If the court of justice establishes that the agreement is not in line with the interests of the children, it rejects the proposal. If the parents do not agree even by the help of the center for social work on the custody and up-bringing, the court of justice decides upon demand of one of them or both parents that the children shall be in custody and up-bringing at one of them or some children at one and other at the other parent. In the same way the court of justice can ex officio determine that all or some children are trusted to custody and up-bringing of a third person. Before the court of justice decides, it has to obtain an expertise by the center for social work regarding the child's best interests. The court of justice respects also the opinion of the child, if the child expresses this by itself or via a person of its trust or chosen by the child and if it is capable to understand the meaning and consequences of it.

By the stepping into force of the novel of the **Act on Execution and Insurance** (AEI) in our law, for the first time, execution in matters of custody and up-bringing and regarding personal contact with the child was regulated (chapter 20.a; articles from 238.a to 238.g). Before, no provision dealing with this materia did contain special regulations. For the execution of judicial rulings, general rules of the AEI were used but they did not fit to the special circumstances of these proceedings, what caused trouble in jurisdiction. The execution of judicial rulings was inefficient and by this legal security was endangered and the basic principle of the protection of the child's best interest was interfered with. After article 238.a two optional territorial jurisdictions were determined: after the place, where the person, to who the child was trusted to up-bringing and custody, has his or her steady or intermediate residence; and after the place, where the person, against who the proposal for execution was filed, has his or her steady or intermediate residence. For the immediate execution (article 238.e) the territorial jurisdiction is also at the court of justice, in the precinct of which the child lives.

b. orders on contact and/or access rights

By the novel of the MFRA - B only those provisions of the MFRA being unsuitable for the constitutional and legal relations after their diction or content, have been changed. Before this novel, a regulation was put into force, where in cases of divorce the court of justice decided on custody and up-bringing, and in cases of cohabitation it was the center for social work. And this was not in accordance with the principle of equal rights of children, since there was a difference between the children based on their birth (also the Constitutional Court of the RS decided on this). The novel abolished this imbalance and so, today, in all cases the court of justice decided. After the novel from 2001 in all cases of custody and up-bringing the courts of justice decide. Unfortunately, at that time the jurisdiction over contact was not transferred to the courts of justice. Thus, up to the novel of the MFRA - C, the centers for social work decided on personal contact. But this was not in accordance with the needs for a complete and unique tackling of the questions of contact. So, the novel of the MFRA - C defined the principles of the best interests of the child in the new article 5a. This principle determines that in all proceedings and activities in connection to the child, the parents, other persons, state bodies and carriers of public authorisations have to take care of the child's best interest. The principle of the best interest of the child is the leading principle in decision-making, but it causes problems in practice since it is defined too few. The interest of the child is a legal standard that has to be made concrete by respecting all circumstances of the individual case. At establishing the interests of the child, in each case the circumstances, relations and conditions in which the child lives and develops, the characteristics of the child, etc. have to be recognized. The expertise on the child's best interest is obtained by the court of justice from the center for social work. It is about a close cooperation of two bodies, where both have to try to clear the circumstances of the case, since to a large extent the future of the children and their right development are depending on them. The center for social work has to establish the facts on the parents, their personal characteristics, their relation towards children, their educational and moral qualities, and on the other hand it has to research the needs of the children, their relation towards each parent, affiliations, wishes...

The child has the right to contact with both parents, and both parents have the right to contact with the child. By the contacts, mainly the child's interests are guaranteed (article 106 section 1 MFRA). Before the adoption of the novel of the MFRA - C the right to contacts was named in MFRA as right of the parents, what was misunderstood by the courts of justice many times. The novel of the MFRA - C set the child as primary holder of the right to personal contacts and by this gave the harmonisation with international conventions. The child's best interests are the leading guidance in the regulation, realisation and execution of personal contact. As secondary holder of the right to contacts, the novel of the MFRA - C set the parents. Since in

practice, a lot of problems arise regarding the execution of personal contacts (e.g. manipulations of the child, hindering, retaining the child...), the act puts certain forms of behaviour upon people, who do this. There, these persons are divided into those, where the child lives, and those, who have the right to personal contacts. Those parents, where the child lives in custody and up-bringing or the other person, where the child lives, has to omit everything that makes the child's contacts more difficult or disables them. Except this, he or she has to try to create a suitable relation of the child towards contacts with the other parent or the parents, respectively. On the other hand, the parent executing contacts has to omit everything that makes custody and up-bringing of the child more difficult (e.g. the parent, who executes personal contacts, speaks negatively about the parents, where the child lives in custody and up-bringing). If the parent, where the child lives, disables contacts between the child and the other parent and contacts can not be executed even by the help of the center for social work, the court of justice can decide upon demand by the other parent to deprive the parent, who disables contacts, from the custody and up-bringing and trust the child to the other parent, if it is of the opinion that he or she will enable contacts and if it is possible to protect the child's best interest (article 106 section 6 MFRA). This is one of the essential novelties introduced by novel of the MFRA – C. Today, the court of justice is enabled to transfer the right to custody and up-bringing to the other parent, if the court of justice establishes that the parent, where the child lives, disables contacts and if it believes that the other parent will enable contacts and by this the child's best interest can be protected. By this provision, the right of the parents to contacts is protected especially when the child wishes this. The disabling of contacts must not be the sole reason to trust the child to custody and up-bringing by the other parent, the basic reason has to be that this parent is the better one for custody and up-bringing or the satisfaction of the needs and the development of the child. The child's interests are the main guidance.

MFRA enables the parents to agree on personal contacts by themselves. If they agree, they can propose that the court of justice files a conclusion in non-litigious proceedings based on their agreement. But, before filing the conclusion the court of justice has to verify *ex officio*, whether the agreement on personal contact is in accordance with the child's best interest. If it is in accordance with the interests, it files the conclusion, if not, the proposal is rejected. The parents shall be motivated to conclude an agreement, and therefore also the center for social work can help them at the conclusion of the agreement. And if the parents do not agree even by the help of the center for social work, the court of justice decides on this based on the demand of one of them or both. In its decision the court of justice is mainly led by the child's interest. The court of justice decides on personal contacts in non-litigious proceedings, except when it decides together with conflicts about custody and up-bringing, since then it decides in civil proceedings (article 106 section 4 MFRA). By this provision, jurisdiction on personal contacts is

transferred to the court of justice. The former two-track regulation was abolished. Namely, before the novel the court of justice decided only in cases of divorce, while in all other cases the center for social work decided on personal contacts. The present regulation enables more efficient protection of the child's rights on the one hand, and on the other hand it enables also efficiency and speed of proceedings, since all matters can be resolved in just one proceeding and in front of one body.

The right of the child to contacts is its right and not a duty. Due to this the court of justice may, after article 106 section 5 MFRA deprive or limit the right of contact only, if this is necessary because of the protection of the child's interests. In the continuation of article 106 section 5 it is stated that the contacts are not in the best interests of the child, when they mean a psychic burden for the child or if else its physical or psychic development is endangered. If such a situation occurs, the court of justice may decide that contacts are executed under supervision of a third person or that they are carried out via personal meetings and socialising, but in another way, if else the child's interest would not be guaranteed (article 106 section 5 MFRA).

In all mentioned matters in connection to ruling on personal contacts, the court of justice also respects the opinion of the child, if the child expresses it by itself or via a person of its trust or chosen by the child and if it is capable of understanding the meaning and consequences of this (article 106 section 7 MFRA).

MFRA – C adopted also another essential novelty – it regulated personal contacts of the child with other persons. The child has the right to personal contacts with persons to whom it is connected by family or personally, if this is in its best interest (article 106a section 1 MFRA).

