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CIPC
Centrum pre medzinárodnoprávnu ochranu detí a mládeže The Center for the International Legal Protection of Children and Youth

EMPLOYMENT AND SOCIAL INCLUSION

Support provided by the Centre for the International Legal Protection of Children and Youth (CIPC) I

Methodology

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Cooperation between the Centre for the International Legal Protection of Children and Youth (CIPC) and other institutions in the area of family law with an international element

Bratislava 2015

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Introduction

In today's times of open borders, cross-border travels and more international relationships, the issue of international parental abductions, removal of children to another country and cross-border recovery of maintenance has become a very topical challenge in the field of family law with an international element in both civil and criminal terms. Against this background, in the framework of Support provided by the Centre for the International Legal Protection of Children and Youth National Project covered by the Operational Programme Employment and Social Inclusion, the cooperation of the central authority responsible for the territory of the Slovak Republic, i.e. the Centre for the International Legal Protection of Children and Youth (hereinafter the "*Centre*"), with national authorities of the Slovak Republic as well as foreign authorities, the idea to outline and explain its remit to the general and professional public has been conceived.

The methodology aims to focus on the various forms of cooperation the Centre has with relevant national authorities, the practical problems that arise in return proceedings including the removal of children in a foreign country and the recovery of maintenance and, consequently, to suggest ways for improving this cooperation, making it more effective and/or for preventing duplication of actions taken by individual authorities.

The benefit of this method is in describing the shortcomings in practical cooperation of the Centre with national and foreign authorities, proposing measures to remedy them and providing suggestions for improvement.

The presented methodology developed by the expert council builds on the outcomes of several meetings of the expert council held on 1 March, 2–3 April, 2 May, 5 May, 6 June 2015, the answers given by representatives of individual national authorities (judges, employees of the ministries of justice, interior, foreign and European affairs, the Prosecutor General's Office, Central Office of Labour, Social Affairs and Family and the various local offices of labour, social affairs and family, and other institutions, for example the Association of Towns and Communities of Slovakia, the Union of Towns and Cities of Slovakia) and the subsequent summary of the outcomes of the cooperation between the Centre and individual

authorities, while highlighting individual shortcomings of this cooperation and submitting proposals *de lege ferenda* for its improvement and streamlining.

The methodology is, thus, essential initial material for development of an Awareness Policy as well as for fine-tuning of other procedures − be it legislative changes and efforts to implement such changes, for prevention, awareness raising among specialists with a view to the application of a uniform procedure in these cases and the possibility of faster, more effective and, last but not least, more efficient procedures applied by individual agencies and institutions as well as for procedures by individual bodies and institutions when informing the public at large and individuals on these issues. Equally, the methodology is also essential in fine-tuning the provision of information through information materials promoting prevention and awareness-raising of the general public on these issues.

We hope that these outputs of the meetings, the conclusions arrived at by experts and representatives of various bodies based on the responses to the questions will facilitate further progress in this agenda and will be of benefit to the work of the Centre for the International Legal Protection of Children and Youth as well as other bodies and institutions involved.

I Cooperation of the central authority of the Slovak Republic with national bodies and foreign central authorities – Background

In carrying out its responsibilities, the Centre cooperates with:

1. Foreign central authorities of Contracting States to the Convention.

The Convention builds on the assumption that by introducing an effective system of cooperation between the Contracting States through appointed central authorities it is possible to ensure smooth resolution of cases of wrongful removal or retention of children.

A central authority for implementing the obligations arising from the Convention is designated in each Contracting State. Implementation of obligations arising from the Convention is based on prompt and effective cooperation, communication and exchange of information among partner authorities. The basic framework for cooperation is set out in the Convention. Subsequently, national legislation of individual countries may complement the Convention of the central authority with provisions concerning national bodies. This legislation may include provisions regulating legal representation of the applicant requesting the return before a competent court, support and cooperation with the courts of a given country, implementation of mediation and a cooperation framework with other national bodies and the like.

2. National central authorities as follows:

a. The Central Office of Labour, Social Affairs and Family, and/or local offices of labour, social affairs and family when assessing the circumstances. Offices of labour, social affairs and family are appointed guardian ad litem of a wrongfully removed child to Slovakia in return proceedings. In addition to the Centre, these offices are another necessary point of contact with the abductor, the child and/or applicant requesting return.

b. The competent courts for case relevant information exchange. The Centre provides assistance and offers very extensive cooperation in providing opinions, helps in obtaining evidence, providing documents for return proceedings, assistance in arranging mediation and facilitates rapid exchange of information with the central authority of the state concerned.

c. Other public authorities:

i. Population Register of the Slovak Republic when it is necessary to find the address of the abductor in Slovakia (other public authorities such as the offices of labour, social affairs and family, Social Insurance Company and departments of the Police Force of the Slovak Republic may also be of help in discovering the whereabouts – see below)

ii. Interpol, Sirene, departments of the Police Force of the Slovak Republic in identifying addresses when the abductor and the child are reported missing.

iii. The Ministry of Foreign and European Affairs of the Slovak Republic and individual Slovak diplomatic missions in the country of destination to exchange information and coordinate procedures of national authorities in complex cases and cases involving countries which have not acceded to the Convention.

Cooperation between the Centre and national authorities

Within family law with a foreign element, especially in cases of child abduction, custody of minor children, removal of children and maintenance, cooperation of the Centre with the following institutions may be considered:

- **general courts of the Slovak Republic and foreign courts** when transferring jurisdiction according to Article 15 of the Regulation
- **Central Office of Labour, Social Affairs and Family of the Slovak Republic**
- **Ministry of Foreign and European Affairs of the Slovak Republic and the respective diplomatic missions of the Slovak Republic in the territory of the country where the child has been removed**
- **Ministry of Justice of the Slovak Republic**
- **Ministry of Interior of the Slovak Republic (Population Register of the SR, Police Force)**
- Law enforcement agencies (prosecution, courts)
- other bodies (health care providers, schools, Association of Towns and Communities of Slovakia, Union of Towns and Cities of Slovakia)

Cooperation with courts and foreign courts

The Centre provides assistance and offers very extensive cooperation in providing opinions, helps in obtaining evidence, providing documents for return proceedings, assistance in arranging mediation and facilitates rapid exchange of information with the central authority of the state concerned.

Transfer of jurisdiction or transfer to a court better placed to hear the case are options available in cases involving removal of the child pursuant to Article 15 of Regulation 2201/2003, which we have already mentioned. It is an institute frequently used by the Centre when intervening in the proceedings and/or when drafting written opinions and submissions to courts or social authorities abroad (especially in cases involving the United Kingdom of Great Britain and Northern Ireland).

Application of Article 15 of the Regulation may give rise to two situations. Either a petition for the return of the minor is filed with a Slovak court, which will transfer the jurisdiction to a foreign court or, vice versa, a petition for the return of the minor is filed with

a foreign court which transfers jurisdiction to a Slovak court. When applying this Article, it is important to establish the conditions which justify its application and for which it can be reasonably assumed that a particular court is better placed to hear the case. These include: the job of the parent who lives with minor children, arrangement of housing and placement of children in pre-school or school facilities etc. These requirements are similar to the ones used in assessing habitual residence where the child has social and emotional bonds.

In cases involving children, submission or request for transfer of jurisdiction must be justified precisely by the wording of Article 15(3). In case of a positive outcome of the assessments concerning the family in the Slovak Republic and based on the assessment report, which may include a recommendation of the family in Slovakia or placement in institutional care (such as children's homes), the Centre forwards this information/application/submission to the central authority of another state together with a request for the transfer of jurisdiction to Slovakia. This decision is the prerogative of the competent national authority of the state concerned (the court).

The time limit for opening the proceedings varies. In the common law system (which is the case of the United Kingdom), the countries set very short deadlines for opening proceedings; therefore, the Slovak courts should be prepared for such situations. The Centre timely informs courts about this transfer and when necessary, the Centre provides sufficient collaboration in obtaining and collecting documents.

In other words, the cooperation process is as follows. When a petition for the return of a minor who was wrongfully moved to the territory of the Slovak Republic is filed with the competent general court, the court shall inform the Centre about initiation of return proceedings. The Centre does not act as a party to the proceedings; however, it cooperates with the court in dealing with problematic situations that may arise, in particular in communication with a foreign court in the country from which the minor has been removed. Various difficult situations arise in the recovery of maintenance claims not paid by the obligor, i.e. the parent who was obliged to maintenance by a court decision. Each country has a specific procedure in place which must be followed by the parent who files a motion for maintenance recovery with the competent court. The court refers the obligee to the Centre, which shall specify what documents the parent needs to exercise their rights before the court in order to successfully recover their maintenance claim in the country where the debtor stays. The Centre also cooperates with the court when discovering the whereabouts of the obliged parent. The Centre contacts the competent central authority of the relevant country and communicates with the relevant authority to establish the actual place of stay of the obligor. The court sends the issued decision, be it return proceedings, placement of a minor or recovery of maintenance claims, to the competent court in the country from which the child has been removed and/or where the obligor stays. The court also sends the issued decision to the claimant and on request to the Centre which is sent the judgment with two counterparts in the Slovak language together with a translation into a foreign language. The Centre is also instrumental in the actual service since the delivery to countries that are neither EU Member States nor Contracting States to the Hague Convention on the Service Abroad of Judicial and

Extrajudicial Documents is more complicated and is channelled through diplomatic missions of the Slovak Republic abroad (embassies, consular offices and/or the consul). In the same way, the problem may also occur in the translation of court decisions, for example, into the Arabic language as there is a lack of Arabic language translators.

Based on the above outline, it may be concluded that judicial cooperation with the Centre is both intensive and extensive. To improve its efficiency it would be appropriate to organise, either by the Centre and/or the Judicial Academy of the Slovak Republic, regular training and/or workshops which could make this cooperation even more effective and would be instrumental in solving various practical problems that the courts face.

Cooperation with the Central Office of Labour, Social Affairs and Family of the Slovak Republic

The Centre cooperates with the Central Office of Labour, Social Affairs and Family (hereinafter the *"COLSAF"*) to which the local offices of labour, social affairs and family report in several areas. Firstly, the most important cooperation is in the assessment of the situation and drawing up reports from assessments that are subsequently sent by the Centre to partner institutions abroad.

As the most important activity of the COLFAS in collaboration with the Centre is the assessment of the situation in the family where the minor has been wrongfully removed from abroad, this cooperation should be as efficient as possible to achieve the objective and purpose of the return procedure. Within its competence, the COLFAS cooperates with the local offices of labour, social affairs and family in the territorial jurisdiction where the minor stays. The Centre seeks the collaboration of the local office of labour, social affairs and family in the place of residence of the child in assessing the conditions under which the child lives, possible harm and verifying the address at which the child should be staying according to the applicant. The assessment of the conditions is carried out without prior notice and then a report on the assessment of the situation is drafted by the competent social worker. The report includes as detailed as possible information on the social conditions (apartment or house, number of rooms, its location, premises, equipment, etc., hygiene, cleanliness, tidiness) and also family circumstances (family members who live in the house or apartment, their jobs, willingness to cooperate). This assessment report and its positive or negative conclusions are crucial for the Centre in further actions to be taken. In return proceedings, the offices of labour, social affairs and family are appointed guardian ad litem of the child wrongfully removed to Slovakia. In addition to the Centre, these offices are another necessary point of contact with the abductor, the child and/or applicant requesting return.

In case of a positive social and family assessment or wish of the applicant and/or on a proposal by the Central Office of Labour, Social Affairs and Family, and in pending court proceedings on child custody, the Centre files with the court, either:

- ✓ **an intervention in the proceedings (intervention – the involvement of a third party in the proceedings) or**
- ✓ **a submission or**
- ✓ **a written statement.**

In this case, a procedure initiated by the Central Office is also possible.

Furthermore, the Centre in cooperation with the Central Office of Labour, Social Affairs and Family assesses the possibilities of child custody in the biological family of the child; when this possibility is not an option, they then suggest placement of the child in an institution where the custody decision is enforced. In the latter case, the opinion of the COLFAS is essential. Though the Centre is the competent authority to issue consent with placement of the minor in the territory of the Slovak Republic, the Centre may issue such consent solely on the basis of the opinion presented by the Central Office of Labour, Social Affairs and Family. Before issuing its statement on the appropriateness and possibility of placement a minor in institutional care in the territory of the Slovak Republic, the Central Office of Labour, Social Affairs performs the necessary social assessment and screening of those potential family members who could be willing and able to take personal care of the minor. If the Central Office of Labour, Social Affairs and Family concludes that the minor has no appropriate family members in the Slovak Republic, it may propose placement of the child in a particular childcare institution. Consent to placing a child in the Slovak Republic is made by the Centre in writing, signed by the Director of the Centre upon compliance with the requirement of having a recommendation of the Central Office of Labour, Social Affairs and Family for placement of the child in Slovakia in an appropriate institution.

In its communication with foreign courts by telephone, the Centre suggests and recommends to the court options for decisions in accordance with the assessment report of the Central Office of Labour, Social Affairs and Family. Labour offices also play a role in communicating the benefits of an amicable resolution of the dispute through mediation.

Cooperation with the Ministry of Foreign and European Affairs of the Slovak Republic

In the performance of its duties and responsibilities, the Ministry of Foreign and European Affairs of the Slovak Republic follows several legal provisions (e.g. Act No 400/2009 on the civil service and on amendments to certain acts as amended, Act No 151/2010 on foreign service and on amendments to certain acts as amended, Act No 575/2001 on organisation of government activities and organisation of central government as amended, Act No 211/2000 on free access to information and on amendments to certain acts as amended, etc.). In addition to these laws, the Ministry issues generally binding legislation within its remit.

The Ministry of Foreign and European Affairs of the Slovak Republic is the central body of state administration in the field of foreign policy and relations of the Slovak Republic with other states and international organisations (Act No 575/2001).

The Ministry of Foreign and European Affairs responsibilities cover:

- protection of the rights and interests of the Slovak Republic and its nationals abroad;
- management of Slovak diplomatic missions;
- contacts with authorities and representatives of foreign countries in the Slovak Republic and abroad;
- administration and management of the property of the Slovak Republic abroad;
- coordination of the preparation and national discussion, conclusion, promulgation and implementation of international treaties;
- presentation of Slovak culture abroad.

The Ministry of Foreign and European Affairs of the Slovak Republic is involved in the formulation of a single national foreign policy and it implements this policy, it performs the task of state administration within its competence and performs other tasks provided for in the statutes, laws and other generally binding legislation.

In compliance with its statutory competencies, the Ministry of Foreign and European Affairs of the Slovak Republic, in particular, performs these tasks (Article 4 of the Statute of the Ministry of Foreign Affairs of the Slovak Republic approved by Resolution of the Government of the Slovak Republic No 147 dated 3 March 1998):

- manages and directs the implementation of foreign policy and coordinates uniform pursuance of interests of the Slovak Republic with respect to foreign countries;

- takes care of the protection of rights and interests of the Slovak Republic and its nationals abroad in collaboration with other ministries and other public authorities;

- provides information and analyses in the area of foreign policy and international relations to the President, the National Council and the Slovak Government and in the framework of foreign policy coordination, also to other central authorities;

- coordinates and evaluates the activities and information from other sectors related to promoting the foreign policy interests of the Slovak Republic;

- liaises with the authorities and representatives of foreign states, arranges and helps to maintain contacts of other bodies and institutions of the Slovak Republic with bodies and authorities of foreign countries;

- manages, coordinates and directs activities of Slovak state institutions in international organisations;

- cooperates with central authorities, national and foreign mass media when informing on fundamental issues of foreign policy and foreign relations of the Slovak Republic;

- cooperates with foreign diplomatic missions in the Slovak Republic and contributes to the development of their relations with the central bodies and institutions of the Slovak Republic and others.

From our perspective, all these types of activities performed by the Ministry are pivotal to our cooperation with the Centre in return proceedings of minors and removal of children abroad, in particular, when dealing with a non-Hague Convention country. The Ministry through its cooperation activities with the authorities and representatives of foreign countries as well as diplomatic missions of the Slovak Republic abroad (embassies, consulates) is instrumental in ensuring the return of a wrongfully removed and retained child in the territory of a foreign state. As soon as a Slovak national contacts the Centre about a wrongful removal of a child to the territory of a foreign country, the Centre contacts the Ministry and in cooperation with the Ministry, coordinates the procedure for the return of the child.

Of course, communication with the competent authorities and courts of a foreign country are also important. The Centre cooperates with the Ministry in the exchange of information and coordination of actions by national authorities in complicated cases and cases relating to non-Convention countries. The Ministry is thus supportive in the exchange of information, participation in court proceedings in the involved country and in coordination of each other's procedures, in particular, in complex cases and cases relating to non-Convention countries.

The purpose is to avoid duplication of proceedings and procedures of these state bodies. Following the release of the child, it is important to continue this cooperation also when the child returns to the territory of Slovakia in order to provide for the child's needs (travel, accommodation, food, etc.). In order to prevent potential child abductions, the Ministry should cooperate with foreign diplomatic missions in the Slovak Republic and facilitate the development of their relations with central bodies of the Slovak Republic and vice versa. The Ministry should arrange cooperation of national central bodies and institutions with the authorities and courts of foreign countries. Cooperation with diplomatic missions of the Slovak Republic abroad, which include embassies and consular offices, as well as mutual cooperation of these diplomatic missions of the Slovak Republic abroad seems to be equally necessary.

Developing a methodology for procedures and cooperation of the Centre with the Ministry in wrongful removal and retention of a child in the territory of a foreign state including the definition of the role of diplomatic missions of the Slovak Republic abroad, their mutual cooperation with a view to guaranteeing prompt, efficient and effective collaboration in the framework of parental child abductions and removal of children would be an appropriate step to achieve more effective cooperation. Another option would be creating an expert group composed of a team of experts on international law where each expert would represent one authority, i.e. the Ministry, the Centre, embassies and consular offices of the Slovak Republic abroad including a contact person for each foreign country, e.g. for the ministry of foreign affairs of that country. Indeed, such cooperation seems to be necessary in

relation to third countries, i.e. those countries which are neither an EU Member State nor a Contracting State to the Convention.