The child's connection to family and personal connections, after MFRA, is given to the grandparents, brothers and sisters, half-brothers and sisters, former foster parents, former or present spouses or cohabitants of one or the other parent. In spite of the expressly named persons, article 106a section 1 MFRA leaves open door since it allows for the possibility that personal contacts are carried out also with a person not mentioned in the named article. The fact that there is no closed circle of persons, derives from the legal formulation: *»The child has the right of personal contact with other persons ...It is considered that such persons are mainly grandparents, brothers and sisters, half-brothers and sisters, former foster parents, the former or present spouses or cohabitants of one or the other parent.«* The openness of the circle derives from the word *mainly* shows that the act names persons usually in the closest connection to the child, but the legislator was aware of the dynamic of life and enabled by this formulation of the act to establish the connection or affiliation of the child to a concrete person in each case. Personal contacts with other persons will be enabled, of course, if they are in the best interests of the child. In spite of the fact that the novel of the MFRA – C legally determined the possibility of

personal contact of the child with persons, to who it is personally attached or connected by family, it is necessary to stress that this is not about the equalization of parents and other persons regarding personal contact with the child. Namely, the right to personal contacts of the parents with the child is a legal expression of parenthood. The parents have the right to personal contacts with the child, in spite of the fact that they have never lived with the child and between them and the child there are no emotional connections, yet, since they are connected by the family relation. And here is the essential difference regarding personal contact with other persons. The condition to create personal contacts with other persons is that the child has a family connection to them and is personally affiliated. For the parents, it is sufficient that there is a family relation or relation of kin (either by blood or adoption), while for other persons an additional connection has to be present, showing mainly through the steady presence of the person, joint living, care of this person for the child and the child's affiliation and trust towards this person. Even here, it is necessary to give advantage to the agreement regarding personal contacts on the range and the way of execution of contacts). At the agreement, the child's parents and the person, regarding who the child has the right to contacts, have to cooperate. If the child is old enough and reasonable, it has to be included, of course. If the named persons can not reach an agreement by themselves, the center for social work helps them at the conclusion of the agreement. If the parents, the other person and the child agree regarding personal contacts, the court of justice, based on the proposal of these persons in non-litigious proceedings, files a conclusion on the reached agreement, except if the agreement would be disaccordance with the interests of the child, the court of justice rejects the proposal (article 106a section 2 MFRA). If the parents, other persons and the child do not succeed to reach an agreement, the proposal for the determination of the range and the way of carrying out personal contacts of the child with other persons can be made by: the child with completed fifteen years of age and with reason (that means that it is capable of understanding the meaning and the legal consequences of its actions), the persons, to who the child has family and personal affiliations, as well as the center for social work that is obliged to take all necessary measures after article 119 MFRA imposed by the protection of the rights and interests of the child. Since the child, after article 77 CPA, has no capability to take civil actions and if personal contacts with other persons are in the child's interests, the center for social work files the proposal for the regulation of personal contacts. Namely, this is about an independent right of the child the content of which lies within the fact that the child preserves the feeling of emotional affiliation and security as well as personal belonging and love towards another person. And, if the child is not old enough (15 years) to do it by itself, this can be done by the center for social work. The proposal has to have attached the proof by the competent center for social work, so the parents and other persons did not succeed to reach an agreement on personal contact of the child with other persons with help (article 106a section 4 MFRA). The proof on the failure represents the first precondition for the decision by the court of justice. Another precondition is that the court of justice, before it

decides by itself, obtains the expertise of the center for social work on the interests of the child, but this is judged in each case separately.

In jurisdiction of the Supreme Court of the RS, when both parents have the same possibilities for custody and up-bringing of the child, that both love the child, that both are prepared to take care of it, it is important, what is needed most by the child of this age (in this case, it was half a year old).³² The Supreme Court decided that the relation between the child and the mother was the basic one, primarily regarding the interests of the child. The legal standard of the »interests of the child« was legally filled by the child by respecting the concrete circumstances and the evaluation of the parental capabilities of both parties on the one hand and on the other hand the primary relation between mother and child. In this case, the Supreme Court determined in its decision that the contacts between the child and the father are to be executed in a way that they spend one month together during the winter break. There is no possibility that the child would spend the holidays in another surrounding without the father, and the mother proposed a change in this week, claiming that the father does not have enough vacation through the year to spend it with the child. Contacts will be possible only, if the father would have the possibility to be together with the child in contact without interruption.

Regarding the execution of decisions on personal contact some rules on territorial jurisdiction for the execution of decisions on custody and up-bringing are used in accordance to their sense (article 238f section 3). According to article 238.a two optional territorial jurisdictions are determined: according to the territory, where the person, to who the child was trusted to custody and up-bringing, has his or her steady or intermediate residence; and according to the territory, where the person, against who the proposal for execution was filed, has his or her steady or intermediate residence. For the immediate execution (article 238.e) also the court of justice on the territory, where the child lives, has territorial jurisdiction.

It has to be mentioned that only jurisdiction on personal contact is being executed, i.e. all sorts of decisions made by the court of justice in these proceedings, disregarding the type of proceedings, in which they were made. Also temporary injunctions made by the court of justice and by which the court of justice temporarily decides (based on the proposal of one of the parents or even ex officio) on the prohibition of personal contacts are being executed. But as, before the novel of the MFRA – C, also the center for social work decided on personal contacts, AEI are not used for the execution of decision by the center for social work.

³² Jurisdiction by the Supreme Court of the RS from 23.12.2004, no. II Ips 574/2004, published in URL: <http://www.sodnapraksa.si/> (28.3.2006)

After the general provision of articles 40 and 15 AEI, the creditor has to list in the proposal for execution:

a) *creditor and debtor*: material legitimation of the parties is the material precondition even in proceedings of execution that can run between the parties (After the provision of article 409 ACP, also the child can be a party in the proceedings, if it completed 15 years of age and is capable of understanding the meaning and legal consequences of its actions.) defined in the execution title or to who the obligation or claim was transferred (article 24 AEI).

b) *obligation of the debtor*: has to be named in the same way as in the execution title. By the introduction of a special provision (article 238b section 1 – after the general rules of execution law, only jurisdiction on tributes can be subject to execution, therefore jurisdiction on contacts being constitutive decisions, as a rule, do not contain instructions on tributes, and as such could not be executed) it is expressly stated that also such a jurisdiction should be executed (constitutional). If the claimant does not include the demand for tribute, the court of justice does include this in the operative part of the conclusion on execution. In the conclusion the court of justice rules that the obligation of the debtor is effective towards any other person, where the child lives in the time of execution (article 238.c AEI-A).

c) *means of and subject to execution*: The claimant does not have to present the means of execution, since the court is not bound to the proposal. The decision on contacts is primarily carried out by the means of mediate enforcement (senseful use of provisions regarding actions to be made by the debtor alone, determination of penalties after the first, second, third and fifth section of article 226 AEI). Only if this does not succeed, there is the means of immediate enforcement. The act allows for the immediate handing over in exceptional cases, when mediate enforcement remained a failure and such a way is the only way to guarantee the protection of the best interests of the child.

d) *executive title*: only decisions filed by the court of justice are executed. The execution of decisions on the right to contacts is separately regulated due to some specialties.

In the part of the operative part of the ruling referring to tributes, all persons, from whose will the realisation of the ruling is dependent, have to be named: the person, to whom the executive title refers; the person, from whose will the handing over of the child is dependent; and the person, where the child lives in the time of the filing of the conclusion; the duty to hand over the child is valid against every other person, where the child lives in the time of execution.

Mediate execution: the court of justice includes to the conclusion the operative part on the penalty, if the debtor does not fulfill his or her obligations within a certain limitation period. To natural persons (parents, foster parents...) the court of justice determines a penalty of maximum up to 1,000,000 Tolars, to a legal entity (institution) and an entrepreneur up to

50,000,000 Tolars (article 226 sections 1 -3 and 5). This is an attempt to influence the will of the debtor, if the contacts will not be enabled, the court shall realise the conclusion on the penalty and file a new conclusion, and it may change the means of execution into an immediate execution.

Immediate execution: At personal contacts, immediate enforcement is possible to be used only subsidiary. If the court of justice decides for this means of execution, in the conclusion it has to determine the executor and the professionally capable employee, who has to be present at the execution. The executor can, regarding the circumstances of the case, demand for support by the police at the execution. On the time and place of execution the person, the child of who is trusted to up-bringing and custody is informed and his or her presence at the execution is enabled (article 238.e AEI). For contacts, a special case is regulated, when in the carrying out of immediate execution, the professionally capable employee (as a rule an employee of the center for social work) establishes that the child opposes the contacts to the parent (creditor) and assesses that enforcement of contacts would not be in line with the protection of its interests, the executor can step back from the carrying out of the executive act and inform the court of justice on the causes (article 238.f AEI). If the court of justice establishes that the child opposes the contacts and assesses that the enforcement of the contacts would not be in line with the protection of the interests of the child, based on the proposal by the professionally capable employee, who was present at execution, the center for social work or the person, against who execution is carried out, execution is delayed for a maximum of three months (article 238f section five). If the proceedings for the alteration of the decision on contacts is started and if it is established that the carrying out of execution was against the protection of the interests of the child, a delay of execution without limitation of time is possible (article 238 f section 6 AEI).

After article 227 AEI the court of justice carries out execution (penalty, after article 226 sections 1 – 3 and 5), when the debtor does not act in line with the decision on the prohibition of contacts. The court of justice determines based on the proposal by the creditors that the debtor has to place caution for damage that he will probably suffer, if the debtor will continue to act against his or her obligation.

Execution of international decisions – an international jurisdiction on contacts has to be handled as national court order and is immediately recognised and executable in another member country. In the AEI, after the novel of 2006 it is determined in article 13 that decisions of a foreign court of justice can be executed in the Republic of Slovenia, if the decision fulfills the conditions for the recognition prescribed by law, by a ratified and published international convention or a legal act of the European Union used directly in the Republic of Slovenia.

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

In practice, in divorce, children are still trusted in a large majority to the custody and up-bringing of the mother (more than 90%). The reasons for this are difficult to define, but I think that the main reason is the consideration that the mother is supposed to be the person who is most capable to take care of the child. In spite of the fact that the novel of the MFRA – C introduced also the possibility of joint parenthood or joint custody and up-bringing even after divorce or when the parents do not live together any more (also in separation of cohabitation), this possibility is rarely used in practice. The reason for this is given by the fact that the court of justice decides on joint parenthood only, if the parents have agreed on this. But, if the agreement between the parents is not existent or if the court of justice doubts that joint parenthood is within the best interest of the child, it does not decide in favour of joint parenthood, but trusts the child to custody and up-bringing to one of the parents.

b. orders on contact and/or access rights

In practice the following case occurred, being characteristic for its cruelty of execution of immediate enforcement. The court of justice trusted the child to the custody and up-bringing of the mother after divorce, but the child did not want to be with her. The child in the age of eight years was »seized by attachment« by eight policemen, an executor by the court and three social workers. The child stuck to the father, cried, did not want to let go, and the policemen intervened in a way that the child was taken from the father by force. Here, the question arises: does it really take 12 people to get a child? This is a situation with an extraordinary high conflict and painful potential. AE determines that the executor may, regarding the circumstances of the case, demand for the support by the police. But, nothing is determined about how many policemen shall be present.

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?

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

The court of justice can file a temporary order to temporarily regulate the question of custody and up-bringing of the child or to limit or prohibit personal contacts.

Please do not only describe the rules drawn up specifically for the enforcement of family judgments but also the rules for the enforcement of judgments in general, as far as they apply to family law judgments as well.

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)

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)

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

In its introductory provisions MFRA determines that for the decision making in matters of family relations at the first instance are under the material jurisdiction of the district courts of justice, that the court of justice rules in civil proceedings, except if ruling in non-litigious proceedings and the priority of the resolving of the matter is provided by law (article 10.a). Thus, it is determined that the court of justice decides in non-litigious proceedings, except when it decides on contacts together with conflicts on custody and upbringing (civil proceedings).

For the differentiation between civil and non-litigious proceedings there is the criterion that in civil proceedings matters shall be resolved, where there is a conflict on some right or legal relation between the parties, and in non-litigious proceedings so-called undisputed matters (article 106 section 3, article 106a section 2).

Ruling in case of an agreement (non-litigious proceedings) The Act on non-litigious proceedings determines that proceedings for the regulation of personal matters and family relations are urgent, that the court of justice shall decide after a hearing, that the public is excluded (article 38 ANP). Non-litigious proceedings are the most suitable proceedings where the principle of protection of children and care for their interests is expressed (due to the special protection of the child, the principles of officiality and the inquisitorial principle are established to a large extent), which derives from several provisions, as the act states that the court of justice has to watch the protection of the rights and legal interests of the parties all the time of proceedings as soon as possible and that the court of justice has to take every measure to protect the rights and legal interests of persons offered special protection by the state (article 5 ANP) (these persons are minors and persons who are not able to take care for themselves and their interests due to mental illness or other circumstances).

The protection of the interests of the child is realised also via article 39 ANP, after which the court of justice may allow the party without legal capacity (also the child), due to the realisation of his or her rights or interests, to carry out singular procedural actions, if he or she is capable to understand the meaning and legal consequences of his or her actions.

Due to the nature of these proceedings and the protection of the rights of certain people, also the inquisitorial principle is also stressed stronger the court of justice finds also facts not mentioned by the parties (article 6 ANP). In non-litigious proceedings the provision of the Civil Proceedings Act are used sensefully (article 37 ANP), but they cannot be used literally, but in accordance to the special nature of non-litigious proceedings. If the parents meet an agreement on contacts (after article 106.a MFRA also the parents of the child, the child and other persons can meet an agreement), they can propose that the court of justice files a conclusion in non-litigious proceedings. If the agreement is in the interests of the child, the court of justice files a decision in form of a conclusion, else it rejects the proposal. I believe that the court of justice could, if it establishes that the agreement is in accordanced to the child's best interest, based on the proposal by the parties, file a judicial settlement on the conflict question. For the parties, this is usually more convenient, no judicial taxation has to be paid, and besides this the running out of the limitation period for complaints has not to be awaited in order for the decision to become rightfull.

If the parents agree on contacts and their agreement is not in accordance to the interests of the children and they do not propose the court of justice to decide, the center for social work has to inform the court of justice on this fact (article 119 MFRA). The court of justice can deprive or limit the right to contacts, if this is necessary because of the protection of the best interests of the child. In the ANP the question of insurance with protecting orders is not resolved. But, based on article 37 ANP this lack of legal regulation is filled with a legal analogy from CPA, and by this the child could be protected in a quicker way. The court of justice, based on the proposal of the party or ex officio, files temporary orders, by which one or both parties are deprived from the right to personal contacts (article 411 CPA). The proposal for the decision on the range and way of execution of contacts is filed by the child, who has completed fifteen years of age and is capable of understanding the meaning and legal consequences of his or her actions, if an agreement between himo r her and the parents, between him or her and other persons was reached and this agreement is in accordance to his or her best interests (the proposal can be made also by other persons and the center for social work).

Decision-making in civil proceedings Conflicts on custody and up-bringing of children being resolved in civil proceedings also attract conflicts on contacts, and when conflicts on contacts are resolved independently, the district court has to handle them according to the rules of non-litigious proceedings. Material jurisdiction of the district court is determined in article

32 section 2 CPA. Among the conflicts from relation between parents and children belong also conflicts about contacts with the parents and other persons. The public is excluded, the court has to do ex officio everything possible to protect the rights and interests of the children, and in the same way it is not bound to the claims, but can decide also without any filed claim. Because of the protection of the interests of the child, the court of justice can also collect other data not mentioned by the parties, and persons or organisations having them at their disposal are obliged to forward them to the court of justice (article 408 section 3 CPA).