Cooperation with the Ministry of Justice of the Slovak Republic

The Ministry of Justice of the Slovak Republic is the central body of state administration responsible for courts and prisons. Within the scope provided by law, the Ministry performs state administration of:

- district courts
- regional courts
- the Supreme Court of the Slovak Republic
- Specialised Criminal Court.

The competence of the Ministry of Justice of the Slovak Republic covers:
- the Corps of Prison and Court Guard,
- the Training Institute of the Ministry of Justice of the Slovak Republic,
- the Judicial Academy,
- the Centre for Legal Aid.

The Ministry of Justice of the Slovak Republic has the following tasks:
- drafting legislation in the field of constitutional law, criminal law, civil law, commercial law, family law, bankruptcy law and international law;
- performing state supervision over the activities of the Chamber of Judicial Officers of the Slovak Republic and the activities of the Chamber of Notaries of the Slovak Republic in the scope stipulated by law;
- inspection of compliance with the terms and conditions of the organisation and performance of voluntary auctions in the scope laid down by law;
- arranging expert opinions, translation and interpretation services and the publication of the Collection of Laws of the Slovak Republic and of the Official Journal;
- arranging representation of the Slovak Republic before the Court of Justice of the European Union and before the European Court of Human Rights;
- arranging the performance of tasks resulting from the membership of the Slovak Republic in Eurojust.

The work of the Centre for Legal Aid and legislation under preparation in the field of family and international law are important for the cooperation with the Centre.

Cooperation with the Ministry of Interior of the Slovak Republic

The Ministry of Interior of the Slovak Republic is the central state administration body responsible for several areas. In terms of cooperation with the Centre, the Population Register and the Police Corps are important resources.

Police departments fall within the competence of the Ministry of Interior of the Slovak Republic and, in the cooperation with the Centre, it is, particularly, the police force that assists in discovering the address at the request of the Centre when the abductor and the child are reported missing. Ascertaining the address is thus an important element not only in the context of the return proceedings but also in the recovery of maintenance.

The Population Register of the Slovak Republic which contains up-to-date information of the person wanted (date of birth, birth number, address of permanent residence, temporary residence, identification of the reported period of residence, ID card number) and also data on the parents of this person (mother, father, partner including the name, surname and birth number of such persons), the children of this person (name, surname, birth number), reports to the Ministry. When identifying the place of residence, the first step is to obtain an extract with the actual residence; if the person is not present at the address of permanent or temporary residence the Centre contacts the competent district police unit that will further inquire about the whereabouts mainly by contacting neighbours at the specified address in order to obtain information on the person wanted. They draft an inquiry report with all relevant information which is then delivered to the Centre.

To give a complete picture of this effort, it should be noted that the Social Insurance Company is also a player in this jigsaw. Social Insurance screens all employment contracts, contracts on work activity or temporary work contracts or contracts on performance of work indicating the period in which this person was employed by the employer together with their business name, registered office and identification number (ID). Currently, all general courts also have access to other registers, e.g. the register of offences which also includes a person's address, when trying to discover that person's whereabouts. Since within the Schengen area, EU citizens are frequently travelling and relocating and third country nationals are also increasingly more mobile, cooperation of the Centre with Interpol and Sirene for the purpose of searching for missing parents and minor children with whom they wrongfully and without the consent of the other parent left the state of origin plays a significant role in this context. Also, if a criminal complaint was filed against a parent-abductor in the Slovak Republic, the Centre would seek cooperation of Interpol by forwarding this criminal complaint.

Cooperation with law enforcement authorities

Pursuant to Section 10 of Act No 301/2005, Code of Criminal Procedure, law enforcement authorities include the prosecution and the courts. The role of general courts has been explained separately. The prosecution system in the Slovak Republic is composed of these state authorities:

- General Prosecution of the Slovak Republic
- regional prosecution offices (8) – the second level to which district prosecution offices report
- district prosecution offices (54) – the first level.

Seats and districts of regional and district prosecution offices correspond with the seats and territorial districts of the competent courts. Several pieces of legislation (first of all the Constitution of the Slovak Republic, Act No 153/2001 on the public prosecution service, Act No 154/2001 on prosecutors, Act No 330/2007 on criminal records and on amendments to certain acts as amended, Act No 300/2005, the Criminal Code, Act No 301/2005, the Code of Criminal Procedure and others), directives, orders, organisational guidelines and interpreting opinions issued by the Prosecutor General as well as international conventions (the Lisbon Treaty, the Convention on Human Rights and Fundamental Freedoms (Rome, 4. 11. 1950) as amended by Protocols Nos 3, 5, 8, and 11) govern the functioning of the prosecution authority.

Cooperation of the prosecution with the Centre could facilitate the efforts in discovering the whereabouts of the missing abductor because the prosecution authority keeps the criminal records; however, this cooperation is limited because the prosecution authority only keeps information about the past record of convicted offenders, offenders serving their sentence and persons in custody.

Cooperation with other bodies and institutions

Within its competence in the framework of collecting documents in return proceedings, removal and placement of children, recovery of maintenance, the Centre also cooperates with health care providers on issues concerning a child's health condition, care for the child by the parent who wrongfully removed the child from abroad. Cooperation with the Centre also includes pre-school facilities and school institutions (kindergartens, schools) when inquiring about school attendance, preparation of the child for lessons, extracurricular facilities (visiting interest groups), the reputation enjoyed by the parent in the place of residence in cooperation with the appropriate town or city mayor. The cooperation with the Association of Towns and Communities of Slovakia, the Union of Towns and Cities of Slovakia and/or self-governing regions takes place in a broader context. This documentation is essential in assessing the conditions of the habitual residence and its identification is a key issue with respect to the competence of courts in return proceedings.

The Union of Towns and Cities of Slovakia is active in the field of mediation and, therefore, it could become a facilitator in reaching a mediation agreement between the parents. Currently, it has been organising international scientific conferences and various training courses in this area because of low awareness of self-governments on this issue. The aim of these events is to encourage dispute resolution by mediation performed by experienced mediators who are already working in villages, towns and schools across the whole country.[1] Such mediation could also be of benefit in abduction cases and amendments to existing

[1] http://www.unia-miest.sk/vismo/dokumenty2.asp?id_org=600175&id=3481&p1=1272

legislation based on practical experience from mediation and/or conferences on the subject would be useful.

Equally effective could be cooperation with the Association of Towns and Communities of Slovakia as the Association is also engaged in counselling and consulting in difficult situations; therefore, it could support the Centre in its communication with a parent who wrongfully removed a minor from abroad.

Cooperation with foreign authorities

Each EU Member State which applies the Regulation has an obligation under Article 55 (d) and related Article 56 of the Regulation to designate a central authority for cooperation with competent courts. The Centre has performed this task in the Slovak Republic since 1 June 2011. Until 31 May 2011, the Ministry of Labour, Social Affairs and Family of the Slovak Republic functioned as the Central Authority of the Slovak Republic.

Cooperation between the central authorities and the courts is channelled through the European Judicial Network in Civil and Commercial Matters. The specific duties of central authorities are listed in Article 55. At the request of a central authority of another Member State, central authorities cooperate in individual cases to achieve the objectives of this Regulation. To that end, they gather and share information on the situation of the child, on any initiated procedures and on adopted decisions concerning the child, in accordance with the law. The activity of central authorities also includes providing information and assistance to the holders of parental responsibility who seek the recognition and enforcement of their decisions in their territory, in particular of those which are relevant for access rights and return of the child. Central authorities also facilitate communication between courts which is particularly needed when a case is transferred to another court and/or when powers are transferred according to Article 15 of the Regulation. In this case, central authorities serve as a link between national courts and central authorities of other Member States. Last but not least, facilitating an agreement between the holders of parental rights and the obligation of mediation or other methods and facilitating cross-border cooperation to this end is an important task in the cooperation framework. Mediation, however, may in no case be used to excessively delay the return of the child. It is, therefore, appropriate to appoint liaison judges or judges specialised in family law who will be instrumental in implementing the Regulation within the framework of the European Judicial Network and/or take other measures to streamline cooperation between judges and the central authorities as well as among judges and thus contribute to a more prompt resolution of cases concerning parental responsibility under the Regulation.

In relation to Article 56 of the Regulation where a court having jurisdiction contemplates the placement of a child in institutional care or with a foster family and where such placement is to take place in another Member State, the court must first consult the

central authority or other authority having jurisdiction in the latter State where public authority intervention in that Member State is required for domestic cases of child placement. The consent of the competent authority of the requested State with the placement is an important element since it is a requirement for issuing judgment on the concerned placement. The procedures for consultation or consent are governed by the national law of the requested State. In national cases, where the authority having jurisdiction decides to place the child in a foster family, and where such placement is to take place in another Member State and where no public authority intervention is required in the other Member State for domestic cases of child placement, it shall so inform the central authority or other authority having jurisdiction in the other State.

A central authority implementing the Convention is designated in each Contracting State to the Convention. Implementation of the Convention is based on a prompt and effective cooperation, communication and exchange of information among partner authorities. The basic framework for cooperation is set out in Articles 6-20 of the Convention. Subsequently, national legislation of individual countries may supplement the Convention regarding the central authority in relation to national authorities. Legislation may regulate legal representation of the applicant for return before a competent court, the support and cooperation with the courts of the involved country, performance of mediation and the framework of cooperation with other national bodies and the like.

Similar to the Regulation, the Convention puts an obligation in Article 6 on each Contracting State to appoint a central authority to discharge the duties that are imposed by the Convention upon such authorities. Central authorities mutually cooperate and promote cooperation between the competent authorities of their states to ensure prompt return of children and to achieve other objectives of the Convention. In particular, they themselves or through other bodies or persons take all appropriate measure to discover the whereabouts of the child who was wrongfully removed or retained in order to prevent further harm to the child or harm to the interests of involved persons by adopting provisional measures or arranging adoption of such measures; furthermore, to ensure a voluntary return of the child or to contribute to an amicable solution of the situation and also to exchange, where appropriate, information on the social background of the child and also general information on the legal system in their country to the extent it is relevant for the implementation of the Convention. This also includes filing petitions to initiate court or administrative proceedings with a view to order the return of the child or to facilitate its commencement and, where appropriate, to adopt measures ensuring the rights of access or effective enforcement. Moreover, they provide or facilitate the provision of procedural aid and legal advice including representation by legal representatives or an advisor, if circumstances so require, they adopt administrative measures which are necessary and proportionate to ensuring safe return of the child and inform each other on the implementation of this Convention and, if possible, eliminate obstacles to its implementation.

Under Article 8 of the Convention, any person, institution or other body claiming that a child has been removed or retained in breach of custody rights may apply either to the

central authority of the child's habitual residence or to the central authority of any other Contracting State for assistance in securing the return of the child. The application must contain the information set out in that article. If the central authority which receives an application has reason to believe that the child is in another Contracting State, it shall directly and without delay transmit the application to the central authority of that Contracting State and inform the requesting central authority, or the applicant, as the case may be. Subsequently, the central authority of the State where the child is shall take or cause to be taken all appropriate measures in order to obtain the voluntary return of the child.

The central authorities of Contracting States also cooperate when the competent judicial or administrative authorities of the Contracting States do not issue a decision within six weeks from the date of commencement of the proceedings and the applicant or the central authority of the State exercises the right to receive a statement of the reasons for the delay. If the central authority of the requested State received a reply, it shall transmit it to the central authority of the requesting State, or to the applicant, as the case may be. Cooperation also takes place when at the date of the commencement of the proceedings before the judicial or administrative authority of the Contracting State where the child is, a period of less than one year has elapsed from the date of the wrongful removal or retention and the competent authority orders the forthwith return of the child, unless it has been demonstrated that the child is now settled in his or her new environment.

In ascertaining whether there has been a wrongful removal or retention, the judicial or administrative authorities of the requested State may take notice directly of the law of, and of judicial or administrative decisions, formally recognised or not in the State of the habitual residence of the child, without recourse to the specific procedures for the proof of that law or for the recognition of foreign decisions which would otherwise be applicable. The competent authorities may, prior to the making of an order for the return of the child, request that the applicant obtain from the authorities of the State of the habitual residence of the child a decision or other determination that the removal or retention was wrongful. The central authorities of the Contracting States shall so far as practicable assist applicants to obtain such a decision or determination.

II Co-operation between authorities and the Centre for the International Legal Protection of Children and Youth – some issues and responses

Ministry of Justice of the Slovak Republic

Wrongful removal or retention of a child outside the country of child's habitual residence (abduction)

As a member of the Hague Conference on Private International Law and at the same time as a Member State of the European Union, the Slovak Republic complies with its obligations arising from international legal instruments in the area of so called "cross-border parental abductions".

The term "parental abduction" is primarily a question of international law and is regulated by the Convention on the Civil Aspects of International Child Abduction, signed in the Hague on 25 October 1980 (hereinafter the "*Hague Convention*"). The European Union has also its specific legislation, Council Regulation No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation No 1347/2000 ("Brussels II bis Regulation") regulating this issue. The provisions of the Regulation take precedence over the provisions of the Convention in relations between EU Member States and over national rules applicable to cases to which this Regulation applies.

Regulation Brussels II bis is an expression of the current state of development of international procedural law. It abandons the protectionist principle of citizenship because in each and every legal relationship with an international element, there is a conflict of interest of at least two sovereign states. The states concerned have the same interest to participate in resolving the legal relationship. International procedural law seeks to determine one responsible state because it considers it fair to have the legal relationship decided by the state (and/or its courts) which is best placed to assess the concerned relationship. It also seeks, as far as possible, to prevent the same case from being heard or potentially heard by courts of different states because it leads to parallel proceedings and these may result in different and even contradictory rulings. This situation is not good for the legal certainty of legal relations and, in particular, it is unacceptable in the area of family law as its consequence may be the person's different legal status of the person in each country.

Such a philosophy is justified mainly with respect to the care for minors. A child from a mixed marriage usually has the nationality of at least two states, both of which have a potential interest in the child. The criterion of the child's habitual residence, which in recent decades has become the dominant principle of court jurisdiction, responds to the fact that the state where the child has had their habitual residence has the closest bond with the child because all essential and relevant information relating to the child are in that state, which

makes it possible to make an informed decision without having to request this information from abroad through the instruments of judicial cooperation. The concept of habitual residence may appear vague but like other concepts of international law it must be sufficiently broad to be applicable in the legal systems and legal traditions of various countries. In the Slovak Republic, the concept of habitual residence has been already used for ten years. In that period, jurisprudence and case law of both Slovak courts and the European Court of Justice has developed. It is the crucial criterion and it is not expected to be replaced by another in near future. The current trend shows that the concept of habitual residence has also gotten gradually rooted in areas outside international private and procedural laws. Through their decision making, the courts will build up its content.

Seen through the prism of these international legal instruments, "parental abduction" may be defined as wrongful removal or wrongful retention of a minor outside the country of his or her habitual residence.

The basic objective of the two international instruments is effective, qualified, consistent and prompt decision-making by judicial authorities of the Contracting States that ensure prompt and effective return of a child to his or her country of habitual residence and also ensuring effective compliance of the rights of custody and rights of access under the law of one Contracting State in other Contracting States.

The Ministry of Justice of the Slovak Republic has no particular powers in the implementation of these international legal instruments and, thus, it is not directly involved in return proceedings in practice. These legal instruments are implemented by courts when a submission is filed in a return case of a child who was wrongfully removed to the Slovak Republic. The courts of the Slovak Republic are independent and the Ministry may not interfere with their decision-making. The Ministry is informed on return proceedings by return courts (Bratislava I District Court, Banská Bystrica District Court and Košice I District Court) that send the decision on the return or non-return of the child in individual cases and when they need to consult. The Ministry does not currently keep accurate statistics on the number of return proceedings. The Ministry has established a continuous flow of relevant documents, information and rulings of international courts regarding these legal instruments to the judges hearing return cases. Training of judges in this area is arranged currently by the Judicial Academy, which organises workshops attended by foreign experts on international family law.

Free movement of people and migration increasingly bring more mixed marriages and partnerships as well as more cases of parental abductions in its wake which pose a serious legal problem and due to its consequences also a broader social issue because the real victims are the minors. At the time when the Convention was under preparation, cases where the "abductor" of the child was the father who was not awarded custody of the child were more frequent. In recent years, the situation has significantly changed and the number of cases where the abductor is the mother is growing from year to year. The Convention reflects the current state of European relations and its primary objective is to ensure the child's right to not to be wrongfully removed or retained as this ensues from Article 11 of the Convention on

the Rights of the Child (Communication No 104/1991). In this respect, the Convention is a relevant mechanism for resolving such cases as confirmed by the conclusions of the 6th Special Commission of the Hague Conference on Private International Law in 2011-2012 and also the continuing interest of the world's states in ratifying it.

In cases of divorced parents, a removal of the child from the country of habitual residence by one of the parents has a detrimental effect on the child and the left behind parent. This is a very sensitive and important area and therefore the main objective of international rules is to prevent child abduction between Member States and, when such abduction has occurred, to achieve the return of the child without delay. The aim of return proceedings is to promptly remedy the unlawful situation which arose from the abduction and to return the child to his or her country of habitual residence so that the authorities of that state can decide on parental responsibility.

However, it should be noted that not every person who returns from abroad with a child to the Slovak Republic is an abductor. A person does not become an abductor by leaving for the territory of the Slovak Republic or as a consequence of the fact that Slovak courts may not have the jurisdiction to rule on parental responsibility for the child. A person becomes an abductor by leaving without having the consent of the other parent and/or a ruling of a court which replaces the consent of the other parent and, thus, effectively prevented the other parent from exercising his or her parental rights.