If the parents do not agree (after article 106.a, if the parents of the child, the child and other persons do not agree), in spite of the help by the center for social work, the court of justice decides on this based on the demand from one or both parents. The demand has to have attached proof by the competent center for social work that the conflict matter was tried to be solved by agreement. The court of justice also has to respect the opinion of the child, if it was expressed by the child or via a person of the child's trust or chosen by the child and if it is capable to understand the meaning of this and the consequences of the proceedings. After the former regulation of civil proceedings, the child had to be ten years old, in order to be able to give its opinion, after the novel of the CPA from december 2003 this is not present any more (article 410 CPA), by this, the rights and interests of the child, who can express its opinion very well under the age of ten years. The right to hearing must be adapted to the psycho-physical capabilities and must not be a too strict interference into its integrity. The court of justice assesses in each concrete case, when the benefits from such a hearing are an excuse for the disturbance of the child, else it is released. Besides the right to give its opinion, the child has also the right in civil proceedings to be a party and independently carry out procedural actions, if it completed fifteen years of age and is capable of understanding the meaning and legal consequences of its actions, else it is represented by its legal representative (the parents of the child) or a guardian, if the interests of the child and the legal representative are in conflict.

Between the proceedings about conflicts from relations between parents and children, the child is protected by temporary orders filed by the court of justice based on the proposal by the party or ex officio, on the deprivation from the right to contacts or the way of carrying out contacts (article 411 section 1), and they are immediately executable at once.

In the ruling on divorce or annulment of matrimony it is also ruled on contacts, and the court of justice can also file a new decision on contacts, if the changed relations or the interests of the child demand this (based on the demand of the former spouse or the center for social work).

2. Time limits relevant for enforcement proceedings
a. Time limits for appeal, both against family law decisions and against decisions supporting their enforcement

We have to separate between decisions that are filed regarding the regulation of custody and up-bringing and personal contacts in civil proceedings, since against these decisions a complaint can be filed within 15 days.

On the other hand we have the conclusion on execution of the decision on custody and up-bringing or personal contacts. Against the conclusion filed in the first instance on the execution of the decision, e.g. on custody and up-bringing or personal contacts, complaint is also allowed. But, except the complaint, the debtor can also file an objection as legal means against the conclusion on execution, by which the proposal was approved. The complaint and objection have to be filed within eight days from the handing of the conclusion by the court of justice of the first instance, if there is no other legal regulation. Against the conclusion filed upon the objection, a complaint is allowed.

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

No.

c. The effect of appeal on enforceability

Complaint and objection against the conclusion on execution do not stop the proceedings, if there is no other legal regulation. The decision on the complaint is legally binding. Against the legally binding decision filed in the proceedings of execution and insurance, no revision is allowed. The renewal of the proceedings is not allowed, except if there is another legal regulation (article 10 AEI).

d. The effect of the passing of time on the enforceability of a family law judgement + e. The effect of change of circumstances on the enforceability

In the proceedings in matrimonial conflicts and conflicts from relations between parents and children, the court of justice can, based on the proposal of one of the parties or ex officio file temporary orders on the custody and maintenance of the common children, as well as temporary orders on the deprivation or limitation from the right to contacts or the way of carrying out contacts (article 411 CPA). More detailed provisions on temporary orders are embodied in the AEI. Article 267 AEI determines that a temporary order can be filed before the introduction of judicial proceedings, during the proceedings, as well as after the ending of proceedings, until execution is carried out. Thus, by a temporary

order certain relations are temporarily regulated, but in spite of this, they are executable. This is especially important, if the temporary order was filed on the regulation of custody. If such a temporary order was filed, and one of the parents does not wish to hand over the child to the parent having a temporary order on this, execution can also be carried out, either a mediate (financial) or immediate one (deprivation from the child and its handing over to the other parent with the order). In this way the court of justice will file a temporary order (this is about a claim without money!), if the creditor (parent) shows e.g. the danger that the carrying out of the claim (in our case the handing over of the child) will be disabled or made much more difficult (e.g. because of the probability of an escape abroad); or that the order is necessary in order to prevent the use of force or the emerging of a damage that is hard to repair (e.g. mainly in cases, when in the family violence is present). The court of justice can, based on the proposal by the creditor, regarding the circumstances of the case, also file several temporary orders, if this is necessary. In the conclusion, by which it files the temporary order, the court of justice decides, for what time the order lasts. If the temporary order is filed before the filing of the claim or before the start of some other proceedings, the court of justice determines, what claim the creditor has to file or what other proceeding he or she has to start to justify the order. The court of justice also determines the limitation period, in which he or she has to do this. The court of justice can also, based on the proposal by the creditor, prolong the temporary order. The proposal on the prolongation can be filed by the creditor only till the time for which the order was filed (article 277 AEI). If the creditor does not file any claim within the set time or does not start another proceeding to justify the temporary order, or if the time, for which the temporary order was filed, has run out, the court of justice stops the proceedings and annuls the taken actions. The court of justice stops the proceedings and annuls the taken actions also based on the proposal by the debtor (the other parent), if the circumstances, because of which the temporary order was filed, later changed, so the order is not necessary any more (article 278 AEI).

In the last section, the word was about changed circumstances in the line of proceedings. If the circumstances changed after the legal effectiveness, but before the execution of the ruling, this is a new proceeding at the court of justice.

3. Coercive measures to ensure enforcement

a. Measures available by law

The parent, where the child lives in custody and up-bringing, or the other person, where the child lives, has to omit everything that makes the contacts of the child more difficult or impossible. He or she has to try for a suitable relation of the child towards the other parent or the parents, respectively. The parent

carrying out contacts has to omit everything making custody and up-bringing more difficult.

Mediate execution: the court of justice includes to the conclusion the operative part on the penalty, if the debtor does not fulfill his or her obligations within a certain limitation period. To natural persons (parents, foster parents...) the court of justice determines a penalty of maximum up to 1,000,000 Tolars, to a legal entity (institution) and an entrepreneur up to 50,000,000 Tolars (article 226 sections 1 -3 and 5). This is an attempt to influence the will of the debtor, if the contacts will not be enabled, the court shall realise the conclusion on the penalty and file a new conclusion, and it may change the means of execution into an immediate execution.

Immediate execution: At personal contacts, immediate enforcement is possible to be used only subsidiary. If the court of justice decides for this means of execution, in the conclusion it has to determine the executor and the professionally capable employee, who has to be present at the execution. The executor can, regarding the circumstances of the case, demand for support by the police at the execution. On the time and place of execution the person, the child of who is trusted to up-bringing and custody is informed and his or her presence at the execution is enabled (article 238.e AEI). For contacts, a special case is regulated, when in the carrying out of immediate execution, the professionally capable employee (as a rule an employee of the center for social work) establishes that the child opposes the contacts to the parent (creditor) and assesses that enforcement of contacts would not be in line with the protection of its interests, the executor can step back from the carrying out of the executive act and inform the court of justice on the causes (article 238.f AEI). If the court of justice establishes that the child opposes the contacts and assesses that the enforcement of the contacts would not be in line with the protection of the interests of the child, based on the proposal by the professionally capable employee, who was present at execution, the center for social work or the person, against who execution is carried out, execution is delayed for a maximum of three months (article 238f section five). If the proceedings for the alteration of the decision on contacts is started and if it is established that the carrying out of execution was against the protection of the interests of the child, a delay of execution without limitation of time is possible (article 238 f section 6 AEI).

Reallocation of the child: if the parent, where the child lives, disables contacts between the child and the other parent and the contacts cannot be carried out even by the professional help from the center for social work, the court of justice, based on the demand of the other parent, can decide that the parent, who disables contacts, is deprived from custody and up-bringing and the child is reallocated to the other parent, if it is of the opinion that this is the only way to protect the best interests of the child (article 105 section 6 MFRA).

b. Measures usually taken in practice

According to the conversation with the chosen executors, the cases of execution of rulings on custody and up-bringing are rare. Usually, the determined penalties are sufficient to make the personal contacts run. In very rare cases, (in Maribor only once) an immediate execution occurs. Here, we have to stress that these are only cases, where execution was demanded, while in practice the cases without execution of personal contacts and difficult or disabled contacts are much more frequent.

c. Taking of coercive measures when the child opposes enforcement

If the child opposes personal contact, it is always necessary to establish first, where its opposing to personal contact comes from. If it is established that its opposing is the consequence of the influence by a parent, the parent can be penalised. The court of justice can, based on the demand of a parent, who has the right of personal contacts, if the parent, where the child lives, disables contacts between the child and the other parent and the contacts can not be carried out neither by the professional help from the center for social work, decide that the parent, who disables contacts, is deprived from the custody and up-bringing and the child is trusted to the other parent, if it is of the opinion that he or she will enable contacts and if this is the only way to protect the interest of the child (article 105 section 6 MFRA). This is a novelty adopted only by novel of the MFRA-C.

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

The main guidance in all matters with participation of children is the protection of the best interests of the child. The court of justice has to watch this ex officio. If it is necessary, the court of justice may (in divorce proceedings or independent proceedings, where decisions on custody and up-bringing or personal contacts are made) hear the child depending on its age and capability of understanding, and it can express its opinion. Jurisdiction and also the MFRA determine that it is necessary to include also the center for social work in certain matters of children (e.g. in Slovenia the obligatory consultation at divorce is provided, if there are common children in matrimony, upon who the parents have the parental right). It has to be stressed that the court of justice is not bound to the expertise by the center for social work, since the center has only an advisory function, but in practice the courts of justice lean on the expertises by the centers, since the center has more opportunities to gain an insight into the complete matrimonial and family relations.

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. Please specify the title of the instrument, its legal nature (law, decree, administrative regulation or rules of court etc.) and short description of content.

Slovenia ratified HC (1980) on 25.3.1993. In comparison with other states, Slovenia is facing an extraordinary low number of cases of international kidnapping. And this is the reason, probably, that in the years from the ratifying of the convention up to today, no special legislative provisions were passed, in order to refer to the execution of decisions on the return of the child.

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 (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.

There are no specific judicial decisions, practice directions or guides concerning the enforcement of court orders. To enforce court orders in the area of family law and to govern the enforcement of return orders the provisions from AEI are used.

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 (either in the absence of specific provisions under question I.1 or in addition to any such specific provisions).

There are no specific judicial decisions, practice directions or guides concerning the enforcement of court orders.

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

No.

2. Procedure and practice with regard to return orders

In your reply, please take into account the issues discussed in the questionnaire of the Hague Conference, p. 3-4, under III.A-D as set out hereunder. In case your member state has already responded to the Hague Conference's questionnaire, you would mainly have to update and if you think necessary, add lacking information. In case your member state has not responded to the Hague Conference's questionnaire, we suggest that you would try to cover the issues mentioned in that questionnaire in a general manner. Please consider whether the replies to the Hague questionnaire refer in any way to the use of mediation as a tool to settle an abduction case and whether this plays a role in actual practice.

III. ENFORCEMENT PROCEDURE

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

1. If an application for return of a child 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?

As mentioned, the cases of international kidnapping in Slovenia are very rare, and therefore collection of data is quite difficult. In the cases of international kidnapping, the return of the child to the parent, who filed the demand for the return, was ordered.

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.

When the court of justice orders the return of the child, the parents have the opportunity to agree on their own, when the child is going to be handed over to the parent, to whom it has to be returned. If there is a danger that the child will be hidden, the immediate handing over is ordered. If the court of justice orders a limitation period for the return of the child, the child can be handed over immediately to the parent, who demanded for the return, or e.g. the employee of

the centre for social work (if they do not wish to meet or if this is impossible due to the geographic distance), who is going to transfer the child e.g. to the state of return.

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

The convention demands for the establishment of the central body in each member state. At ratification (25.3.1993), Slovenia determined that the role will be carried out by the Ministry of Internal Affairs. Then something got stuck, since the government adopted a conclusion on its 43rd session on 16.9.1993 that the Ministry of Labour, Family and Social Affairs shall be nominated to be the central body. In 1996 the government was warned by the ombudsman because of the discordance between the act and the conclusion by the government. Only after multiple warnings by the ombudsman, the mentioned conclusion was abolished and today, this role of a central executive body is being carried out by the Ministry of Internal Affairs.

The main role at the return has the parent, who demands for the return, since he or she is the one, who proposes certain activities (e.g. return of the child, mediate or immediate execution...). An important role is also owned by the centre for social work with its employees and the police.

B. Actors involved in enforcement

1. Once a return order is made, is a specific request for enforcement necessary? If yes, which authority is responsible and which procedure applies?

When the conclusion on the return is filed, naturally the possibility of a voluntary fulfilment is given, except a certain immediate handing over of the child is being determined. If no voluntary fulfilment of the conclusion follows, execution can be carried out. The executive court of justice decides about this in the execution proceedings after AEI.

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

Execution was demanded by the applicant or his / her lawyer.

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 i) according to the law ii) in practice. 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 return cases (regularly or exceptionally and, in the latter case, depending on which conditions).

In proceedings on international kidnapping and the returning of the children mainly court of justice and the ministry of internal affairs (as central executive body) are included, but also the centres for social work that is supposed to have educated staff for work with children, what includes social workers, psychologists and lawyers. But, it has to be mentioned that such staff are available only at larger centres for social work. Also experts can be included (e.g. psychologists) as official experts of the court of justice. If there is a case that a child has to be taken from a parent (if the child was illegally brought to or kept in Slovenia) and the decision on the return of the child is filed, but the child does not want to be returned, the executor of the court of justice is included, as well as the police, if necessary.

The court of justice of the litigation (district court of justice): filed the conclusion on the return. It decides by conclusion, whether the conditions for a return are given.

The centre for social work: has an advisory role and gives expertise in matters with included children. But, the inclusion of them is respected only after the limitation period of one year during which the mandatory return is given. Namely, HC 1980 determines that the status destroyed by kidnapping shall be established. The decision – conclusion after HC 1980 is not based on the merits of the case, because there is no interference with the decision on the regulation of the relation between parents and children, only the status existing before the kidnapping shall be re-established. Therefore, the role of the centre for social work before the running out of the limitation period of one year is much smaller than after the running out of this limitation period.

After the running out of the one-year limitation period, the centre for social work is called to give its expertise, whether the return of the child is not in discordance with its interests. The role of the centre for social work is given also in the execution proceedings and in execution, since the child is taken away in presence of an employee of the centre for social work.

The central executive body: helps in the regulation of matters around the return of the child.

The police: cooperates in immediate execution.

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?

The role of specialised offices for the field of family law is owned by the centre for social work in Slovenia. But, many centres for social work, of which there are 64 in Slovenia, do not have employed all mentioned necessary staff. Therefore, the courts of justice, in cases where the expertise by an expert has to be obtained (e.g. a psychologist) use experts of the court of justice.

In this context, we have to mention also the provision of article 410 section 1 CPA stating that in cases, when the court of justice decides on custody and upbringing of children, it has to give the child capable of understanding the meaning of the proceedings and the consequences of the decision the opportunity to express its opinion. Regarding the age of the child and other circumstances, the judge invites the child to a conversation in an informal way to the court of justice or outside the court, by the help of the centre for social work or the school counsellor. The mentioned situation comes into account after the running out of the limitation period of 1 year meaning a mandatory return of the child. In the conversation, also a person of the child's trust or chosen by the child might be present. From the mentioned derives that the primary attention is dedicated to the child and the protection of its rights. Therefore, with the intension of regulating the relations, it is not always necessary to give this task to the person of professional skills, but this can be done by every person of the child's trust and chosen by the child for this purpose (e.g. the teacher, grandparents, godfather ...). But, we must not ignore the advantages of the professional staff, since they are not personally connected or associated by family relations to the child, what can be the case with people chosen by the child.

c) Please specify also whether the 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.

The presence of the applicant in the proceedings of execution is not necessary.