Notwithstanding the conflict between the spouses and/or partners, they both are the parents of the child and they have the same rights and duties towards the child. The principle of equality of the parents before the law in the exercise of their parental responsibility is enshrined in the legal system of the Slovak Republic (the Constitution of the Slovak Republic, the Family Act and the Criminal Code). Therefore, even if there were a child abduction from abroad and a Slovak court has jurisdiction in the matter, it could not ignore the unlawfulness of the abductor's conduct. Parental responsibility for a minor child is exercised by both parents even when the court has awarded personal custody of the minor to the parents who represents the minor and administers his or her property. Unfortunately, many parents do not realise this fundamental fact and mistakenly believe that if they have custody of the child they can also decide about everything concerning the minor. The court decision on awarding custody of the child to one of the parents who has also the right to represent the child and administer their property always applies only to everyday issues of the minor. The substantive matters relating to the minor's upbringing, his or her representation and property administration are always decided jointly by both parents. Under Section 35 of the Family Act, permanent relocation of a minor abroad is an essential issue of a minor's upbringing and therefore if a parent plans to relocate with a minor child, he or she necessarily needs the consent of the other parent or a judicial order as its substitute. Failing that, the parent commits parental abduction of the minor. Parental abductions always have an international civil law aspect, and in some countries, also a criminal law dimension. The Convention on the Rights of the Child guarantees the right to care from both parents and the child's best interest must be a priority in the decision making by courts and also legislators. Therefore, it is inacceptable

to assess the conduct of a person who leaves with a child from the state where the child lived and, thus, has removed the child from the care of the other parent without his or her consent or judicial order as positive conduct requiring protection; while the same conduct by the other parent would be assessed negatively. This is an unlawful situation that no state may condone and tolerate by either the conduct of its authorities or its legislation. The rule of law, protection of human rights and the non-discrimination must not favour one parent, either on the grounds of gender or nationality. Each state is bound by its own constitutional and legal principles as well as obligations under international law and must not favour its citizens by violating international agreements

When one of the parents wrongfully moves or retains a minor outside the place of habitual residence without the consent of the other parent, it is necessary to file an application ordering the return of the minor as soon as possible with the central authority of the country of minor's habitual residence; and if the central authority establishes that the child is residing in another state party it shall transfer the case immediately to the central authority of that state. The central authority of the Contracting State where the child has been wrongfully removed must take all reasonable measures to achieve a voluntary return of the child. If a voluntary return is not achieved, the central authority either on its own volition transfers the matter to a competent court to hear the case or informs the applicant to file a motion seeking return order for the minor to the country of habitual residence with the competent court of the Member State.

In the practice in the Slovak Republic, the applicant for return of a child is usually the father. The mother, a Slovak national living abroad, has travelled with the child to the territory of the Slovak Republic without the consent of the other parent of the child. In most cases, since the mothers have strong family ties in the Slovak Republic, often also permanent residence, they try to obtain a decision by a Slovak court on their exclusive custody of the child immediately upon arrival. They do so in the belief that as Slovak nationals having permanent residence in the Slovak Republic they will be granted legal protection by Slovak authorities.

In our view, the issues that emerge in practice can be best addressed by improving the legal awareness of citizens so that they learn to solve their issues at the appropriate place and thus avoid conflicts caused by inappropriately chosen steps. Parents refuse to resolve their problems in an amicable way and then rely on the intervention of public authorities. Here, they overestimate the purpose and meaning of child return proceedings as its purpose is not a decision on the custody of and/or regulation of access to the child but to return the child to the country whose authorities have the power to decide on parental responsibility and from which the child has been wrongfully removed, i.e. without the consent of the other parent. The primary solution is mediation, i.e. reaching an agreement between the parents of the minor. Mediation is important even if no settlement and/or agreement between the parents is reached because it will at least establish and clarify the situation of the particular case and the parents will be more capable of communicating with each other during a trial. In the dissemination of

information, the media that should disseminate correct and unbiased information, which is mostly not the case, also play an important role.

In cases of child abduction from the Slovak Republic, the Ministry of Justice of the Slovak Republic has no effective jurisdiction. In cases of abductions to non-Hague Convention countries, it should be pointed out that the Hague Conference on Private International Law supports the so-called Malta Process which aims also to achieve communication also with the Mediterranean countries that are not and probably will never become Contracting States to the Convention. So far the result of the Malta process is the formulation of the basic principles of mediation which is the proposed way of resolving child abductions to these countries while all involved countries can designate a central contact authority for the purpose of applying these principles of mediation.

Enforcement of return decisions

In Slovak legislation, procedures for enforcing return decisions are governed by Sections 272-275 of the Civil Procedure Code (Enforcement of decisions on upbringing of minor children). Enforcement orders are issued by ordinary courts having jurisdiction over the place where the child resides or stays. In coordination with the relevant authority for social and legal protection of children and social guardianship (hereinafter the "*authority for social and legal protection of children*") or a municipal authority, the court may order that the child be removed from the person with whom he or she should not be residing and handed over to the person authorised to take over the wrongfully removed or retained child (usually the other parent).

Because of frequent problems faced by the courts and other parties to the proceedings in enforcement of decisions involving minor children, the Ministry of Justice, in agreement with the Ministry of Labour, Social Affairs and Family, the Ministry of Education, Science, Research and Sport, and the Ministry of Interior, issued Implementing Decree No 474/11 laying down the details of enforcement of decisions on upbringing of minor children, effective from 1 January 2011; the Decree also applies to the enforcement of the decisions on the return of minor children to the country of their pre-abduction habitual residence.

Moreover, in an effort to improve judicial procedures in return proceedings, the new Civil Non-Adversarial Procedure Code will also regulate the proceedings on the return of a wrongfully removed or retained child living abroad. The measures aimed at improving return proceedings will include the impossibility of lodging appeals on points of law in return cases.

The return of children abducted by one of their parents raises several enforcement-related issues. The problem consists in the generally low effectiveness of enforcement of Slovak courts' judgments on the return of children to their country of habitual residence and of the judgments on access rights. In practice, courts are rather inefficient in implementation of their decisions, which contributes to the low confidence of people in enforceability of the law. Practical experience is relatively negative. It is very difficult, almost impossible, to enforce a return decision if the abducting parent is the child's mother. The difficulties are

mostly of a psychological nature (no one wants to forcibly take a child from his or her mother); there is also a problem of public and media attitude in every case a return decision is to be implemented. The speed of enforcement certainly does not benefit from the possibility of lodging appeals against return decisions, which may lead to considerable enforcement delays. Moreover, there is an informal network of mothers in similar situations who share their experience with how to best avoid enforcement. This also weakens effectiveness of enforcement.

The actual execution of child return decisions in the Member State to which the child has been abducted, issued in that Member State, continues to face obstacles in the practice of other Member States. Because enforcement procedures are subject to the law of the Member State of enforcement, enforcement tools differ from one country to another. The decisions should be implemented without delay but their enforcement often takes too long. Yet, return proceedings and execution of final return decisions require urgency because the passage of time can have irreparable consequences for the relations between the child and the left-behind parent. Adequateness of enforcement measures must be therefore judged by the speed of their implementation.

Appropriate legislative changes in this connection include, for instance, entrusting execution of these decisions to court enforcement officers (the state should pay them a flat fee for enforcement of these decision) or adopting other measures to ensure their expeditious and smooth enforcement.

Proceedings on the return of a child to the country where he or she was habitually resident before the wrongful removal present a problem in several states and practical experience shows the need to address the issues of the speed of proceedings and the subsequent enforcement of return decisions. It might be appropriate to exclude Article 11 from the Regulation during its envisaged revision; instead, some form of addendum (protocol) to the Convention could be considered since it would apply to a larger number of states that ratified the Convention rather than just the Member States of the European Union. Article 11 of the Regulation constitutes a special form of “implementing” provision for the Convention and, although is useful both for the courts and the parties, its amendment and extension through a separate instrument applicable also to other signatories of the Convention would be more beneficial.

The problematic decision of the European Court of Human Rights in the Shuruk and Neulinger case, which is binding for the Contracting States to the Convention for the Protection of Human Rights and Fundamental Freedoms, has been criticised by several experts on international law (Prof. Jeremy D. Morley, Linda Silberman, Martin Lipton, Paul Beaumont) because they say it obstructs the purpose and objectives of the Hague Convention. A court dealing with a child return application under the Hague Convention only examines the facts related to the existence of grounds for non-return referred to in Article 13 or, alternatively, it may apply Article 20. Harmonisation of expert opinions for the purpose of drafting new wording of the Regulation could be facilitated by comments from the Court of

Justice of the European Union concerning the decisions of the European Court of Human Rights. There is a problem, however, that the Court of Justice of the European Union does not have the authority to interpret the provisions of the Convention or to address human rights protection issues; its comments are limited to the provisions of the Regulation.

The protection of the best interests of the child, in particular his or her fundamental right to maintain contacts with both parents as set out in Article 24 of the Charter of Fundamental Rights of the European Union, is one of the main objectives of European Union policies in the area of recognition and enforcement of judgments in civil matters. The borders between Member States should not constitute an obstacle to the enforcement of judgments in civil disputes. The purpose of the Regulation is thus to achieve free circulation of all decisions on matters of parental responsibility. The Regulation is the first instrument of the European Union that abolished proceedings on the declaration of enforceability, but only as regards access rights and return decisions. The fact that a declaration of enforceability is still required for the remaining decisions concerning parental responsibility has led in practice to lengthy and financially-demanding exequatur proceedings. The situation in which a decision contains two verdicts – one on access rights and the other on rights of custody – that were reached in a different manner is not systematic or economical. The parent who has been granted access rights thus has an advantage over the parent who has been awarded custody. The abolition of exequatur proceedings made it easier to claim the rights of access. Moreover, conflicting situations may occur in which a Member State would have to recognise the verdict on access rights while at the same time it would have to reject the recognition of the verdict on custody rights given in the same decision if an appeal is lodged. The recognition of decisions on parental responsibility – other than access rights and return decisions – can be rejected on the grounds set out in the Regulation. A frequent reason for non-recognition of such decisions is failure to hear the child in the proceedings. Problems arise in practice because of different rules on hearing a child applied by the Member States.

The Commission would like to see this part of the Regulation amended but because of the differences in custody award procedures and exercise of custody rights it will be difficult to achieve consensus on this issue among the Member States. Custody rights are awarded in some countries to both parents by virtue of law while in other countries it is necessary to obtain a court decision which makes the proceedings last longer. To address this issue, the Commission envisages introducing common minimum standards for the exercise of these rights.

Enforcement of decisions on the custody of minors

Opinion of the Legislation Section of the Ministry of Justice of the Slovak Republic

The Slovak Republic has a reserved position on the issue of adoption of EU-wide rules on appropriate enforcement of judgments. It is unquestionable that the principles and legal provisions governing enforcement of child custody judgments are closely intertwined with substantive family law and, as such, with legal and philosophical attitudes of society towards the family and children.

Slovak legal provisions on enforcement of child custody decisions underwent comprehensive reform in 2011, preceded by a wide all-society discussion. The Ministry of Justice of the Slovak Republic, i.e. the authority responsible for the substantive and procedural provisions of family law, can confirm that its efforts at setting out the rules for enforcing decisions involving children were perceived as highly controversial. Legislative and substantive issues discussed in the process of drawing up amendments were considered from the perspective of the child in order to respect the child's interests at every stage of the proceedings, i.e. including in the process of the so-called personal execution. The questions raised in this respect concerned the right of both parents to exercise their parental rights and the duty of the state to support and facilitate the exercise of access rights by a parent. Legal provisions linked to family law of procedure correspond to EU law only to a minimum degree as evidenced, for instance, by the offence of obstructing enforcement of court decisions under substantive criminal law, or temporary suspension of child allowance payments to persons, including parents, who do not respect a court decision under the social security law. The process of decision enforcement in Slovakia made it even necessary to adopt a detailed secondary legislative instrument, *Decree of the Ministry of Justice of the Slovak Republic No 474/2011 of 6 December 2011* laying down the details of enforcement of decisions on upbringing of minor children, drawn up in conjunction with the Ministry of Labour, Social Affairs and Family, the Ministry of Education and the Ministry of Interior.

The Slovak Republic is of the opinion that given the difficulties it has experienced in the search for a compromise at the national level, the attainment of a European-wide consensus on such a sensitive issue, while not impossible, will require a number of expert discussions and legislative specifications that can significantly prolong deliberations on the proposal of the European Commission for a revised Brussels II bis.

Provisional measures under Article 20 of Brussels II bis

According to Article 20 of Brussels II bis, the courts of a Member State may, in urgent matters, take provisional measures with respect to a child in that State even if a court of another Member State has jurisdiction as to the substance of the matter. Since the effective date of Brussels II bis (1 March 2015), parties to the proceedings on parental responsibility have started to extensively use the possibility of provisional measures, including in cases where they have wrongly removed a child to another Member State, trying to invoke this provision to obtain provisional custody of their child. In this regard, the Court of Justice of the European Union has issued a number of decisions (see C-403/09 – Detiček, C-256/09 – Purrucker, C-296/10 – Purrucker II, C-523/07 – A), in which it explained the provision in question and stated that it is not appropriate to apply it "automatically" to abduction cases because it frequently happens that the requirement of urgency of such a measure is not met. Specifically, in the Detiček case, the Court of Justice of the European Union explained that the court of a Member State to which the child has been abducted cannot impose the provisional measure of entrusting the custody of a child to his or her parent who is in that State if the court having jurisdiction as to the substance awarded provisional custody to the other parent before the wrongful removal and if the custody decision was declared

enforceable in that Member State. Such judicial decisions are binding for the court and for the parties; at the same time, this shows the need to address these problems as well in new wording for the Brussels II Regulation.

Wrongful removal of children in the case law of the CJEU

The Court of Justice of the European Union (the CJEU) and the European Court of Human Rights have issued several decisions in parental abduction cases in which they set out the principles related to international parental abductions, with the best interests of the child as a primary consideration. The CJEU stressed that Brussels II bis is based on the principle of mutual trust and mutual recognition and that the grounds for non-recognition must be minimised. In cases involving Brussels II bis, the CJEU has used the fast track procedure known under the abbreviation of PPU, i.e. an urgent preliminary ruling procedure.

The Regulation provides that when there is a conflict between a non-return judgment given by the court of the Member State to which the child has been wrongfully removed and the subsequent judgment ordering the child's return is issued by the court of origin, the latter judgment on immediate return of the child prevails; this means that the return judgment given by the court of origin is immediately recognised and enforceable in Member States without the need for the declaration of enforceability and without any possibility of contesting its recognition (Article 42 of the Regulation). This judgment need not be preceded by a final judgment on the merits since the purpose of the return decision is, *inter alia*, to help resolve the issue of parental responsibility.

In practice, effective enforcement of return decisions faces obstacles regarding both enforcement of the judgment in the Member State to which the child has been wrongfully removed, issued by that State, and enforcement of the return judgment in the Member State issued by the court in the State of origin. Given the fact that enforcement procedures are governed by the law of the Member State of enforcement, they differ from one State to another. In this connection, the Court of Justice of the European Union noted that, although the object of the Regulation is not to unify substantive and procedural rules of the Member States, it is nevertheless important that the national rules do not impact on the purpose of the Regulation, i.e. ensuring prompt return of a wrongfully removed child to the State of his or her habitual residence. The European Court of Human Rights has also emphasised that the proceedings on enforcement of final return decisions must be expeditious because the passage of time can have irremediable consequences for the relations between the child and the parent with whom the child does not live. The appropriateness of a measure must be therefore judged by the swiftness of its implementation.

References to case law of the Court of Justice of the European Union:

Judgment in "A", C-523/2007 (Article 20 of Brussels II bis)
Judgment in "Detiček", C-403/2009 (Article 20 of Brussels II bis)
Judgment in "Purrucker I", C-256/2009 (Articles 20, 21 of Brussels II bis)
Judgment in "Purrucker I", C-296/2010 (Articles 19, 20 of Brussels II bis)

Judgment in "Rinau", C-195/2008 (Articles 11, 31, 42 of Brussels II bis)
Judgment in "Povse", C-211/2010 (Articles 10, 11, 47 of Brussels II bis)
Judgment in "Zarraga", C-491/2010 (Article 42 of Brussels II bis)

Transfer of jurisdiction

The implementation of the provisions on the transfer of jurisdiction to a court better placed to hear the case if it is in the best interests of the child (Article 15 of Brussels II bis) has proved to be problematic in practice because the requested court often failed to inform the requesting court of its acceptance of jurisdiction in due time.

The Slovak Ministry of Justice does not carry out the transfer of jurisdiction *per se*, but it has recommended the transfer of jurisdiction in certain court proceedings where this was in the best interest of the child (e.g. in proceedings on the recognition of legal transactions carried out in favour of minor children for the purpose of succession proceedings). However, the Ministry does not have any feedback on whether this has been actually done.

Envisaged revision of Brussels II bis

A draft working document on revising Brussels II bis in four areas was presented to the July 2015 informal Council of Ministers in Luxembourg. Firstly, it proposes consistent abolition of exequatur and introduction of free circulation of judgments, including child custody decisions. Secondly, return proceedings in cases of abducted children are to be accelerated. Thirdly, enforcement of judgments issued under the Regulation is to be harmonised and, fourthly, cooperation between the Central Authorities is to be improved.

The Commission stressed that although the current Regulation is a viable instrument, today 10 years into its implementation, the need for improvement has become apparent in several areas. The Commission subsequently endorsed all four areas proposed in the draft working document.

The European Parliament (JURI Committee) reported on a study carried out on this subject. It pointed to the growing trend in civil law abductions. It stressed that a distinction should be made in the revised Regulation between cases where the aim of the abduction was to escape from domestic violence and other abduction cases. It would not be fair towards the abused persons if the same yardstick were applied to all abduction cases. In addition, it highlighted the need for specialised courts and mediators. It also noted a need to improve enforcement of judgments and to harmonise conditions of access to legal aid, representation by a guardian ad litem, mediation, etc.

Most Member States expressed their support for harmonisation in the outlined areas, with a wide consensus on upholding the best interests of the child (as a cross-cutting principle).

As regards the first area (abolition of exequatur), the position of most Member States was rather negative. Among the problems they signalled were, e.g., contradictory judgments issued in different Member States or judgments contrary to the best interests of the child (criticised, among others, by the Council of Europe). Although some Member States did not take an outright negative position, even these states stressed the need for guarantees (public order reservation, consistent pursuit of the best interests of the child).

As regards harmonisation of enforcement, the Member States were rather sceptical. They were not against improvements in enforcement but harmonisation in this sensitive area, which is also closely linked to substantive law, could prove to be very problematic at the EU level. It would be more advisable to issue recommendations in this area. Some Member States also questioned the legal basis for such harmonisation.

More changes were proposed, e.g., in connection with the transfer of jurisdiction and/or the issue of "punitive" decisions against the abducting parent, which certainly do not help speeding up the child's return. The Member States propose that common standards be introduced on hearing the child because this could contribute to simplifying (and accelerating) cross-border recognition and enforcement. Wider use of mediation in this area was also proposed.

The Member States stressed that the revised instrument should respect the national systems and that harmonisation, rather than being implemented across the board, should be limited to the necessary minimum. Some states also expressed scepticism about regulation of cooperation between central authorities, fearing an increase in unnecessary administrative burden.

In general, revision of Brussels II bis has received broad support. The text of the draft regulation is to be finalised in autumn 2015 and, after the impact assessment is made, the proposal could be put forward in the spring of 2016.

Enforcement of decisions on child maintenance obligations and on obligations other than those of parents towards children

Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement and cooperation in matters relating to maintenance obligations (hereinafter the "*Maintenance Regulation*") entered into effect for Member States on 18 June 2011.

The Regulation is a comprehensive instrument of private international law in matters relating to maintenance obligations. It sets out, *inter alia*, the conditions under which maintenance decisions given in one Member State are recognised in another Member State. A positive step in this connection was the abolition of the exequatur procedure which means that, in practice, maintenance decisions given in proceedings commenced after 18 June 2011 are enforced in another Member State without the need for any special procedure and for the declaration of enforceability. No objection may be lodged against recognition of such

decisions. This means that a Slovak court, when issuing an order on enforcement of a maintenance decision given in proceedings initiated after the entry into force of the Maintenance Regulation, need not examine the conditions for recognition and the counterparty may not raise an objection against the decision. However, the obligee must submit the documents required under Article 20 of the Maintenance Regulation. According to paragraph 2 of that Article, the maintenance decision need not be accompanied by its translation into Slovak. The translation is replaced by a decision extract form (Annex I of Maintenance Regulation), which must contain complete information required for enforcement purposes; a translation is required in this case. The translation of the decision is required only if its enforcement can be challenged by appeal. On application of the obligor, the court may refuse, either wholly or in part, enforcement of the decision if the right to enforce is extinguished by the effect of prescription either under the law of the State of origin or under the law of the State of enforcement. The court may also refuse enforcement, wholly or in part, when the decision is incompatible with another existing decision. The Slovak court may suspend enforcement, wholly or in part, if the obligor has applied for a review of the decision in the State of origin. If enforceability of a decision has been suspended in the State of origin, the court must stay the enforcement. In both cases, the court shall stay enforcement of a decision on a motion from the obligor.

The Maintenance Regulation gives the defendant – either an obligor or an obligee, depending on his or her procedural status, who had not participated in the proceedings that preceded the decision for which the enforcement is sought – the right to apply for a review of the decision. The review shall be performed in the Member State in which the decision was rendered. In the Slovak Republic, this would mean a retrial under the Civil Procedure Code. As regards the review procedure, whatever its form and notwithstanding the procedural rules of the state in which the proceedings are conducted, the time limits applicable to the obligee's initial claim continue to run. This means that if in the initial proceedings the obligee was awarded maintenance with retroactive effect of three years from the date of filing the application, he or she will be entitled to that maintenance also in case of retrial, and the three-year time limit will run from the date of filing the initial application.

The main objective of the Maintenance Regulation is to simplify and improve the transparency of cross-border litigation in maintenance matters; the Regulation is thus useful mainly for the parties, especially at the enforcement stage.

The courts

The most common problems in this area from the perspective of the courts

- obstructions by "abductors", proposals for evidence which is not relevant for return proceedings but concerns parental responsibility arrangements,
- problems with identifying relevant legal provisions on child custody in the country of habitual residence of the child, with assessment of the situation in the country of

habitual residence, and problems related to the need to provide the necessary guarantees after the return of the child to the country of habitual residence,

- the need to strictly respect the time limits set out in the Civil Procedure Code, which makes it impossible to adhere to the time limit set out in the Convention on the Civil Aspects of International Child Abduction,
- returning a case to the first-instance court by decision of the regional court for additional expert evidence on assessment of the child's psychological state,
- lengthening of the proceedings due to sending requests abroad, taking evidence abroad, or translations,
- resistance of society to returning "our" nationals to a foreign country. Mothers often consider a return decision as an act of taking their child away from them and being entrusted to the father.

According to Article 2, second sentence and Article 11 of the Abduction Convention, the court must hear the case as expeditiously as possible and, in order to protect children from the negative effects of wrongful removal or retention, issue a decision within six weeks from the date of being presented with the case. Compliance with this time limit is hampered by the still valid provisions on court procedures under Act No 99/1963 – the Civil Procedure Code (CPC) – in particular its provisions on the procedural rights of the parties, such as the right to judicial proceedings in one's mother tongue (Section 18 CPC) and the related right to ensure translation of documents, which makes it necessary to issue a decision on appointing an interpreter and/or translator, service of the motion into one's own hands (Section 79(4) CPC), observance of the time limit granted to prepare for the hearing (Section 115(1) CPC), motions for participation of an intervener (Section 93 CPC), absence of the concentration principle specifically related to abduction proceedings, the right of the parties to comment on any evidence presented, etc. The courts thus find it extremely problematic to strictly observe the above time limit while respecting all statutory requirements for judicial proceedings under the Civil Procedure Code.

Service of the motion and of the summons

According to Section 45(1) CPC, the courts perform their own service or use the postal service. They may serve documents also through court enforcement officers, municipal authorities, or competent police departments or, in cases governed by separate legal provisions, through the Ministry of Justice of the Slovak Republic. A document is deemed served and the court may continue proceedings under Section 101(2) CPC even if the summoned party fails to enter an appearance despite having been properly summoned, depending on the nature of the document and subject to the fulfilment of conditions set out in Section 46(2) and in Section 47(2) CPC. Internal regulations (Postal Rules) of Slovak Post, the most commonly used service to serve court documents, provide for an up to 18-day deadline for depositing uncollected consignments; after the final date, the consignment is returned to the court. One possibility of circumventing this deadline would be to explicitly request that the consignment be delivered within a shorter 3-day deadline; however, this possibility is used only rarely because of the generally low awareness of its existence. Under

Ministry of Justice Decree No 543/2005 on Administration and Office Rules for District Courts, Regional Courts, the Specialised Court and Military Courts, it is also possible to summon a party to a hearing by telephone but the courts quite often do not have telephone contacts for the parties.

Observation of the time limit to prepare for the hearing

According to Section 115(2) of the Civil Procedure Code, summons must be served sufficiently in advance to enable the parties to properly prepare for the hearing, normally not less than five days before its date. This is where possible obstructions occur most often (causing delays in the proceedings), e.g. by choosing a new counsel to take over legal representation just before a hearing and the ensuing request for adjournment invoking the party's constitutional and legal right to legal representation (Sections 24 and 25 CPC in conjunction with Article 47(2) of the Constitution of the Slovak Republic) which guarantees effective protection of procedural rights and obligations of the parties.

Admission of an intervening party

Under Section 93(3) CPC, intervening parties participate in the proceedings on their own initiative or on the request of one of the parties filed through the court. The court decides on the admissibility of intervening parties only on a motion. If the court does not grant leave to intervene, it must issue a separate resolution on the motion to admit an intervener, which may be challenged by appeal lodged in accordance with Section 209a(1) CPC and served on the parties; it must be lodged within the time limit of 15 days. In case of appeal, the proceedings are extended by the duration of appeal proceedings because the requirement of Section 209(2) CPC, according to which the court may submit a decision to the appellate court only after the proceedings have been concluded, does not apply to this type of decision.

Absence of the concentration principle in applicable procedural rules

Notwithstanding the obligation of the court under Section 114(1) CPC to prepare the hearing in a manner enabling the court to decide at a single hearing, the parties have the right to propose evidence at any time during the proceedings and they also have the right under Section 123 CPC to comment on the evidence proposed and on any evidence that has been taken.

Among the difficulties resulting from the above legal provisions, the biggest problem seems to be the court's obligation set out in Section 176(3) CPC, i.e. to decide the petition within six months of its filing (the obligation to give the decision in a matter with a foreign element within three months of being seized of the case, which was practically unfeasible, was fortunately removed through a CPC amendment effective from 1 January 2013). Service of process abroad especially faces obstacles that are difficult to surmount. Despite European Parliament and Council Regulation (EC) 1393/2007 on the service of judicial and extrajudicial documents in civil and commercial matters in Member States and the time limits prescribed therein we still encounter problems connected with the length of service of

process; service through the Ministry of Justice of the Slovak Republic to countries that are not bound by the Hague Convention is often extremely lengthy and ineffective. However, the attempt at service of process is a precondition for the possibility of appointing a guardian ad litem for the child.

The situation is simpler if the child is in the Slovak Republic. It gets more complicated – specifically in proceedings before my court – in case of children residing in border areas, or if one of the parents resides in a foreign country. There has been a recent increase in the number of proceedings on alternating custody where one of the parents lives abroad. It is very difficult for the court to examine the situation of that parent even if he or she lives near the border of the Slovak Republic because the place of residence is outside the jurisdiction of the Slovak authorities for social and legal protection and guardianship.

The six-week time limit for court decisions in minor child return cases

In return proceedings, speedy procedure is essential. In line with Brussels II bis, the Hague Convention stipulates that a court should issue a decision within six weeks from being seized with the application. In addition, the Regulation provides that the decision-making authorities (the courts) apply the most expeditious procedures available under the national law. The requirement of expeditious proceedings is fully legitimate and has a justification in return proceedings; on the other hand, it may go counter to the best interest of the child as the primary consideration. In its commentary on the best interests of the child, the UN Committee on the Rights of the Child underlines that the child's best interests is a threefold concept: (a) a substantive right – the right of the child to have his or her best interests assessed and taken as a primary consideration; (b) a fundamental, interpretative legal principle – if a legal provision is open to more than one interpretation, the interpretation which most effectively serves the child's best interests should be chosen; and (c) a rule of procedure – whenever a decision is to be made that will affect a specific child, an identified group of children or children in general, the decision-making process must include the assessment of the possible impact (positive or negative) of the decision on the child or children concerned.

The best interest of the child also includes the need to avoid potential harm caused by the child's return to the country of habitual residence, especially if the child were to return without the mother who, for various objective and/or subjective reasons, cannot accompany the child returning to the country of habitual residence. The European Court of Human Rights took a position on the conflict between the need for expeditious return proceedings and the need to give a careful consideration to the best interests of the child (which takes a certain time, mainly because of the need for expert opinions) in its judgment No 27853/09 of 26.11.2013 on X v. Latvia; the European Court of Human Rights noted that the Hague Convention must be interpreted in accordance with the best interests of the child. In that case, the Court ruled that the Latvian courts failed to meet the procedural requirements of Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms by refusing to consider the allegation of the mother of a minor child that the child would face the risk of serious harm if returned to Australia. It stressed that the national courts have a duty to

properly assess the overall situation of the family, including allegations that the child would be exposed to the risk of serious harm if returned, and to adequately justify the results of such assessment. In this context, the European Court of Human Rights criticised Latvia for the dismissal by the Riga Regional Court of a report drawn up by a psychologist and submitted to the court by the child's mother, according to which an abrupt separation of the child from its mother could cause the child psychological trauma. According to the European Court of Human Rights, it was unacceptable that the Riga Regional Court dismissed this evidence as inadmissible in the child return proceedings. The European Court of Human Rights emphasised that the need to comply with the short time limits laid down in the Hague Convention does not exonerate the Latvian courts from the duty to undertake effective examination of allegations of psychological harm of the child in connection with his or her return to the country of habitual residence, either on the basis of the submitted psychological report or by ordering new expert evidence.

It is clear from the above judgment of the European Court of Human Rights that the relatively short time-limit for a decision in return proceedings, however legitimate, cannot be perceived as a self-serving provision tying the hands of a court to such a degree that it would be unable to take all evidence needed to ascertain the best interest of the child in a particular case, which is the main purpose of the proceedings, while duly respecting the right of the parent whose custody rights have been infringed. During the entire return proceedings and the subsequent enforcement of return decisions, effective assistance can be and, in my opinion, is provided by the Centre for the International Legal Protection of Children and Youth, as the Central Authority within the meaning of Articles 6 and 7 of the Hague Convention and Article X of Brussels II bis. For inspiration, I would like to point to the Czech legislation on enforcement of return decisions, namely Act No 292/2013 on Special Judicial Proceedings (hereinafter the "*SJP*") since, in my view, the Slovak legal provisions on enforcement do not adequately ensure enforcement of child return decisions and fail to reflect the specificities of this type of proceeding. According to Section 502 SJP, the court orders enforcement of a decision by imposing a fine on the person who fails to voluntarily abide by the court's decision, or by a court-approved child custody and/or access agreement, or by a return decision. Enforcement of a decision by imposing a fine may be ordered repeatedly; the amount of individual fines must not exceed CZK 50,000. The proceeds of collected fines go to the state and the court keeps a record of their amount. According to Section 507 SJP, the fines can be ultimately used to meet the essential needs of the child under Section 507 SJP, which provides that "on a motion of the legal guardian or carer of a minor child, the court may decide to draw on such funds to cover incurred and documented costs which serve to meet essential needs of the child, up to the full amount of collected fines under the condition that the fines had been recorded in accordance with Section 502 SJP. If the imposition of fines according to Section 502 SJP does not lead to the fulfilment of the obligation arising from the decision on the return of the child to his or her country of habitual residence the court may, in accordance with Section 503 (1)(a)(b) SJP, order the party who failed to voluntarily abide by the child's return decision to meet with a mediator for three hours, or may fix an "adjustment regime plan" (hereinafter the "*plan*"), if this is in the interests of the child. The plan will be

drawn up so as to enable gradual contacts between the child and the entitled person; before adopting the plan, the court normally requests an expert opinion on appropriateness, content, scope and duration of the plan. If implementation of the plan is not directly overseen by the court, the court appoints a suitable person or facility to oversee its implementation. If the court finds that a party has failed to adhere to the plan to such a degree that this may have an impact on the purpose of the "adjustment regime", or reaches a conclusion that the "adjustment regime" does not serve its purpose, it annuls the plan and proceeds to enforcement under Section 504 SJP (enforcement of the decision by removal of the child). However, enforcement of the decision by taking the child away from his or her parent provided for in the Czech legislation is the measure of last resort that the court will take only after the exhaustion of remedies under Section 502 SJP (imposition of fines) and Section 503 SJP (meeting with a mediator, "adjustment regime"). This arrangement is aimed, in my view, at eliminating potential psychological harm that the child might suffer as a result of enforcement in the form of his or her removal from care, by offering a possibility of using more moderate means prior to such enforcement. The "adjustment regime" mechanism brings the Czech legal system on enforcement of child custody decisions, including decisions given in return proceedings, closer to the French legal system. I do not have detailed knowledge of the latter system, but information concerning this issue in the light of problem areas covered by the project of Support provided by the Centre for the International Legal Protection of Children and Youth indicates that France enforced a decision issued in return proceedings by making the children visit the country to which they were to be returned so as to enable them to get familiar with the environment. This suggests that French legal provisions on enforcement of decisions given in return proceedings also prefer more moderate means of enforcement in order to prevent psychological harm to the child who is to be returned to the country of habitual residence. Legislative provisions on an "adjustment regime" (either in Czech Act No 292/2013 on Special Judicial Procedures or in similar treatment prescribed in the above French case of enforcement of a child custody decision, including decisions issued in return proceedings) create, *inter alia*, broader opportunities for cooperation between the court ordering enforcement and the authority for the international legal protection of children and youth in which, for instance, the task to oversee the implementation of the "adjustment regime" plan could be entrusted to the Centre for the International Legal Protection of Children and Youth.

Regarding the transfer of jurisdiction under Article 15 of Brussels II bis and its rule that the court first seized may in exceptional cases transfer the jurisdiction to the court of another Member State, (a) with which the child has a particular connection, (b) is better placed to hear the case or a specific part thereof, and (c) where this is in the best interest of the child, I am of the opinion that a judge who intends to transfer such a case because he or she believes that all three conditions have been met, should enter into communication (e.g. by email) with the court to which the jurisdiction is to be transferred to ascertain whether the conditions for the transfer have really been fulfilled. The relevant court of another Member State may be identified with the help of the "European Judicial Atlas in Civil Matters" that lists relevant courts in EU Member States and includes their contact information. Judges may

be effectively assisted in identifying the relevant court in another EU Member State also by central authorities designated under the Regulation, including the Centre for the International Legal Protection of Children and Youth, which may also help overcome the language barrier on the part of some judges. This procedure is described in the "Practical Guide for the Application of the New Brussels II Regulation" (Regulation (EC) No 2201/2003 of 27 11 2003 on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000). I support this approach because it helps prevent various stressful situations resulting from short deadlines for assuming jurisdiction (as was the case of an English court which set out a two-day time-limit).

Transfer of jurisdiction pursuant to Article 15 of Brussels II bis

A fundamental problem is the time-limit under Article 15(4) and identification of the court which is to be seized or to decide on the assumption of jurisdiction. I am referring in this connection to the wording of Section 177(1) CPC, first sentence, applicable to the present case; it provides that if the competent court is not known or if it cannot act on time, the case will be heard by the court having jurisdiction over the place of stay of the child because Section 88(1)(c) CPC on exclusive jurisdiction in childcare matters provides that the place of residence of a minor child is determined by parental agreement, on the basis of a court decision or of other decisive facts. If decisive facts with relevance for the determination of the court with territorial jurisdiction emerge during the proceedings, that court assumes the jurisdiction (by issuing a resolution on assuming jurisdiction) pursuant to Section 177(1) CPC, second sentence, and will be transferred the case.