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)?

There is no special form of supervision defined, except that the ministry of justice supervises the execution of AEI.

In this place, it is necessary to mention also the supervision of executors. The supervision of the legal conformity of the executors labour and the work of the chamber is carried out by the minister of justice, ex officio or based on the proposal by the president of the local, district or higher court, the president of the chamber, the state attorney and persons with a legal interest. In the framework of the mentioned authorisation, the minister of justice can: a) order and via authorised employees of the ministry carry out the overview of the work of the executor or the intermediate deputy with an overview over the business documents, registers, files and things in custody; b) demand from the executor all necessary data on their business and employees; c) obtain from the competent bodies and organisation data on the business of the executor, and from banks, savings banks and the competent tax administration data on its financial business; d) introduce disciplinary proceedings against the executor or temporary deputy (article 297 AEI).

The supervision over the legal conformity of the carrying out of the service of an executor in connection to the matters transferred to the executor by the court of justice by conclusion is carried out by the president of the local and the district court of justice in the territory of which the executor has his or her seat. The president of the local and district court of justice carries out supervision ex officio or based on the proposal by the minister of justice. In the framework of the mentioned jurisdiction, the president of the court of justice can: a) order the overview of the business of the executor or the temporary deputy in matters; b) propose to the minister of justice the order for the complete business of the executor or temporary deputy; c) propose the introduction of the disciplinary proceedings against the executor or the temporary deputy. In the framework of supervision, the president of the court of justice orders the abolition of lacks and determines a deadline for the carrying out of the measures for this (article 297a AEI).

The immediate supervision over the business of the executor of the temporary deputy is carried out by the chamber of executors. The supervision is carried out ex officio or based on the proposal by the minister of justice or the president of the local, district or higher court of justice, in the precinct of which the executor has his or her seat, at least once a year. In the frame of the mentioned authorisation, the chamber is entitled to have insight into files, entries or other registers of the executor, the business with things in custody and the business with cautions and clearings of payments for work and costs of the executor and may demand from him all necessary measures to bring the business in line with the provisions. About the performed supervision, the chamber sends a report to the minister of justice (article 297b AEI).

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?

Supervision is always carried out by the court of the first instance.

C. The actual enforcement procedure

1. Is there a timeline for enforcement?

The court's ruling determining the return of the child is executable, if it became legally binding and if the limitation period for the voluntary fulfilment of the debtors obligation has run out. The limitation period for the voluntary fulfilment of the obligation starts to run the next day from the day when the debtor receives the decision (article 20a sections 1 and 2 AEI). From the mentioned rule derives that execution is not bound to a concrete limitation period, but the limitation period for execution is depending on the circumstances of each single case.

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?

Primarily, the parties are supposed to have the opportunity to determine the date of the return of the child by mutual consent. If the parties are not capable of this, the court of justice determines the limitation period for the return of the child. Thus, the court of justice states in the conclusion on execution that the person, where the child is, is obliged to return the child. The court of justice determines the limitation period, in which the child has to be handed over, or that the child has to be handed over at once.

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.

In principle there are not. But, after MFRA there is a possibility that the centre for social work takes away the child, if the parents neglected the up-bringing and custody of the child or if this is in the best interest of the child for other important reasons. The last possibility could be used also in the case of kidnapping, but there is a low probability that it will be used in practice. If there is a danger that the kidnapper will hide the child after the conclusion on the return was filed, but before the execution of it, even the filing of a temporary order can be applied for.

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?

The court of justice, the central executional body, the centre for social work and the police try to find the child as soon as possible and hand it over to the parent, to whom the child is supposed be returned. The major role is surely owned by the police, since it is in their jurisdiction to look for the delinquent.

The limitation period is not influenced.

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)?

The court of justice has to do everything ex officio, what is in the best interests of the child. The party demanding for the return of the child may also propose certain measures on her own (e.g. demand for the filing of a temporary order forbidding personal contacts with the parent keeping the child or kidnapping it).

In the conclusion on the execution the court of justice proposes the means of execution. If there is no voluntary execution, the court of justice is not bound to the proposed means of execution. Namely, the court of justice, if this is obligatory for the providing of protection of the best interests of the child, can change the means of execution determined in the conclusion on the execution (article 238b AEI).

By the conclusion on the execution, the obligation of the handing over is put on the person, to which the execution title refers, the person, whose will the handing over of the child is depending on and the person, where the child is in the time of filing of this conclusion. In the conclusion on the execution, the court of justice states that the duty to hand over the child is effective also against each other person, where the child is in the time of carrying out of execution (article 238c AEI).

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?

Enforcement measures can be filed in the form of penalties or in the form of immediate execution, when the search for the child, if the location is known, is

escorted by the police. The child is taken away and handed over to the person with the right to custody and up-bringing of the child.

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

The use of physical force (the police come for the child) can be used only, if the court of justice has made prior decision on this.

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.

The executor has to follow the provisions of the conclusion by the court of justice. Changes can be made by the court of jurisdiction only. As mentioned, the court of justice is not bound to the means of execution proposed by the parties, but can, if this is necessary for the protection of the best interests of the child, change the means of execution determined in the conclusion on the execution. This is important especially in urgent cases.

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?

In non-litigious and in execution proceedings the court of justice can file temporary orders that offer quick and temporary legal protection to the parties. In matters with participation of children, in the filing of temporary orders, the main guidance is the interest of the child. But, these orders can be filed only in the time of regular office hours.

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?

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?

Costs of execution are paid by the creditor, first. The creditor has to pay an advancement for the costs of executive actions in a way, amount and time limit determined by the court of justice. If the creditor does not pay the advancement in a certain limitation period, the court of justice stops execution. For immediate actions of execution and insurance based on the demand by the executor, the creditor has to pay caution according to the provisions of article 38a AEI.

If the proceedings are introduced *ex officio*, the advancement or caution is not to be paid, and the necessary costs are paid in advance on the account of the budget of the court of justice allowing execution. The debtor has to return the costs necessary for execution to the creditor based on his or her demand, including the costs of investigations about the property of the debtor or the costs of the proceedings *ex officio*. The creditor has to repay to the debtor or the third person the costs of execution caused without a base. If AEI does not determine anything else, the repayment of the costs of execution has to be demanded immediately, when they emerge and their amount is known, but within thirty days after the finish or stopping of execution or the conclusion of the last act of execution, after which execution was not continued, else the costs are not recognised. The court of justice has to decide about the costs within eight days from the reception of the demand. In the determination of costs being the last in execution, the court of justice based on the demand by the party, also respects costs to occur at recovery of the costs of execution and allows for the execution and orders the insurance for their recovery. If they are demanded later, these costs are not recognised (article 38 AEI). To guarantee payment for work and costs, the executor can ask the creditor for the payment of a caution within the deadline and for the amount determined in tariff from article 292 AEI.

The executor has to hand the payment order for the caution to the creditor personally and with a warning of the consequences, if caution will not be paid in due time, and if the executor and the court of justice will be presented the proof on the payment, and demand from the court the decision on caution based on the information on the right. The sample of the payment order for the caution is handed to the court by the executor. If the creditor does not agree with the way of payment, the deadline or the amount of caution, he file a demand to the executor within eight days from the reception of the call, in which he asks him to inform the court of justice. The executor forwards the demand immediately to the court of justice that has to decide about it within eight days from the reception. The creditor has to present proof on the payment of the caution to the executor and the court of justice. If the creditor does not pay caution in the way and within the limitation period determined by the executor or the court of justice or does not present the proof on the payment, the executor informs the court of justice on this and the court of justice stops the execution. The court of justice stopping the execution can, based on the complaint, change or annul the mentioned conclusion, if the proof of payment of caution is attached to the complaint. It informs the executor on its decision. The executor has to start with the carrying out of the immediate execution at

once, but within thirty days after the reception of the proof on the payment of caution.

Charges can be dropped with respect to parties who fulfil the conditions for legal support.

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?

The costs of repatriation are covered by the parent demanding for the return.

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

The party from abroad is informed in his or her home country, already, on the eventual costs and all relevant information. In Slovenia, in single cases lawyers were hired, who carry out all actions on behalf of their clients in connection with the executive proceedings.

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

There are no special duties of the bodies carrying out execution.

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

No.

3. Enforceability and legal remedies of return orders

See the questions hereunder, taken from the questionnaire of the Hague Conference, under II. In case your member state has already responded to the Hague Conference's questionnaire, you would mainly have to update and if you think necessary, add lacking information. In case your member state has not responded to the Hague Conference's questionnaire, we suggest that you would try to cover the issues mentioned in that questionnaire in a general manner.

II ENFORCEABILITY AND LEGAL REMEDIES

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

Against the conclusion of the court of justice in the first instance, by which the child is said to be returned, it is possible to file certain legal means:

- complaint – is a regular legal means decided upon by the court of justice of the second instance. The limitation period is 15 days from the filing of the ruling by the court of justice in the first instance. The filing of the complaint delays execution;
- revision – is an extraordinary legal means. Against the legally binding ruling the parties can file revision within thirty days from the handing of the copy of the ruling. The Supreme Court decides on the revision. The filed revision does not delay the execution of the legally binding ruling, against it is filed.

- 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).**

The court's ruling on the return of the child can be executed only, when it becomes legally binding and executable (when the limitation period, within which the voluntary return of the child is ordered, runs out). Means of immediate execution can be used – if the child is not returned, a penalty can be filed. If even this does not work, immediate execution is ordered.

b) Which is the competent organ for these decisions?

The court of justice decides about this.

- 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?**

Yes, the decision has to be legally binding.

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.).

If the Supreme Court of the RS, based on the revision, decided on the return of the child, there is no means against this decision.

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.

Revision can be filed only once and revision delays execution. If a complaint was filed, execution is delayed.

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?

If the legal means of complaint was filed, it has a suspending effect, since legal binding of the decision by the court of justice and by this also its executability is delayed. If revision is filed as irregular legal means, it does not influence the executability of an already legally binding decision and due to this not the executability of the decision by the court of justice. The court of justice in the second instance decides about the complaint, while the Supreme Court of the RS decides about revision. Complaint and revision can not be filed at the same time, consequently.

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

No.

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

In this part, ‘other family law decisions’ are family law decisions (as defined above), with the exclusion of orders on the return of the child, which should be discussed in Part 2. Notably these judgments may relate to the custody, the place of residence of the child, to orders supporting these judgments and judgments relating to contact or access. We assume that contact and access orders will in most cases be enforced on the basis of the Hague Abduction Convention or on the basis of the particular

provision of Brussels 2A (Article 41), but it cannot be excluded that they are enforced on the basis of 'ordinary' rules.

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

Apart from the Brussels 2A regulation (see question 2 hereunder) and the Hague Abduction Convention (discussed in Part 2) your member state may be party to other international convention relevant of the enforcement of family law judgements (e.g. the Hague 1961 and 1996 Conventions on protection of children or regional conventions). Please list these conventions. Please indicate any legislation implementing or supporting the application of these conventions. In case no international instrument is applicable, please indicate whether there is legislation or case law relevant for the enforcement of foreign family law judgments?

1. Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children
2. European Convention on the Exercise of Children's Rights

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

In Part 1A you will already have set out the national system for enforcement of family law judgments in internal cases. Are there any specific legal provisions (or case law) relevant for enforcement in cross-border cases, and specifically under Brussels 2A? If necessary, please distinguish between situations where a decision emanating from your member state is to be enforced abroad and where a decision emanating from another member state is to be enforced in your member state.

There are no specific legal provisions.

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

In case the courts in your member state take a decision that is to be enforced in another member state, will the courts take the 'cross-border' factor into account. E.g. will the court consider:

- **whether orders that support enforcement are practicable (or not) in the member state where enforcement is to take place (e.g. involvement of police authorities, which may not be practicable in all member states in case of enforcement of, e.g., visiting rights)**

The primary goal followed by the court of justice is the protection of the rights and interests of the child. The court of justice tries to determine measures that could be executed also in another member state of HC 1980. Therefore, here penalty is put in the foreground.

- any other practical factors regarding the enforcement that ensue from the fact that the enforcement takes place in a cross-border situation, such as the involvement of foreign child protection agencies, the taking into account of different society customs and practices in the other member state, or the practical difficulties encountered by the child and interested persons (mostly parents) when family rights such as custody or visiting rights are to be respected in a cross-border situation.

Because of the extraordinarily poor practice,¹ it was impossible to obtain these data. But, regarding the importance of the matter, it is possible to expect that also bodies, institutions or persons in the country, where the return is asked for, will be included in the execution of the conclusion on the return filed in Slovenia. The reason lies in the better knowledge of their domestic norms and by this also the legal, economic, ethical, political and other relevant circumstances connected to the case.

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

When a family law judgment from another member state is to be enforced in another member state, will the courts be inclined to amend the modalities of such a decision, e.g. with regard to the measures supporting enforcement (involvement of the police) or the practicality of the arrangements laid down by the foreign court.

If a foreign decision was recognised in Slovenia and now execution is looked for, the confirmation on the executability has to be attached. I expect that the implication of police into execution determined abroad, e.g. at the taking away of the child, the intension would be tried to be achieved without the implication of the police, if this would be possible. Immediate execution would be the last means.

But, here it was impossible to get more information on the running of the proceedings as such.

¹ In Slovenia within 6 years (from 2001 to 30.9.2005) the central executive body sent only 9 orders for the return of a child – in these 9 orders, the return of 15 children was asked for (10 girls and 5 boys). In Slovenia within 6 years (from 2001 to 30.9.2005) the central executive body received only 4 demands for the return of a child in another member state – in the 4 demands the return of 5 children was asked for (2 girls and 3 boys).

5. Setting aside or amending of foreign judgments

Is it possible to indicate what conditions must be fulfilled before a decision of another member state, which is to be recognised and enforced in your member state, may be set aside by a 'new' decision of your own courts? E.g. a divorce court in another member state has taken measures with respect to parental responsibility and visiting rights. The child then comes to live in your member state. After a certain period an interested party challenges the arrangements made by the divorce court, whereas another interested party pleads for enforcement of these arrangements.

The foreign ruling will be equal to the decision by a court of justice of the Republic of Slovenia only, if it will be recognised. The Slovenian court of justice rejects recognition of a foreign ruling, if it established based on the objection of the party, against who it was filed, that the party was unable to participate in the proceedings due to irregularities. The foreign ruling is also not recognised, if the exclusive jurisdiction of a Slovenian court of justice is determined, etc. The court of justice of the RS may refuse recognition of a foreign ruling, if the effect of recognition could be in discordance with the public order of the RS.

If a foreign ruling was already recognised and there is a change of circumstances, the court of justice can be addressed to decide about the case, again (e.g. the child does not wish to live with the mother, but with the father). Here, the ruling by the court of justice does not interfere with the already legally binding decision (as for instance with irregular legal means). Therefore, we can not talk about a change of the ruling, but in the case of changed circumstances it is about the filing of a new demand not being identical to the first one. Therefore, in the new proceedings the legal relation emerging based on the prior ruling is reformed in a new way without reaching into its legal binding. The claim must not contain a change of the preliminary ruling and a change of allocation of the child, but just e.g.: the handing over to up-bringing and custody to the claimant. The court of justice approves this demand only, if it established that the circumstances have changed and that the claims are not identical, but the changed circumstances demand for the handing over of the child to the other parent or a third person or institution, respectively, and, of course, if such a decision is in line with the interests of the child.

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

1. The role of organs and institutions

What national organs and institutions are involved in the cross-border enforcement of family law judgements (both when enforcement takes place in your member state or 'abroad' (in another member state or in a third state). We assume that to an extent such organs have already been

discussed above under B.1 a-c, above, but it may be necessary to include particular details.