The role of the central authority in return proceedings

The central authority should cooperate with the Slovak courts by, in particular, facilitating access to documents and evidence from the country of origin or habitual residence of the child that are necessary for the decision-making of national courts, such as assessment of the situation at the place of the child's original residence or the child's ties and social background in the country of habitual residence, verifying whether any criminal proceedings are conducted against one of the child's parents with a view to identifying any serious threat of physical or mental injury or intolerable situation after the child's return, or establishing the actual stage of the court proceedings pending in the countries concerned, if any, in order to take the necessary steps or enquiries that could help speed up the decision on merits.

The substance of cooperation is defined by the role of the central authority. As regards the form of cooperation, swift and effective decision-making is facilitated by direct communication, ideally by telephone or email. However, informal direct contacts can be maintained only on the condition of previous personal acquaintance with relevant staff members of the CIPC in order to prevent the risk of misuse of the parties' personal data or facts of personal character by unauthorised persons. The security in this area could be enhanced by using advanced electronic signature, or by posting a regularly updated list with the names, competencies and telephone and email contacts of staff members of the CIPC on

its website, or by making these contacts directly available to the courts, for instance through their inclusion in court registry logbooks ("Spr logbooks"); this would make it possible to verify their identity (a concrete case from practice: a court officer responded to an email request sent by a CIPC employee only after repeated reminders and considerable lapse of time precisely because she had doubts about the authenticity of a request sent only by email and was not able to verify through publicly available channels whether the sender of the email communication was really an employee of the CIPC).

Content of cooperation between the central authority and the competent court

- assessment of the situation in the country from which the child was removed with a view to clarifying the country of habitual residence of the child
- material and social situation of the family
- personal situation of the child and the parents
- language skills of the child
- educational outcomes of the child and reports from educational institutions
- family and social bonds of the child
- any interactions with law enforcement agencies of the child's state of origin since the abducting parent often complains of physical or psychological abuse by the other parent but is unable to support his or her claims by relevant documents or evidence
- health condition, if relevant.

Intervening parties and their legal interest in the proceedings on the return to the country of habitual residence

Besides the claimant and the defendant, persons having legal interest in the outcome of the proceedings may join the proceedings as interveners, except in divorce proceedings or determination whether or not the marriage exists (Section 93(1) CPC).

Besides the claimant and the defendant, proceedings may be joined by legal persons whose core activity is the protection of rights under separate regulation (Section 93(2) CPC).

Interveners enter the proceedings either on their own motion or upon the request of one of the parties filed through the court. The court decides on admissibility of a leave to intervene only if there is a motion (Section 93(3) CPC).

The intervener has the same rights and obligations in the proceedings as the main party. However, the intervener acts only on his or her own behalf. If the intervener's actions are in conflict with those of the party he or she supports in the proceedings, the court examines them in the light of all circumstances (Section 93(4) CPC).

The above provision of Section 93(3) CPC (i.e. *"The intervener joins the proceedings either on his own motion or on the request of one of the parties filed through the court. The court decides on the admissibility of the leave to intervene only on a motion.")* could suggest that a third person becomes the intervener from the moment the court is served the notice to intervene on the side of one of the main parties; however, it is not possible to intervene in

every type of proceeding. According to the reasoning of the Supreme Court in Resolution Ref. No 2 Cdo 410/2013 of 31 March 2014 on the purpose of intervention, i.e. helping a party to win the case, Section 93(3) CPC should be interpreted as meaning that intervention is possible only in the proceedings where this is justified by its purpose and objective. As a matter of principle, this can only happen in adversarial proceedings.

Intervention (Section 93 CPC) is a legal concept which belongs exclusively to adversarial proceedings where there is a claimant and a defendant. The law explicitly rules out intervention in divorce proceedings or in the determination whether or not a marriage exists (Section 93(1) CPC). No intervention is possible in non-adversarial proceedings, the parties to which include persons whose rights and obligations are to be determined.

It follows from the above that intervention in child custody proceedings **does not give rise** to any effects.

However, because of concern for procedural purity and because of the ambiguous nature of return proceedings as a type of parental responsibility proceeding, the courts do not automatically dismiss the notice of leave to intervene.

The opinion that return proceedings cannot be understood as proceedings on the exercise of parental responsibility stems from the fact that the aim of return proceedings is not to decide which parent will be awarded custody and/or parental responsibility (child custody, access rights, etc.) as this is decided in separate legal proceedings: in return proceedings, the court applies relevant legal provisions only to decide on a return application on the basis of the determination of the state of habitual residence of the child and whether the child has been removed wrongfully. The aim of the proceedings is to restore the status quo before the removal of the child, i.e. of the initial situation, by ordering the earliest possible return of the child to his or her country of habitual residence. Only after a decision has been made in the above proceedings, can the court of the child's habitual residence decide on the custody of the minor child, i.e. award child custody to one of the parents and decide on access rights of the other parent.

In the light of the above provisions of the Civil Procedure Code, and in line with the views presented in professional legal literature (see Krajčo Jaroslav et al., Civil Procedure – Commentary, Volume I, p. 380, Eurounion, 2010), requirements for participation of interveners in the proceedings are: (a) request of a party or motion of the intervener; (b) the intervener's statement as to which party he or she wants to support; (c) proof of the intervener's legal interest in the outcome of the proceedings; (d) a court decision on admissibility of the intervener (in case a party objects to the intervener's admissibility); (e) consent of the intervener whose intervention has been requested by a party; (f) consent of the (main) party which the intervener wants to support if the motion to intervene is filed by the intervener.

An intervener may join the proceedings either on his or her own motion or on a request from a party. If a party files a request demanding the participation of an intervening party in the proceedings the court notifies the prospective intervener of this fact, requesting his or her opinion and notice of readiness to join the proceedings. If the prospective intervener formally expresses readiness to join the proceedings, he or she becomes an intervening party from the moment his or her written notice has been served to the court, or from the moment of making an oral statement on the record; no consent of the court is required. If the person designated by the party does not express the will to join the proceedings in the capacity of intervener, no intervention will take place; nobody can be forced to intervene. The court does not examine admissibility of intervention unless it is challenged by one of the parties. Even if intervention is initiated by the intervener itself, the parties have the right to comment on the act whereby he or she entered the proceedings and may challenge admissibility of intervention.

The statutory requirement for admissibility of intervention under Section 93(1) CPC is the legal interest of the intervener in a successful outcome of the proceedings for the supported party. In the proceedings, the intervener assists and supports one of the main parties. The intervener provides assistance to the claimant or to the defendant promoting the interests of the chosen party while, at the same time, seeking to protect his or her own rights under substantive law provisions of generally binding regulations. The intervener strives to contribute to a successful outcome of the proceedings for the supported party because the loss of litigation by that party would have a negative impact also on the intervener's legal situation.

In both cases covered by Section 93(1) CPC, the essential requirement for granting the leave to intervene is the consent of the party which the intervener wants to support (see the above list of intervention conditions, point (f)). The consent of the party which the intervener wants to support is required because of the very nature and purpose of intervention. In no way would it be possible to infer from Section 93 CPC that an intervener can join the proceedings even if the party he or she wants to "support" does not agree with the intervention; the party does not even have to justify the refusal of intervention. By definition, a party cannot be supported in court by someone whose participation in the proceedings the party does not want. The intention to support a party in the proceedings in the procedural position of intervener does not automatically mean that the party in question welcomes such procedural assistance, considers it appropriate, and must accept it under any circumstances. This fully applies also to intervention under Section 93(2) CPC. The purpose of procedural assistance in adversarial proceedings, which the intervener wants to provide to one of the (main) parties, can be met only if that party accepts the intervention. Although a person becomes an intervener from the moment the court receives his or her procedural motion expressing his or her interest in entering the proceedings in the procedural position of intervener, the party concerned has the procedural right not to accept the intervention. It is necessary to bear in mind that since interveners have identical procedural rights and obligations as the main parties, they could – in the procedural sense (even if only to a certain extent) – interfere with and influence the proceedings. This is the reason the party has the right to refuse intervention

by a person intending to intervene on his or her side. It is clear that the nature and purpose of civil adversarial proceedings does not allow participation in the proceedings of an intervener imposed on the party.

In the light of the above, the law provides that the court informs the parties of a prospective intervener and invites their comments on the intervention. The parties may give a negative opinion on the intervener's participation in the proceedings. The procedural standing of an intervener is acquired even without a court decision – merely by filing a motion for leave to intervene with the court. The court decides on admissibility of intervention only if intervention is challenged by a party. The court must always adequately respond to every motion whereby a party challenges any aspect of the procedure (including admissibility). This means that the court must decide on the motion by a resolution, which may not be contested on any of the exclusion grounds under Section 202 CPC. This resolution cannot be considered as a resolution on the conduct of the proceedings under Section 202(3)(a) CPC which is not appealable because the latter resolutions are without prejudice to the decision on the substance of the case and cannot cause a more serious harm to the rights of the parties; they are usually given in respect to the issues which, in order to facilitate effective conduct of the proceedings, must be urgently decided without the risk that the denial of the possibility of appeal could prejudice the rights of the parties, including the rights of the intervener who has proven his or her legal interest in the outcome of the litigation. These resolutions are not binding on the court, which may modify them or issue a new resolution related to the conduct of the proceedings without having to expressly repeal the previous resolution. Resolutions related to the conduct of the proceedings include, for instance, resolutions on remission of fines for the breach of peace (Section 53(3) CPC), resolutions on extension of time limits (Section 55 CPC), resolutions on the joinder of cases or splitting off a claim for separate proceedings (Section 112 CPC), resolutions on appointment of experts (Section 127(1) CPC), resolutions on adjournment of the hearing, etc. A resolution on objections to the wording of the record pursuant to Section 40(3) is a resolution related to the conduct of the proceedings and, as such, is not appealable (Section 202(3)(a) CPC).

It follows from the above explanation that if a motion is filed for leave to intervene in abduction proceedings with the aim of causing obstructions and delays, this aim can presently be easily achieved because the current legislation requires the court to take procedural steps on that motion. This could be addressed by **unequivocally denying admissibility of intervention in the proceedings on international abductions,** in particular proceedings on the return to the country of habitual residence where the existence of a legal interest of third parties other than the parents of a minor child in the outcome of such proceedings is questionable (although it cannot be completely ruled out, for instance, in the case of grandparents).

Enforceability of provisional measures by the Police Force of the Slovak Republic and re-abductions of children during return proceedings

If there is an urgent need to place a child in the custody of the other parent, a provisional measure to this effect is issued under Section 76(1)(b) CPC. The court issues such

provisional measures within 7 days from the date of service of a motion meeting all statutory requirements; measures are enforceable from the date of their issuance (Section 75(5) CPC). To ensure smooth enforcement of such decisions, possibly with police assistance, particularly in abduction proceedings requiring flexible and expeditious actions, it would be advisable **to ask the courts to attach the clause on immediate enforceability to their decisions already when sending them to the parties** (Section 62a in conjunction with Section 63(4) CPC and Decree No 543/2005 on administration and office rules for district courts, regional courts, the specialised court and military courts, as amended,) **or to amend to this effect the relevant procedural rule**. The person – entitled person in case of a provisional measure – possessing such manifestly enforceable decision may request **police assistance** only pursuant to Section 72 of Police Force Act No 171/1993, i.e. if this is connected with the duty of the police **to assist in the protection of fundamental rights and freedoms**, especially protection of life, health, personal freedom and safety of persons, and protection of property (Section 2(1)(a) of the Police Force Act); in the case under consideration, this means that the police force could exercise its authority if its assistance were requested in connection with a **call for voluntary compliance with a decision**, which the entitled parent personally delivers to the obliged parent, usually at the latter's place of residence or the place where the latter is staying with the child. The police are not authorised to automatically intervene or remove the child from the parent with whom the child is not to be.

The provisional measure of handing the child over to the other parent is not executed immediately after it has become enforceable since enforcement must follow the statutory procedure. The provisional measure is enforced only if the obliged person does not voluntarily fulfil the obligation imposed by the provisional measure. Without the commencement of the proceedings on enforcing a decision through lawful procedures, the state cannot enforce a provisional measure through coercive means or protection under criminal law (e.g. prosecuting the obliged person for obstructing execution of an official decision).

This means that in case of non-execution of an enforceable decision, the entitled parent must file a **separate motion requesting enforcement** under Section 272 et seq. CPC.

It is only within the proceedings on such motion (as the last resort measure) that the child can be forcibly handed over to the other parent (in the presence of a social worker, court enforcement officer, and possibly the police). Because this is an exceptionally traumatic experience for the child, the courts resort to this option only in extreme situations. They try to resolve conflicts between parents primarily by mediation, psychological interviews or interventions by social agencies because these conflicts are quite often more of a "human" than a legal nature.

Because of the varied character of obligations and/or rights being enforced, the law does not set out specific and exclusive enforcement methods for child custody decisions; it only provides for certain legal instruments to facilitate voluntary compliance with or enforcement of decisions, such as a formal written notice, notice of hearing, or ordering a hearing (Section 272(3) CPC), levying fines (Section 273(1) CPC), notice of benefit

suspension (Section 273(2) CPC) and, as an extreme measure, removal of the child (Section 273(4) et seq. CPC) as a method of directly enforcing a child custody decision. This means that there is no exhaustive list of enforcement methods and tools and no definition of other means the court may use to achieve the actual enforcement of child custody decisions. In fact, concrete procedures that the court will use to enforce custody decisions will be always geared to the particular circumstances of the case. It is also necessary to take account of the fact that after the child has reached a certain age the implementation of a child custody decision will almost invariably **depend not only on the will of the parents but also on the will of the minor child.** In such cases the court only provides for or ensures appropriate conditions for the implementation of its decision, but it does not always have the power to achieve its actual execution (m. m. IV. ÚS 452/2013).

The actual enforcement of a decision takes place in several stages. First, the court issues a notice requesting voluntary compliance with the decision by the obliged parent. The notice also includes advice on the consequences – including those under criminal law – of the failure to voluntarily comply with the enforcement notice. When enforcing a provisional measure, it is advisable to use the legal possibility of serving the enforcement notice on the obliged parent just before enforcement, i.e. the obliged parent need not be informed of the enforcement with a certain lead time, especially if there is reason to believe that enforcement could be obstructed. In the event of non-compliance with the enforcement notice, the court may impose on the obliged parent a fine of EUR 200 (also repeatedly) and ask the competent authority to halt the payment of parental allowance, child allowance or additional child benefit. If the obliged parent fails to voluntarily comply with the court decision in spite of all of the above, the court is authorised to proceed with the physical removal of the child from the obliged parent and to hand the child over to the entitled parent with the assistance of state authorities (the police). The court has also the right to open and enter the premises where the child is presumed to be and take the child away even without the consent of the persons living in those premises. Much **broader powers** are granted in these cases to the assisting **police officers** under Section 73 of the Police Force Act; the Act stipulates that police units provide protection to the agents performing enforcement of court or other public authority decisions if these agents are unable, because of a threat to their life or health, to execute a decision, subject to the written request of the competent authority for their protection. Police assistance is provided where a previous enforcement attempt was frustrated or where the life or health of the person performing enforcement may be reasonably expected to be at risk considering the behaviour or the character of the obliged person. But the law does not address the issue of court intervention if the child puts up physical resistance to being removed from his or her parent. No provisions of the Act authorise the persons performing enforcement to use violence against the child and/or overcome the child's resistance by force. The courts thus cannot be expected to remove a child from the obliged parent by force.

According to Section 489(1) of the Code of Criminal Procedure (the "CCP" hereinafter), the Ministry of Justice may request the extradition of the accused from abroad on a request from the court which issued the arrest warrant pursuant to Section 490.

- *This provision sets out the position of the Ministry of Justice in the process of extraditing a person from abroad. The only Slovak authority that may request extradition from abroad is the Ministry of Justice. However, the extradition request can be made only on the basis of an arrest warrant issued by a court pursuant to Section 490. The Ministry of Justice cannot instruct the court to issue the arrest warrant because the courts have exclusive jurisdiction to examine the fulfilment of the requirements for issuing the arrest warrant. The extradition request may be addressed only to the particular country where the person is located. The essential precondition for making the request is therefore the knowledge that the person to be extradited is in a particular state and/or information that he or she has been detained in that state, for instance on a request from Slovak authorities for his or her provisional detention (Section 493(1). An arrest warrant issued by a court does not per se constitute a sufficient basis for making the extradition request if the location of the requested person is not known.*

Section 490(1) CCP provides that if the accused is abroad and his or her extradition is required, the presiding judge of the competent court issues an arrest warrant ("international arrest warrant"). In the pre-trial, the judge for preparatory proceedings issues the international arrest warrant upon a motion by the prosecutor. The international arrest warrant has the same effects in the Slovak Republic as the warrant of arrest.

- *The arrest warrant may be issued if all positive statutory requirements have been cumulatively met and if no negative statutory requirements under Section 492 impede extradition. Positive requirements for issuing an arrest warrant under this provision are:*
  - the accused is abroad and
  - there is a request for his or her extradition or surrender.

  The accused must stay abroad for a longer time and must intend to continue staying abroad. Vacation stays or business trips abroad do not constitute sufficient grounds for issuing an international arrest warrant. The law does not specify when the extradition of the accused is to be requested. Some guidance is provided in paragraph 2. The court issuing the arrest warrant must bear in mind that this is an exceptional measure which should be used only as a last resort if other measures do not lead to the desired result. The last sentence of paragraph 1 explains the effects of an arrest warrant in the Slovak Republic. This legislative provision is based on Supreme Court judgment R 59/2002. The arrest warrant represents an "extension" of the warrant of arrest issued pursuant to Section 73. If no warrant of arrest has been issued and there is only an international arrest warrant the international arrest warrant has the same effects on the territory of the Slovak Republic as the national arrest warrant, especially in relation to paragraphs 3 and 4 (i.e. for the purpose of arresting or tracking down the accused).

According to Section 490(2) of the Code of Criminal Procedure, the court issues an international arrest warrant in particular if:

a) it is not possible to secure the presence of the accused for the purposes of conducting a criminal prosecution in another manner; or
b) the convicted person stays abroad and in spite of having been served the prison committal warrant does not abide by the warrant, or if by staying abroad he or she avoids enforcement of the final custodial sentence or its remainder.

This provision provides examples of cases where arrest warrants meet the positive requirements set out in paragraph 1. It has been amended because the practical application of the previous provision revealed doubts as to when extradition is appropriate or necessary. According to the current provision, extradition should not be requested particularly in those cases where it cannot be presumed that the reason for the accused's or convicted person's stay is to avoid prosecution or enforcement of a custodial sentence. The judge must examine all these aspects in the light of circumstances of the case, in particular the circumstances of the person's departure from the Slovak Republic, the purpose of his or her stay abroad, response to the summons served abroad, and so on.

Ensuring the presence of the accused for the purposes of criminal prosecution [subparagraph (a)] by other means applies, for example, to impossibility or failure to serve the indictment or the summons on the accused abroad, or impossibility or failure to conduct the interrogation of the accused abroad through international legal assistance. These other means should be used as alternatives to issuing arrest warrants, especially for minor offences, or in situations where the proceedings could be conducted in the absence of the accused (Section 252).

Subparagraph (b) responds to experience from practice that shows many sentenced persons are actually ready to return to Slovakia to serve their sentence on the condition that they are aware of the existence of a warrant of committal to prison issued against them. If the whereabouts of the sentenced person abroad are known, the court should first make an attempt at serving the committal warrant and only then issue the arrest warrant for the purposes of executing a custodial sentence. Only if this measure is ineffective or if the sentenced person abroad is moving from one location to another or is hiding is the issuance of the arrest warrant justified.

The above provisions of the Code of Criminal Procedure clearly indicate that international arrest warrants can be issued only in criminal proceedings. The court issues an international arrest warrant if two positive statutory requirements are cumulatively met: 1) the accused is abroad; and 2) his or her extradition is required. The extradition request is ultimately issued by the Ministry of Justice on a request from the court that delivered the international arrest warrant. In my opinion, in the above-mentioned case it is not possible to issue an international arrest warrant against the offender (in spite of his attempt at committing a criminal offence under Section 210 of the Criminal Code) who is in the Slovak Republic and whose location is known to the competent Slovak authorities. Other instruments of civil and criminal law should be used to prevent the abduction of the child in that case.

Criminal law aspects of so-called parental abduction in Slovakia

Section 210(1) of the Criminal Code (hereinafter the "*CC*") stipulates that **any person who, as a parent or a relative in the first degree, takes a child** or a person suffering from a mental disorder or a person of unsound mind **away from the care of a person who has the obligation of their care under the law or an official decision** shall be liable to a term of imprisonment of between six months and three years.

If there is a provisional measure granting custody of the child to one of his or her parents, the above act would clearly be classified as abduction. In such case (provided that a criminal complaint has been filed), it is appropriate and necessary to seek assistance of law enforcement agencies that have better operational capabilities for taking action against the abductor than a civil court.

This particular criminal offence undoubtedly applies also to the breach of custody rights of the entitled person towards children under Section 127(1) CC. The duty of care under this provision of Section 210 is exercised by parents, by persons other than parents or relatives in the first degree (e.g. adoptive parents, guardians, foster parents, persons to whose care the child was entrusted by court decision). The notion of care is to be understood not only as routine assurance of material security but also as including all related actions necessary to protect the interests of the child.

The concept of "taking away from the care" thus denotes any action that interferes with the continued care for the abducted child, e.g. removal or retention of the child without legal authority. In my view, it is not relevant whether the perpetrator intends to remove the child permanently or only for a short time. From the criminal liability perspective it is equally irrelevant whether the child went willingly with his or her abductor or not. It also does not matter what means the abductor used (violence, deceit, persuasion, bribery, etc.). Abduction will always be considered an intentional criminal offence accomplished at the moment of abducting the child. Only parents or relatives in the first degree can be considered as perpetrators of this criminal offence. This is why it would be helpful to define the elements of a new criminal offence extending criminal liability also to other persons.

In the Slovak legislative context, parental abduction is not automatically considered a criminal offence. **R53/1980** offers this explanation: *Pursuant to Section 210(1) CC, parental abduction is committed by the parent who – although not divested of parental responsibility or restricted in his or her parental rights – removes the child from the other parent who has been awarded custody of the child by a court. However, there is no abduction if a parent removes the child from the other parent, even if by force or deceit, in a situation where the court has not yet finally decided which of the parents will be awarded custody of the child.*

Enforcement procedure in practice

Enforcement of return decisions is governed by Section 273a CPC, namely by its provisions applicable to child custody decisions. If the court's notice on execution of a judgment brings no effect, the court – in cooperation with the state authorities – makes arrangements for removing the child from the person with whom the child is not to be and ensures that the child is handed over to the person in whose custody the child is to be according to the court's judgment. This is a mandatory removal of the child without imposition of a fine. Court notices concerning execution of judgments addressed to parents, or cooperation with authorities for social and legal protection of children and municipal bodies aimed at ensuring voluntary compliance, are not clearly provided for in other legal provisions. There is still a gap in the involvement of other services that would help minimise the trauma to the child caused by enforcement.

Enforceability of and compliance with provisional measures issued during the proceedings (concerning, e.g., a travel ban or access rights of the parent/applicant)

Non-compliance with an effective and enforceable court decision constitutes the criminal offence of obstructing execution of an official decision. The obliged parent who does not comply with a final court decision runs the risk of prosecution. This fact, in combination with the subsequent forced execution of the decision, ensures sufficient legal certainty for the entitled party.

The court seized with a return application requests the competent labour office to assess the social situation of the child at the child's current place of residence, particularly to verify the correct address and safety of the child. What does the court need included in the report?

- assessment of the local situation in the country at the place of residence,
- material and social situation of the family,
- personal situation of the child and the parents,
- language skills of the child,
- educational outcomes of the child and reports from educational institutions,
- family and social ties of the child,
- health condition, if relevant,
- the reasons for leaving the country of origin,
- any signs of abuse or crime committed against the child.

Adoptability and its practical implications for international adoptions

The court decides on adoptability of a minor child subject to fulfilment of the legal requirements for adoption pursuant to Section 52(6), Section 55(2) and Sections 98-104 of Family Act No 36/2005, in proceedings specified in Section 180a CPC, normally within three months of being seized with the application.

In practice, it is extremely complicated to preclude potential problems after a child has been declared adoptable and placed on the list of children that may be put up for intercountry adoption (Section 44(3) of Act No 305/2005 on social and legal protection of children and social guardianship). These include, e.g., the filing of a motion by a Slovak national requesting that the child be placed in a different form of alternating care, or involvement of the child's parent made possible under Section 44(5) of the Act which provides that the placement of a child on the list of adoptable children is without prejudice to the obligation of the relevant authority for social and legal protection of children to apply Sections 42 and 43 of the Act related to the general obligation to secure substitute care. In my view, this creates a possibility of two parallel proceedings – i.e. proceedings on placing the child in substitute care of a Slovak national and proceedings on intercountry adoption. These legislative provisions are clearly meant to safeguard the interests of the child by preventing a situation where the child cannot be placed in substitute care in Slovakia (which always precedes institutional care) if there is no interest in his or her intercountry adoption. In the relevant judicial proceedings or in the subsequent potentially conflicting proceedings that could be instituted with regard to adoption by foreign nationals, placement in substitute care, placement in foster care, or return of the child to the care of a parent, the court examines the circumstances and the best interest of the child, taking account of the situation of the applicants/claimants and the most favourable prospective conditions for all-round development of the child; the court, however, must also consider the emotional ties of the child necessary for his or her healthy psychological development. These proceedings could also require expert evidence, focusing specifically on the possible impact of proposed individual measures and/or legal provisions on the psychological state of the child and the child's further development.

Opinion on Section 12 of Civil Non-Adversarial Procedure Code

Section 12 of the Civil Non-Adversarial Procedure Code (CNAPC) mirrors the current provision on intervening parties in the current wording of Section 93(2) CPC, according to which a legal entity whose core activity is the protection of rights under a special regulation, i.e. Act No 305/2005 on social and legal protection and social guardianship of children, may take part in the proceedings in addition to the claimant and the defendant. There is, however, a difference consisting in the fact that while under the current legislative provisions the intervening party joins the proceedings of its own motion or at the request of one of the parties, the approved wording of Section 12 CNAPC provides that **the court itself has the competence** to request that the Centre for the International Protection of Children (CIPC) join the proceedings as an intervening party (the request of a party or a motion by the CIPC are not excluded but are not required). According to the explanatory memorandum, this provision reflects the need for increased protection by the entities with requisite competence. The logical interpretation of the Act thus excludes participation by the CIPC in the proceedings in areas where the CIPC does not have the competence under Section 74 of Act No 305/2005 on social and legal protection and social guardianship of children. The way in which the courts will actually apply this Act, i.e. whether they will respect the scope of competence of the CIPC under the above legal provision, **will be seen in future judicial practice**. I assume,

however, that nothing will prevent the CIPC from challenging incompetent judicial decisions by lodging **a remedy** against a court decision issued without CIPC's approval and/or in proceedings that fall outside of its area of competence, requesting a reversal because the decision was issued **without adequate ground**s (in the current CPC wording, a decision may be reversed on appeal if it was issued without a motion, is not based on the merits, was made on grounds that ceased to exist or did not exist); this is possible under Section 221(1)(i) CPC which will be transposed to Section 381(1)(d) of the Civil Adversarial Procedure Code; this amendment, however, has no relevance for the present case.

Procedure of amending or issuing decisions under Council Regulation No 4/2009

Regarding application of Articles 56 and 57 of Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations, Article 45(b) stipulates that the entitled party is to be provided assistance and representation by the central authority of the requested Member State either directly or through public or other authorities or persons in: the filing of applications seeking the recovery of maintenance under the Regulation and requesting recognition of a decision or recognition and declaration of enforceability of a decision; enforcement of a decision given or recognised in the requested Member State; issuance of a decision in the requested Member State if there is no decision, including the determination of paternity where necessary; issuance of a decision in the requested Member State if the decision issued in other than the requested Member State cannot be recognised or declared enforceable; modification of a decision given in the requested Member State; modification of a maintenance decision given in other than the requested Member State against the obliged party and recognition of the decision entailing the suspension or restriction of enforcement of an earlier decision issued in the requested Member State; and modification of the decision issued in other than the requested Member State. According to Article 56(4) of the Regulation, save as otherwise provided in the Regulation, applications referred to in paragraphs 1 and 2 shall be determined under the law of the requested Member State and shall be subject to the rules of jurisdiction applicable in that Member State. It follows from the above that it is sufficient to send an application in accordance with Annex VII to the CIPC as the Central Authority; this application is to be considered by the court as a **motion to initiate proceedings** under legal provisions of the EU and Section 41(2) CPC derived therefrom; the court should thus commence the proceedings on custody of a minor child of its own motion pursuant to Section 81 CPC. There is basically no reason for the CIPC to address the Legal Aid Centre because this procedure seems to be rather ineffective, being much longer and also uneconomical since its costs would have to be borne by the state.

Motion for determination of maintenance obligations of an obligor habitually resident in the Slovak Republic towards a minor child habitually resident abroad

If a minor child is habitually resident abroad but the obligor is habitually resident in the Slovak Republic, and the obligee parent files a motion to a Slovak court for determination of maintenance obligations, the Slovak court – after it has resolved the issue of **jurisdiction and applicable law –** commences the proceedings; in these cases, Slovak courts have

jurisdiction under Article 3(a) of Council Regulation (EC) No 4/2009 of 18 December 2008 and the applicable law is the law of the Slovak Republic under Article 4(3) of the Hague Protocol on the Law Applicable to Maintenance Obligations of 23 November 2007.

Interest on arrears in maintenance

Under Act No 125/2013 amending Family Act No 36/2005 effective from 15 June 2013, maintenance obligees have the right to claim interest on arrears in maintenance. Before that date the Slovak legal system did not provide for the principle that is currently set out in Section 76(3), first sentence, of the Act. The need to stipulate this right of the obligee resulted from an unfavourable interpretation of the Family Act by the Supreme Court of the Slovak Republic in its Ruling No 5 Cdo 217/2010 of 26 January 2012; the Supreme Court found that the claim of interest on arrears in maintenance had no support in substantive law because there was no contractual legal relationship between the parties. It argued that since maintenance represents a relationship created under family law it does not constitute an obligation under civil law, i.e. provisions on obligations in the Civil Code. According to that interpretation, until 14 June 2015, the obligee whose maintenance right was expressed in cash (as is basically always the case) had no right to seek the payment of interest on arrears in court. After the above amendment of the Family Act, the obligee is entitled to claim interest on arrears, but **must lodge the claim** (as in the case of non-payment of maintenance) in civil proceedings and the decision of the court in these proceedings then gives rise to the right of the obligee to claim interest on arrears in unpaid maintenance. Moreover, even when the obligor defaults on the payment, according to general provisions of the Civil Code, the **entitlement to interest on arrears arises only after a period of one month from maturity of the obligation**. The deadline within which the obligor must pay his or her debt (maturity) to avoid falling into arrears is the due date for the payment of the debt (Section 563 of the Civil Code). In maintenance cases, this deadline is generally specified in the court decision. Given the fact that the obligor (the parent) will only fall into arrears if he or she fails to fulfil the maintenance obligation within one month from the due date of maintenance payment, it is not possible to determine the amount of arrears in the basic proceedings on the determination of maintenance and to claim the arrears on the basis of the maintenance part of the decision on parental responsibility. This is why the obligee will be able to claim interest on arrears only after the obligor has failed to pay maintenance for a period of more than one month; to this end, the obligee must file an **independent motion** that will not be heard in the proceedings on parental responsibility but in separate civil proceedings. The amount of interest is identical with the so-called default interest under Section 517(2) of the Civil Code and the related Section 3 of Government Regulation No 87/1995 of 18 April 1995 implementing certain provisions of the Civil Code, which sets the amount of default interest in case of late payment of a monetary debt at 5 percentage points above the basic interest rate of the European Central Bank valid on the first day of defaulting on the payment of the monetary debt. The simplest way of claiming default interest through the court is to file a motion seeking issuance of the order to pay. The right to claim interest on arrears is generally time-barred after a three-year limitation period; the limitation period runs separately for each individual maintenance

payment default. If, however, the court awards a concrete amount of interest on arrears for a defined time period, the limitation period for execution of such court decision is ten years.

Because, as it was mentioned above, the present case constitutes a civil law dispute, i.e. a dispute that is not directly related to the care of minor children, **the court cannot proceed pursuant to Section 81 CPC** and commence the proceedings on the award of default interest of its own motion. If the CIPC receives a request for assistance in the recovery of interest in arrears, it is necessary to submit a reasoned motion on the merits, i.e. the CIPC would have to involve the Legal Aid Centre.

Limitation of maintenance claims

No limitation period applies to the right to maintenance (Section 77(1) CPC, first sentence). However, a limitation period applies to the right to repeated maintenance payments and other cash benefit entitlements under the Family Act (Section 77(2) CPC). The limitation period is governed by the Civil Code, namely its Section 110. If the maintenance entitlement was awarded by a final decision – i.e. the amount of maintenance due for the previous period – the period of limitation is ten years from the due date of maintenance payment fixed in the court decision (Section 110(1) of the Civil Code, first sentence). If the obligor is ordered to pay maintenance in instalments, the ten-year limitation period also applies to individual instalments to which the maintenance payment was broken down by decision of the court (Section 110(2)). The limitation period starts running separately on the due date of each instalment. The start of the limitation period is governed by the same regime as instalments in general (Section 103 of the Civil Code, i.e. from the due date). Section 160 CPC provides that in addition to the decision on the amount of instalments, the court may also determine that the default on the payment of one instalment will entail the maturity of the entire due amount; the ten-year limitation period for the entire debt will start running on the due date of the unpaid instalment. In general, repeated maintenance payments are subject to a three-year limitation period. However, they are subject to a ten-year limitation period if they became due before the decision on their award, or written recognition for the obligee, became final. The limitation period for the interest and repeated payments that will become due after the decision has become final will also be three years (Section 110(3) of the Civil Code).

Maintenance set at 30% of the subsistence minimum

All parents, irrespective of their abilities, possibilities or financial circumstances, must fulfil their maintenance obligation in the amount of no less than 30% of the subsistence minimum per each dependent minor child, or per a dependent child under separate provisions. The amount of the subsistence minimum is set pursuant to Section 2(c) of Act No 601/2003 on the subsistence minimum; the actual amount is adjusted on 1 July of every calendar year by a decree of the Ministry of Labour, Social Affairs and Family; in that decree, the previous level of minimum subsistence is multiplied under statutory conditions by the coefficient of per capita net monetary income growth established by the Statistical Office of the Slovak Republic. **In its judgment, a court may set the level of maintenance payments as a fixed amount in accordance with the wording of the Act applicable at the time of the**

judgment (Section 154(1) CPC). However, since the maintenance constitutes a recurrent benefit, the maintenance obligor may be obliged to pay the benefits that will become payable in the future (Section 154(2) CPC). Because the amount of maintenance is modified on 1 July of each year, it is evident that if a maintenance payment was set as a fixed amount, no later than on 1 July following the date of issuance of the judgment an automatic change in the situation would occur as a result of a legal fact, i.e. amendment of the relevant legislation that would make it necessary to change the judgment pursuant to Section 163 CPC, which provides that in case of a change in the situation, the judgment on upbringing and maintenance, i.e. the judgment ordering the payment of benefits payable in the future or the payment in instalments, can be modified on the court's own motion. It is clear that the amendment of the legal provision which was used as the basis for fixing the amount of maintenance represents such substantial change of the situation. To avoid the unnecessary harassment of the parties by requiring them to submit maintenance increase motions as a result of legislative changes introduced on 1 July of each year, or to avoid instituting *ex officio* proceedings – i.e. proceedings of the court's own motion pursuant to Section 81 CPC, since child custody proceedings may be commenced without a motion – it is a common practice to express the amount of monthly maintenance not as a specific cash amount under the law effective at the time of the judgment but by the wording *"30% of the subsistence minimum per dependent minor child or other dependent child under the Act on the subsistence minimum"*. Such determination of maintenance by reference to the exact method applicable under separate legislation is fully enforceable and, as already stated, practically feasible. In order to avoid complications in cases with an international element, an additional legislative amendment is required in order to explicitly exclude maintenance fixed in the above manner from relevant proceedings.