Courts, centre for social work, police, ombudsman, central executive body.

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

To an extent these issues will have been discussed under B. 2 a-c above and there may not be any specific different rule or practice. We are inclined to assume that in cross-border cases certain time limits (e.g. for appeal) are similar to those in internal cases, as discussed in under B. above, or are subject to foreign law (if the decision emanates from another state. However, in cross-border cases, possibly certain time limits may influence enforcement, whether it is the enforcement of a ‘foreign’ decision or the enforcement abroad of a decision from your Member State. Finally the passing of time may have a different effect on enforceability in cross-border cases.

If the ruling on the return of the child was filed in Slovenia, it would be possible to complain about this provision, within 15 days from its filing. The decision by the court of justice becomes executable, if it is legally binding and if the limitation period for the voluntary fulfilment has run out. Else, there are not relevant time limits set for execution.

3. Coercive measures to ensure enforcement

Again reference may probably be made to paragraph B. 3. a-c above. Please include any issue relevant to a cross-border case.

Even here, mediate (penalty up to a maximum of 1.000.000 SIT or 4173 EUR) or immediate execution (deprivation from the child with cooperation of the police and the executor) can be ordered.

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

Again reference may probably be made to paragraph B. 4 above. Please include any issue relevant to a cross-border case.

In practice, not practical or legal conditions hindering the execution of cross-border cases showed.

5. Issues of specific concern in cross-border cases

The issues of specific concern may vary from Member State to Member State and may very well be specific for you jurisdiction. Possible issues that may (or may not be discussed are, e.g.:

- 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)**

Slovenia has a legal system valid on the whole territory. Holders of the parental rights in Slovenia are only the parents. Parental rights can not be transferred to another natural person and legal entity neither by law, nor by contract. But, the parental right of the parents is not absolute, since it can be deprived or limited, which is in the jurisdiction of the court of justice.

As long as the parent has his or her parental right, it can be executed unlimited throughout the world. Disregarding whether the child is born in or outside wedlock, the mother of the child is the woman who gave birth to it. At fatherhood, there is a difference. If the child was born in wedlock, regarding fatherhood the legal assumption on fatherhood is valid (for a child born in wedlock or 300 days after the ending of it, the husband of the mother is considered to be the father). For a child born out of wedlock, this legal assumption is not valid, but recognition of fatherhood or establishment of fatherhood in judicial proceedings have to be carried out.

- 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?**

For the change of the child's residence from one country to another, there is not permission needed by the court of justice when the parents are capable of mutual communication and can agree on this. If one of the parents opposes the moving of the child from one country to another, changed circumstances demand the filing of a new ruling. The parents can get assistance by the centre for social work helping them to come to an agreement. If they do not reach agreement the court of justice files a new decision. When filing the new decision, the court of justice follows the main guideline of the interests of the child that has to be respected *ex officio*. The parental right is carried out by the parents, as mentioned, mutually in accordance with the best interests of the child.

When the parents do not live together and do not both have custody and up-bringing of the child, they must decide on questions, which essentially influence the development of the child (such as the change of residence from one state to another) with mutual consent, in accordance with the interests of the child. If they do not find an agreement on this, the centre for social work

helps them in concluding an agreement. If the parents do not agree on questions in spite of the help by the centre for social work, the court of justice decides on this based on the proposal by one or both parents in non-litigious proceedings. The proposal has to have attached the proof of the competent centre for social work that the parents tried to find an agreement on the execution of the parental right by its help. Before the court of justice decides, it has to obtain the expertise by the centre for social work on the best interests of the child. The court of justice respects also the opinion of the child, if the child expressed its opinion by itself or via a person of trust or chosen by the child and if it is capable of understanding its meaning and consequences.

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

There are no specific issues.

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

There are no specific conditions.

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

There is no influence of bilateral or regional convention.

6. Mediation/Alternative dispute resolution

Please discuss to what extent mediation (or alternative dispute resolution) plays a role in the enforcement of other family law decisions. What would or could be the legal base of such a solution and to what extent does it play a role in the practice of the courts. If mediation plays a role, is its use limited to 'internal' cases or is there also a use in cross-border cases.

In Slovenia, family mediation is not yet regulated in the family legislation (but it is encompassed in the proposal of the new Family Law Code). But, family mediation is carried out at the District Court of Ljubljana, i.e. in cases:

- of conflicts on up-bringing, custody and maintenance for children;
- of conflicts regarding the execution of the right to personal contacts;
- of conflicts regarding the range and division of common property.

The so far results are assessed as positive, but there are no special obligations to include mediation or other alternative conflict resolutions in cases of international kidnapping.

NOTE ON THE EMPIRICAL STUDY

A. Statistical information

In the legal questionnaire, various legal aspects will have been discussed of the enforcement of internal and foreign family law decisions. We are required to obtain statistical information and request you to indicate which authorities in your Member State we may contact for such information. To the extent that you are aware of existing statistical information (e.g. through legal literature or other reports), please make them available to us or point us to the source of such a document. In some Member States we may have to ask you for your support when contacting the relevant authorities to sort out linguistic complications.

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

- **the number of family law judgments on parental responsibility, including custody and the place of residence of the child, judgments entailing the return of the child, judgments on contact/access, that were enforced in a Member State in a given calendar year (preferably 2004 or 2003);**
- **an indication of the proportion of the family law judgments referred to above that concerned the enforcement relating to a cross-border situation;**
- **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;**
- **the number of cases where the enforcement was achieved only with difficulties;**
- **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.);**
 - **the role of mediation in the enforcement procedure;**
- **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.**

The statistical data should specify the nature of the order/s sought to be enforced, for example whether they relate to custody, contact, return of the child or otherwise as well as giving details of the court or authority which granted the order and, where separate the court or other authority responsible for its enforcement.

Table 1: Demands for the return of children after the Convention on civil law aspects of international kidnapping, sent to accessing countries by the central executive body

	No. of cases	Number of children regarding to sex	
		F	M
2005 (till 30.09.)	1	1	1
2004	2	2	0
2003	2	4	1
2002	2	1	1
2001	2	2	2

Table 2: Demands for the return of children after the Convention on civil law aspects of international kidnapping, received by the central executive body from accessing countries

	Numbe of cases	Number of children regarding to sex	
		F	M
2005 (till 30.09.)	2	2	1
2004	1	0	1
2003	0	0	0
2002	0	0	0
2001	1	0	1

The Slovenian central executive body for the Convention on civil law aspects of international kidnapping from 2001 to 2005 sent two demands for the introduction of personal contacts with the child, one in 2002 and one in 2004, while it did not receive any such demand in the mentioned period.

In 2005 conflicts in matrimonial and family relations at the district courts of justice in Slovenia represented 43,2% (4319 matters) of all matters of the district courts. Of 4319, there were 3002 proceedings of divorce (unfortunately

there is no record on the presence of children at these divorces). There were 435 separate conflicts on custody and up-bringing of children running.

Table 3: Divorces by number of dependent children and by duration of marriage, 2003

Number of dependent children	Total	Duration of marriage (years)									
		<i>under 1</i>	1	2	3	4	5-9	10-14	15-19	20-24	25 +
Total	2461	19	54	71	98	106	439	434	451	346	443
Without children	985	17	35	49	43	39	96	58	71	181	396
One child	811	2	16	20	46	55	198	174	158	108	34
Two children	595	-	2	2	7	12	136	182	193	49	12
Three children	64	-	1	-	2	-	9	17	27	7	1
Four children	3	-	-	-	-	-	-	3	-	-	-
Five and more children	3	-	-	-	-	-	-	-	2	1	-

Table 4: Divorces, regarding to whom the children were given

The children were given to	1998	1999	2000
Husband	101	108	82
Wife	1194	1183	1215
Husband and wife	41	38	39
Other persons	2	-	-
Institutions	-	1	-
Other possibilities	21	34	4
TOTAL:	1359	1364	1340