Decision on declaration of enforceability of a foreign judgment

To be effective and enforceable in a Member State other than the state of judgment, the judgment must be first **recognised and/or declared enforceable** in the other Member State. The proceedings for the declaration of enforceability in the Slovak Republic of a judgment issued by another Member State of the European Union are based on the provisions of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, Chapter III.

Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility governs the matters involving the rights of access and return, which do not require a decision on the declaration of enforceability (exequatur); they are enforceable on the basis of a declaration/certificate of enforceability issued in the Member State of origin. The declaration of enforceability is implemented using the procedure prescribed in the national law of the Member State requesting the declaration. Under the Slovak legislation, relevant proceedings are governed by the provision of Section 325b(1) CPC on other activities of the court, the European Enforcement Order, and also include issuance of the certificate of enforceability under Community law. The Civil Procedure Code refers to

detailed legal provisions that are to be introduced to this effect but there is still no comprehensive legislation in this field.

A foreign judgment **recognised** by a Slovak court has **the same legal effect** as a judgment issued by a Slovak court. Foreign judgments on matrimonial matters, matters of determination (confirmation or denial) of paternity, and adoption matters have **the same legal effect** as the judgments of Slovak courts even **without the recognition if the parties are not nationals** of the Slovak Republic and if the judgments are **not contrary** to the Slovak public order.

The court having jurisdiction to hear cases for the recognition of foreign judgments in matrimonial matters **is the Regional Court in Bratislava**; in a matter of determination (confirmation or denial) of paternity or in an adoption matter it is the district court having jurisdiction over **the domicile of the child** or, if there is not a domicile, the court for the child's place of stay; if there is no such court, the court having jurisdiction is the Bratislava I District Court in case of foreign custody or access judgments and it is also the **court having jurisdiction to order enforcement of the judgment** or to issue the execution title if it does not have jurisdiction under point two. The proceedings on the recognition of a foreign judgment are initiated by a **motion** filed by the person identified in the foreign judgment as a **party**; in judgments on matrimonial matters, determination (confirmation or denial) of paternity and adoption matters, the motion can be filed also by a person who proves **legal interest in the matter**. The **parties** to the proceedings are the **claimant and those against whom** a foreign judgment is to be recognised. If the claimant's motion does not specify such other parties, parties to the proceedings also include the parties identified as such in the foreign judgment. If the applicant is **residing or established in a foreign country**, he or she must **appoint a representative** for the acceptance of documents who is residing or established in the territory of the Slovak Republic. If no representative is chosen within the specified time limit, the documents will be stored in court and be deemed to have been served; the applicant must be instructed thereof. If none of the parties **object to the recognition** of a foreign judgment **within 15 days of receipt of the motion for recognition** of a foreign judgment, the court **does not need to order a hearing.** If the **parties declare in writing** that they **agree** with the recognition of a foreign judgment, the court does not effect service of the motion for recognition and does not order a hearing. This written declaration must be accompanied by its officially-certified translation into Slovak. The court is **bound by the findings of fact** on which the foreign authority based its jurisdiction. The courts have no right to review foreign judgments on their merits. The recognition by the court of foreign decisions on matrimonial matters, on determination (confirmation or denial) of paternity, and on adoption **has the form of a judgment**. In all other cases the court decides **by a resolution**. If some of the conditions for the recognition of a foreign decision remain unfulfilled, the court declares that the foreign decision is not recognised. Otherwise, the foreign decision is recognised by court. The **resolution** on recognition (non-recognition) of a foreign decision or a declaration of its enforceability (unenforceability) in the territory of the Slovak Republic issued by the Appellate Court upholding the resolution of a first-instance court is **appealable on points of law**.

Service of process

The court effects the **service of process** to the defendant in accordance with the relevant provisions of the Civil Procedure Code (Section 45(1) CPC), i.e. it serves the document through a process server or by post, the latter being the most commonly used means of service; the document may also be served through a court enforcement officer (very seldom), a municipal body (a method used mainly in smaller municipalities), or the competent police department – the most frequently used method if the defendant avoids the service of court documents, and the most effective method in problematic cases.

Slovak legislation prescribes the procedure for cases where the defendant is abroad and deliberately avoids the service of process. In such case, the court may appoint a guardian to the defendant pursuant to Section 29(2) CPC.

Service of process outside the EU:

The service of process outside the EU is effected in accordance with the provisions of the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters of 15 November 1965.

Service within the EU:

The service of a decision on the declaration of enforceability has important procedural consequences because, according to Article 32 point 5 of Council Regulation (EC) No 4/2009 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations ("the Maintenance Regulation"), an appeal may be lodged against the declaration of enforceability within 30 days of service thereof.

In point 3 of its Preamble, the Maintenance Regulation reflects earlier legislation on the service, namely Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents) and repealing Council Regulation (EC) No 1348/2000.

In contrast to the Maintenance Regulation where the Central Authority for the Slovak Republic under its Article 49(3) is the *Centre for the International Legal Protection of Children* (C 38/5 Official Journal of the European Union: Information relating to Article 71(2) of the Maintenance Regulation), the central body under Article 3 of the Service of Documents Regulation is the Ministry of Justice SR (Official Journal of the European Union: Information relating to Article 23(2) of the Regulation on Service of Documents).

According to Article 3 of the Service of Documents Regulation, the central body is responsible for:
a) supplying information to the transmitting agencies;
b) seeking solutions to any difficulties which may arise during transmission of documents for service;

c) forwarding, in exceptional cases at the request of a transmitting agency, a request for service to the competent receiving agency.

Central bodies play a supporting but nevertheless important role, being responsible for supplying information to the transmitting agencies, seeking solutions to any difficulties that may arise and, in exceptional cases, for forwarding at the request of the transmitting agency, a request for service to the competent receiving agency.

In general, central bodies seem to be working satisfactorily in spite of certain shortcomings.

First, central bodies of some Member States are not properly equipped with the necessary technology (e.g. lack of computer equipment). This may have a negative impact on transmission speed and reliability.

Second, certain transmitting agencies indicated that they expect the central bodies to provide assistance in locating the recipients whose address is not known. The Regulation may not be entirely clear about the extent to which the central bodies must provide assistance in this area. In connection with the issue of identifying the address of the person to be served, there is a need to consider and explain the role of central bodies so as to ensure uniform application and effectiveness of the Regulation.

Finally, it appears that information on central bodies submited by the Member States in the Judicial Atlas (the European Judicial Atlas in Civil Matters is an information portal of the European Commission, nowadays migrated to the European e-Justice portal) does not have a uniform format across the Member States. Information in some cases is more detailed than in others. Article 23(1) in conjunction with Article 3 of the Regulation do not provide clear guidance as to what information the Member States must communicate. It is advisable to simplify the requirements concerning information to be provided in order to make it as useful as possible for users of the system.

Article 7 of Regulation (EC) No 1393/2007 of the European Parliament and of the Council on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (“the Service of Documents Regulation”) and repealing Council Regulation (EC) No 1348/2000 provides that the receiving agency shall itself serve the document or have it served, either in accordance with the law of the Member State addressed or by a particular method requested by the transmitting agency, unless that method is incompatible with the law of that Member State. In this context, the Service of Documents Regulation also regulates the issue of the costs of service. The service of judicial documents coming from a Member State may not entail any payment or reimbursement of taxes or costs for services rendered by the Member State addressed. This does not apply when a particular method of service is used or when the service is effected by a court officer or a competent person under the law of the receiving Member State. According to information on Article 23(2) of the Service of Documents Regulation, published in the Official Journal of the European Union, the costs of service vary from one country to another: for example, Belgium

charges a flat fee of €135.00 per service of a document by the competent process server, Germany reports a service fee of €20.50 per document, and Slovakia charges a fee of €6.64 per document.

Article 8 of the Service of Documents Regulation provides for the right of the addressee to refuse to accept a document if it is not written in one of the official languages of the place where service is to be effected or in a language which the addressee understands. This makes it possible to conclude that any other refusal to accept a document will be ineffective. The application of this Article has also given rise to certain problems.

In Case C-14/07 (*Weiss*), the European Court of Justice examined some practical aspects of the right of refusal. In this case, the addressee refused to accept the document being served because he or she argued that the translation under Article 8 of the Regulation was provided only for the text of the action but not for the attached annexes. The court ruled that the addressee of a document instituting proceedings does not have the right to refuse to accept the document whose untranslated annexes represent documentary evidence that has a purely evidential function and is not essential for understanding the subject matter of the claim and the cause of action. In the same case, the ECJ was asked to give a decision on the contractual arrangement between the addressee and the applicant, under which the addressee expressed his agreement with exchanging correspondence between the parties in the language of the Member State of transmission. The Court ruled that this contractual arrangement does not represent the presumption that the addressee knows that language but is only an indication that the court may or may not consider when verifying whether the addressee understands the language of the Member State of transmission.

Problems have arisen in practice also in connection with the use of standard forms to exercise the right of refusal.

Firstly, the wording of Article 8 does not clearly spell out the need to submit information using the standard form (Annex II to the Regulation) in a case where the document to be served is in the language of the receiving Member State, which means that the addressee cannot reasonably refuse to accept the document (Article 8(1)(b)). In practical terms, attaching the standard form in these cases could lead the addressee to a mistaken belief that he or she has the right to refuse the service.

Secondly, there is a practical question of whether to provide Annex II of the Regulation to the defendant in its entirety, i.e. with the text in all official languages of the European Union, or provide only the text in the language of the receiving Member State. The latter solution could save financial and environmental costs.

Thirdly, a question arises about the legal consequences of the receiving authority's failure to submit information on the right of refusal (i.e. to attach Annex II). It is not clear which legal provisions should be used to adjudicate the effects of such service (i.e. whether the service should be considered effected). This is an unsatisfactory situation from the aspect

of legal certainty of the addressee because different Member States may provide a different degree of protection. A uniform solution may be needed.

Fourthly, there are problems with establishing whether the refusal by the addressee to accept the service of process is justified or not. Article 8 and Annex II of the Regulation provide that the addressee may refuse to accept the document to be served at the time of service (directly with the person serving the document), *or* may return it to the receiving authority. At the same time, it is recommended in Annex II that the form should be returned together with the document to be served (cf. Declaration of the Addressee). It is therefore not quite clear how to legitimately exercise one's right of refusal. In some cases, the addressees did not exercise their right of refusal at the time of service but returned the correctly completed Annex II (with the declaration of refusal), but *without* returning the served document itself. The question arises as to whether this can or cannot be considered a justified refusal. The exact wording of Article 8 would suggest that the refusal would not be justified. It is questionable whether this is a satisfactory explanation: if the simple return of the document is considered as justified refusal, the refusal explicitly expressed using the standard form, moreover without the document itself, should be considered as all the more justified. It may be appropriate to explain this matter in the Regulation.

Finally, the Regulation prescribes the use of the refusal form without specifying how to transmit the form. The refusal may thus take place by transmitting the form to the process server at the time of attempted service or may have the form of a simple letter. A question arises whether it would not be appropriate to lay down certain formal requirements in order to increase the legal certainty in connection with legitimate refusal to accept the document to be served.

I would also like to draw attention to the Commission report on the application of the service of documents from which it follows that the rules of the Member States differ substantially on fundamental questions such as

- under what circumstances the documents are served: for instance, in some Member States judgments are not served when the parties were present or represented in the proceedings while in some Member States the judgment is mandatorily served as the first step in the enforcement proceedings;

- which documents are served on the parties in legal proceedings: while documents introducing proceedings are generally served in all Member States there is wide variation on the service of judgments, convocations for hearings, etc. Judgments, for instance, are served in some Member States, sometimes even as a condition for enforceability of the judgment in the forum State while in other Member States judgments are not generally served but are to be picked up from the court by the parties themselves;

- on whom documents are served: for instance, in some Member States documents are served on the parties themselves while in other Member States documents or certain

types of documents may, or even must be, served on their legal representative in the forum State;

- by whom documents are served: in some Member States, service is generally the responsibility of the parties while in other Member States the court takes care of the service of documents. In several Member States, the responsibilities vary depending on which type of document needs to be served (document introducing proceedings, convocation for hearings, judgment, etc.);

- the legal consequences attached to a service (e.g. starting the running of time limits for instance for appeal, for calculation of interest) or a lack of service (e.g. opening the recourse to special remedies).

Because of these differences, it is not clear today under what circumstances the protection under the Service of Documents Regulation is actually provided. In particular, it is not certain whether foreign defendants will be protected, if necessary, by the rules on the right to refuse to accept the document (Article 8), date of service (Article 9) and the rights of defence in case of absence.

In conclusion, I would like to draw attention to the EU initiatives promoting the so-called electronic service of documents which, in my view, would be highly beneficial, especially in cases of deliberate refusal to accept the document. In most systems using this method of service, persons (usually business entities) register with the courts and may thus be served the documents directly in electronic form. In the present Service of Documents Regulation, no mention is made of electronic delivery. There is a question whether foreign nationals will be able to register in the national system of electronic service and whether the service to these foreigners should be regarded as a cross-border service for the purposes of application of the Service of Documents Regulation. The answer to this question has important implications, e.g. whether it will be possible to exercise the right to refuse a document that is not written in one of the languages mentioned in Article 8 of the regulation. It will be important to determine whether electronic service can be available at the cross-border level and whether in such case the Regulation should apply and how. Introduction of electronic service would save costs and reduce delays in the proceedings held at a long distance. The Commission is co-financing several on-going pilot projects, including the project “Service of documents by means of e-justice”. The aim of the project is to create a dematerialised and secure exchange of documents by means of an electronic platform set up between the ministries of justice, courts, court (enforcement) officers and lawyers. The project is linked to the e-Codex project aimed at improving, in a more general manner, the cross-border exchange of information in legal proceedings in a safe, affordable and sustainable manner.

Extract from the decision on maintenance obligations – procedure

The court proceeds in accordance with the Maintenance Regulation; Annex I is completed in proceedings initiated after a certain date and Annex II is completed in

proceedings initiated on or before a certain date, i.e. when the court was seized. This is why the decisive date is the date of commencement of the proceedings, i.e. the date on which the court was seized with the matter.

Court procedure for a minor child habitually resident abroad while the obligor is habitually resident in the Slovak Republic; if the obligee files a motion with a Slovak court for the determination of maintenance obligations, what position will a Slovak court take?

Current European legislation distinguishes between jurisdiction to determine a maintenance obligation and jurisdiction to determine parental responsibility. The issue of maintenance is expressly excluded (Article 1(3)(e)) from the scope of Council Regulation (EC) No 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility (hereinafter "*Brussels II bis*") because jurisdiction over maintenance matters is governed by Council Regulation (EC) No 4/2009 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations (hereinafter the "*Maintenance Regulation*"). Article 3 of the Maintenance Regulation sets out the general jurisdiction; pursuant to Article 3(a), jurisdiction in matters of maintenance in the Member States lies with the court for the place where the defendant is habitually resident. This means that the Maintenance Regulation (unlike Brussels II bis) provides not only for the jurisdiction of the court of a Member State but also for the territorial competence of the court. Having regard to Article 7(2) of the Slovak Constitution, it can be concluded that the CPC provisions on territorial competence are not applicable to cases where the only cause of action is maintenance.

This means that for a motion to determine the maintenance obligation of an obligor habitually resident in the Slovak Republic, filed with the locally competent court for the habitual residence of the **obligor**, the Slovak court must proceed pursuant to Article 3(a) of the Maintenance Regulation.

Can the CIPC directly forward applications submitted under Annex VII of Regulation 4/2009 if the applicant has no legal representation in the Slovak Republic?

Annex VII of Regulation 4/2009 relates to Articles 56 and 57, which are subsumed in Chapter VII of Regulation 4/2009. Legal representation is regulated in Articles 44 et seq. of Regulation 4/2009. Under Article 44(3) of Regulation 4/2009, in cases covered by Chapter VII, a Member State shall not be obliged to provide legal aid if and to the extent that the procedures of that Member State enable the parties to make the case without the need for legal aid and the central authority provides such services as are necessary free of charge. Under Chapter VII, such central authority is the authority designated by each Member States in accordance with Article 49(3) of Regulation 4/2009. The Article refers to Article 71(2) of Regulation 4/2009, under which Member States shall communicate to the Commission the names and contact details of Central Authorities in accordance with Article 49(3) and the Commission shall publish this information in the Official Journal of the EU. According to

Communication No 52015XCO204(01), designation C 38/5 (Schedule 5), such Central Authority for the Slovak Republic is the *Centre for the International Legal Protection of Children and Youth.*

It follows from the above that a Member State is not obliged to provide legal aid in cases covered by Chapter VII if the following two conditions are fulfilled: (a) the procedures of that Member State enable the parties to make their case without the need for legal aid; and (b) the central authority provides such services, as necessary, free of charge.

The Ministry of Labour, Social Affairs and Family of the Slovak Republic

The Ministry of Labour, Social Affairs and Family of the Slovak Republic ("the MLSAaF" hereinafter) coordinates, *inter alia*, the activities of state authorities for social and legal protection of children and social guardianship, municipalities, self-governing regions, accredited organisations and other legal entities and natural persons active in the field of social and legal protection of children and social guardianship, and performs the tasks resulting from international conventions and legal acts of the European Union.

The MLSAaF is designated as a body under Article 44 of the Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children (Communication No 344/2002) that is to be addressed for requests filed under Articles 8, 9 and 33 of the Convention.

The MLSAaF has identified the following areas as problematic:

- lack of consistency in the designation of central bodies and authorities for cooperation between the Regulation and the Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children;
- lack of consistency in the interpretation of the Regulation by individual Member States of the EU (i.e. the areas covered by the Regulation, inconsistent interpretation of relevant concepts, and differences in the methods of cooperation between Central Authorities; this also applies to the interpretation of concepts and procedures of Central Authorities in the application of the Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children;
- lack of formalised procedures for cooperation of central authorities/bodies at the national level, in particular procedures relating to the central authority and bodies designated to apply the Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children;

- lack of formalised procedures for exchanging and submitting information at the cross-border and national level;
- incomplete or untimely information concerning
  - assessment of habitual residence of the child,
  - the child, the parents or the person awarded custody of the child, the relatives,
  - adopted measures,
  - the possibility of adopting protective measures (for example, support to improve the functioning of a family),
  - assessment of the current situation and possibilities of providing support to improve the functioning of the family,
  - current state of proceedings on the merits (including judgments),
  - method of communication between individual entities (lack of on-going information),
  - assessment of the best interests of the child, etc.;
- limited time available for enquires;
- lack of clarity concerning the procedures used to enforce the decisions of competent authorities of other countries.

Application from the Centre under Article 55 of Brussels II bis

General

If the Central Office of Labour, Social Affairs and Family (hereinafter the "*COLSAF*") receives a request for cooperation from the CPIC for the purposes of Article 55 of the Regulation, or from the MLSAaF for the purposes of Article 33 of the Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children, it has a duty to process such a request.

In their requests for cooperation, the CIPC as the Central Authority and the MLSAaF are required to supply complete information on the child, parents or persons who were or are considered to have been awarded custody of the children, measures adopted with respect of the child, current status of the proceedings, clearly specified areas on which the COLSAF should focus in its cooperation with the authorities for social and legal protection of children, and also reasonable time limits for handling the request. An important source is information from the assessment of the place of habitual residence of the child.

If the central authority/body does not provide complete information (the central authority ascertains additional data through cooperation), relevant information may be sought from the authority for social and legal protection of children in order to ensure objective information.

If the request received by the central authority from a holder of parental responsibility or from another central authority falls outside its scope of competence, the request is referred to the relevant central authority/body (for instance, applications for a criminal records certificate, medical records of the child, information about detained or convicted persons, etc.); the entity that submitted the request is duly notified thereof.

 What particulars should the request contain?

The request and/or its annexes should include:

- data on the assessment of habitual residence of the child;
- data on the child, his or her parents and relatives (name, surname, date of birth), last known address, or address of permanent residence in the Slovak Republic;
- detailed reasons for the removal of a minor child from parental care;
- in case of envisaged placement of a child in foster care or in a foster care facility, also the names of the relatives in the Slovak Republic and their identification data, if known;
- information on whether the parents manifest interest in their minor child, the level of care and their ideas concerning future arrangements (e.g. whether they intend to move to/stay in the Slovak Republic, etc.);
- information concerning the place of stay of the child and of the caregiver (parents, other person or a facility that has a similar function as the Slovak facilities for enforcement of court decisions);
- information about child protection measures and the reasons thereof;
- information on any relatives in the country who could take custody of the child;
- clearly and intelligibly specified issues on which the authority for social and legal protection of children and social guardianship should give its opinion;
- clearly fixed deadlines for the submission of information.

The request for information (and questionnaire annexes, where appropriate) is submitted in writing to the authority for social and legal protection of children in the Slovak language (requests filed by telephone are prone to errors).

 Can local offices of labour, social affairs and family (hereinafter the "local OLSAF") disclose information concerning the health status of a child and/or relatives obtained from Slovak health-care providers (medical records, hospital stay records and reasons, and/or hospital discharge)?

Medical records are the property of health-care providers; processing, provision and disclosure of data from medical records are governed by Act No 576/2004 on health care, services related to the provision of health care, amending and supplementing certain other acts. The issues related to the disclosure of medical records and information on the health status of natural persons should be consulted with the Ministry of Health of the Slovak Republic. The authorities for social and legal protection of children and social guardianship do not have access to medical records or to concrete information about the child's health

condition (e.g. a diagnosis). The authorities for social and legal protection of children do not have the authority to acquire and convey such information. The exchange of information for the purpose of protecting minors is explicitly regulated by Act No 576/2004 or, as the case may be, by Act No 578/2004

 Can local OLSAFs acquire and make available a criminal records certificate and/or information concerning custodial sentences imposed on the child's parents or other relatives?

The authorities for social and legal protection of children cannot acquire or make available criminal records certificates and/or information concerning custodial sentences served by the child's parents or other relatives. Requests for criminal records certificates are regulated under Criminal Registry Act No 330/2007

Requests for criminal records certificates can be filed on a prescribed form only by concerned natural persons. Criminal records certificates may be issued also to legal entities – their list and the specific purpose of the request are laid down in Act No 330/2007

It is recommended to address this issue with the Prosecutor General's Office.

What expectations do local OLSAFs have vis-à-vis the Centre in connection with information sharing: what information is required for the purposes of proceedings under Brussels II bis?

Complete and comprehensive available information and concrete requirements must be submitted for the purposes of Article 55 of the Regulation to the extent defined in the answer to question 1.2. Information on the fulfilment of the tasks by the other Central Authority under Article 55 – the Ministry of Justice of the Slovak Republic – should also be provided.

In connection with the Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children, the role of the Ministry of Justice as the Central Authority is to coordinate the activities of the bodies – the CIPC and the MLSAaF – and the sharing of information.

At what point should the case be closed and how should the local OLSAF and the Centre cooperate in this regard?

Act No 395/2002 on archives and registries governs the organisation and scope of competence of state administration authorities in the field of archives and registries, organisation of archives, defines the rights and duties of founders of archives, owners of archival documents, access to archival documents, and the rights and obligations of entities establishing the registries.

From the substantive point of view, the case should be deemed closed upon the receipt of information by the central authority from the central authority of the relevant State that the case has been closed; from the practical point of view, we recommend that the case be deemed closed after relevant proceedings in a foreign state have been finally concluded and, if a child was placed in the care of relatives or in a different form of substitute care in the Slovak Republic by decision of a foreign body, the case will be closed for the CIPC by the actual enforcement of the decision (unless the decision imposes certain obligations on the state of habitual residence); the authority for social and legal protection of children will proceed in a standard manner.

What is the scope of information sharing from a local OLSAF side, and in which areas can a local OLSAF help the Centre?

The authority for social and legal protection of children can share information from administrative files (if available) or from the assessment of:

- measures of social and legal protection of children and social guardianship, if any (in case of children staying or having stayed in the Slovak Republic);
- the situation of the minor child currently staying in Slovakia, including ascertainment of the opinion of the child.

The authority for social and legal protection of children is capable of sharing information:
- from the child's administrative record kept by the authority for social and legal protection of children, if any;
- obtained from the assessment of the family, housing and social situation of the minor child's family or relatives in Slovakia, including information from the municipal council, school, etc. (if the court/competent authority envisages the placement of the child under Article 56);
- information on the facilities for enforcement of court decisions.

Sharing of information and assessment of the situation of relevant persons for the holder of parental responsibility under Article 55:

o ***Under what conditions can the Centre submit a request to a local OLSAF?***

The obligation to provide information about a minor child's situation to the holder of parental responsibility lies primarily with the other parent. The obligation to inform the other parent about the child is stipulated in Family Act No 36/2005 If a parent requests information pursuant to Article 55 of the Regulation, the role of the central authority is to encourage the other parent to voluntarily provide information about the situation of the child. If this is not possible, the authority for social and legal protection of children makes that information available only if there is probative evidence that the child is staying in the Slovak Republic, and the authority for social and legal protection of children and social guardianship can obtain

such information from the administrative record or through assessment of the situation of the child.

o ***Which documents does a local OLSAF need to process the request?***

To "process" the request, the authority for social and legal protection of children needs:

- information as required by the nature of the case (i.e. whether Article 56 of the Regulation or Article 33 of the Convention applies) and, in particular,
- data concerning the child, his or her parents and relatives (name, surname, date of birth), last known address, or address of the permanent residence in the Slovak Republic;
- detailed reasons for the removal of the minor child from parental care;
- in case of envisaged placement of a child in foster care or in a foster care facility, also the names of the relatives in the Slovak Republic and their identification data, if known;
- information concerning the place of stay of the child and of the caregiver (parents, another person or a facility that has a similar function as the Slovak facilities for enforcement of court decisions);
- information about child protection measures and their reasons;
- information about the reasons for the child's removal from parental care;
- information on any relatives in the country who could take custody of the child;
- clearly and distinctly specified fields in which the authority for social and legal protection of children and social guardianship is asked to give its comments.

Provision of comprehensive information by the authority for social and legal protection of children and social guardianship is also necessary for proposing and/or implementing child protection measures.

 Mechanism of cooperation between the Central Authority, the court and the local OLSAF prior to and during return proceedings: in which matters or areas of return proceedings could the local OLSAF provide assistance (e.g. assessment, enforcement, etc.), and how could this be implemented?

If the child is in the Slovak Republic: Appointed by the Slovak court as guardian ad litem for a minor child in the proceedings on the child's return to his or her other parent in the country of habitual residence is usually the authority for social and legal protection of children, which performs the tasks required for purposes of judicial proceedings. The enforcement of the decision is stipulated in the Civil Procedure Code and in the implementing decree which clearly spells out the tasks of this body.

 If transport of a child being transferred to Slovakia is arranged only up to arrival in the Vienna Airport, who is authorised (and on what basis) to collect the child at the airport in the third country and bring him/her back to Slovakia?

The child can be collected only by a natural person (the parent, the "substitute parent") or a legal person – the establishment designated in the court decision. Under the Slovak legislation, even if the child is to be placed in institutional care, the court's decision on institutional care must specify the establishment in which the child is to be placed.

Slovak authorities have jurisdiction only over the territory of the Slovak Republic; communication between two countries is governed by diplomatic protocols and conventions, or by legal acts of the European Union (e.g. a regulation); these instruments always require that a central authority be designated for their implementation, define the nature and modalities of communication between central authorities, and communication languages.

In case of unaccompanied minors who are to be returned to or placed in a facility in Slovakia by court decision, the authority for social and legal protection of children notifies the relevant diplomatic mission of the measures that have been taken to ensure the return or the relocation of the child to the Slovak Republic, and of the identity of the natural or legal person who will collect the child abroad. At the same time, it communicates the name of the natural person or the legal entity that will take over the child upon his or her return to the Slovak Republic. The court decision on placement of a child in Slovakia is enforced immediately after the identification of the place, persons and documents needed to take over the child. If the child is to be returned or transferred to the Slovak Republic for the purpose of placement in a facility for enforcement of a court decision, it is necessary to actually bring the child to the territory of the Slovak Republic (the child is to be placed in Slovakia and not in a third country). Since the authority for social and legal protection of children has territorial jurisdiction only for Slovakia, the transport of the child must be arranged accordingly. It is therefore not possible to collect the child in the territory of a third state.

In principle, the return/relocation of unaccompanied minors is always organised by the party responsible for the child by virtue of the law (parents) or by decision of the competent authority (e.g. an institution). The holder of this responsibility also bears the costs of travel.

Central Office of Labour, Social Affairs and Family (COLSAF)

The most common problem is scarcity of information about individual cases. This mainly applies to inaccurate and often absent identification data concerning minors, their parents and relatives. There is also a problem of lack of information about developments in the case during the time the family stayed abroad. Information about the movements of the family abroad and the reasons for interventions in the family, or about the measures applied by the social service in another country, is important for the relatives in the Slovak Republic as well as for assessing the need to take measures of social and legal protection of children and social guardianship, as well as for a comprehensive assessment of the social situation and the proposal of solutions. Problems are also caused by delayed information concerning the removal of a minor child from parental care, or information about on-going judicial proceedings in connection with which a report is required if there is not enough time to

prepare the report. A continuing problem exists in the attempts of British social agencies to communicate directly with the COLSAF and with individual local OLSAFs without the intermediary help (or awareness) of the Centre, and non-compliance with the cooperation procedure established in Council Regulation (EC) No 2201/2003 and Council Regulation (EC) No 1206/2001. Additional difficulties are connected also with the fact that the documents are submitted to the COLSAF in English.

Collection and provision of information and assessment of the situation of relevant persons by partner bodies abroad (i.e. central authorities and/or social services of other countries) ***in accordance with Brussels II bis:***

 Under what circumstances is the request for assessment of the social situation submitted by the Centre for information sharing purposes under Article 55 Brussels II bis accepted or rejected?

- If the request for cooperation submitted by the Centre to the COLSAF under Article 55 Brussels II bis meets all the requirements of Article 55, the COLSAF accepts the request and conveys it to the relevant local OLSAF. If the request does not meet all the requirements, the COLSAF asks the Centre to complete it. Upon receipt of the requested information, the request is forwarded to the relevant local OLSAF.

- If the COLSAF receives a request from the Centre under Article 55 which does not qualify as a request falling within the scope of that Article and is, for instance, a request for evidence to be used in court proceedings, the COLSAF asks the Centre to direct the attention of relevant authorities of the foreign state to the procedure set out in the legislation applicable to the given case, i.e. Council Regulation (EC) No 1206/2001 on cooperation between the courts of the Member States in the taking of evidence in civil and commercial matters.

 What particulars should the request meet?

- Identification data of the child, his or her parents and relatives (name, surname, date of birth), last known address, or address of permanent residence in the Slovak Republic,
- In case of assessment of the relatives in the Slovak Republic, also their identification data.
- Information about the current location and child custody arrangements (parental custody or custody of another person or a facility which has a similar function as the Slovak facilities for enforcement of court decisions) and the relevant custody decision.
- Child protection measures and reasons thereof,
- Reasons for the removal of the minor child from parental care.
- Current information about, e.g., school attendance, health condition, etc.
- Information on whether the parents manifest interest in their minor child, exercise visitation rights, or cooperate with the competent social services agency,
- Information about the relatives in the country, if any, who could take custody of the minor,
- Objectives of the work of social institutions with the family and with the child,

- The reason for cooperation/request,
- Clearly and distinctly formulated requirements for the COLSAF and local OLSAFs,
- All information should be provided in the Slovak language.

All the above data are necessary mainly to give the relatives of the child relevant information about the child's situation in order to enable them to consider, based on such realistic description of the circumstances, their possibilities and capabilities of ensuring proper care for the child.

This information is also necessary for taking timely child protection measures.

 Can a local OLSAF provide information concerning the health status of a child and/or a child's relatives obtained from Slovak health-care providers (medical records, records on hospitalisations and the reasons thereof and/or hospital discharge records)?

Medical records of minors are kept by their general practitioner who must abide by legal provisions governing the keeping and disclosure of patients' medical records. It is recommended to consult this issue with the Ministry of Health.

If the child's administrative records kept by the local OLSAF contain information about his or her health condition other than medical records and medical documentation, the local OLSAF may, where necessary, include this information in their report.

 Can a local OLSAF acquire and submit a criminal records certificate and/or information concerning criminal convictions of the child's parents or other relatives?

Legal provisions governing the issuance of criminal records certificates are laid down in Criminal Registry Act No 330/2007 Applications for criminal records certificates can be filed on a prescribed form only by natural persons – data subjects. Legal entities may request criminal records certificates only if they are authorised under the above Act. It is recommended to contact the General Prosecutor's Office of the Slovak Republic.

If the administrative record of the local OLSAF contains information about the custodial sentence of the child's parent, this information may be provided to the CIPC. However, neither local OLSAFs nor the COLSAF possess information about persons serving their imprisonment sentences. In this connection it is recommended to contact the Ministry of Justice.

 What information does a local OLSAF expect from the CIPC in connection with information sharing?

Comprehensive information on the situation of the child and the child's family, in particular:
- Identification data of the child, his or her parents and relatives (name, surname, date of birth), the last known address, or address of permanent residence in the Slovak Republic,
- Information concerning the current location of the child and custody arrangements (whether the child lives with his or her parents or is in custody of another person or of a facility that has a similar function as the Slovak facilities for enforcement of court decisions), and on the basis of what decision,

- child protection measures and the reasons,
- the reason for the removal of a minor child from parental care,
- current information about the child, such as school attendance, health condition, etc.
- information on whether the parents manifest interest in their minor child, exercise their visitation rights, or cooperate with the competent social services agency,
- information as to whether there are any relatives in the country who could be awarded custody of the minor,
- the aim of the work of social services with the family and the minor,
- the reason for the cooperation/request,

- Timeliness of information,
- Intelligibility of the request

 When should the case be deemed closed and what should be the cooperation in this respect between the local OLSAF and the CIPC?

In closing and archiving a case file, the CIPC should proceed in accordance with applicable registry rules.

 What is the extent of information sharing by local OLSAFs and in which areas can a local OLSAF be useful to the CIPC?

The wording of this question is not quite clear; we assume that it concerns the gathering and exchange of information pursuant to Article 55 of Brussels II bis.

- if the CIPC requests cooperation from the COLSAF in a situation where the child and his or her family are abroad, it is necessary to know the reasons for and the purpose of cooperation, and to have information about the current social situation of the child abroad, mainly in order to identify the best possible arrangements and further care for the child upon his or her return to Slovakia, and to ensure effective cooperation between the CIPC, the COLSAF and the local OLSAF in keeping with the Regulation and the Slovak legal provisions.
- local OLSAFs request cooperation from the CIPC through the intermediary of the COLSAF, especially in the following cases:

o assessment of the current situation of the child, who was entrusted in substitute care by decision of a Slovak court and is currently staying abroad;
o assessment of the current situation of the child, who was entrusted in foster care by decision of a Slovak court and is currently staying abroad;
o when they reasonably suspect that the child is neglected;
o when the child's relatives living abroad want the child placed in institutional care to spend holidays at their home abroad;
o the local OLSAF, which took measures of social and legal protection of children and social guardianship with regard to the family of the minor child in the Slovak Republic, will pass this information to social services abroad to be potentially used in their work with the family.

 What information can a local OLSAF gather and exchange?

- Information obtained through assessing the family, housing and social situation of the child's primary family or relatives in Slovakia,
- Information from the municipality where the family is domiciled or had stayed before leaving abroad,
- Information from the primary school or preschool facility attended by the child before leaving abroad.

 Collecting and exchanging information and assessment of the situation of relevant persons for the holder of parental responsibility under Article 55

The issue of communicating information about a minor child to the child's parent who is in another Member State is considered at three levels:

- As regards exchange of information between the holders of parental responsibility on the current situation of their child, the non-custodial parent has the right to regularly seek information about the child from the other parent or to seek judicial enforcement of that right pursuant to Family Act N. 35/2005 amending certain laws as amended.
- Provision of information and assistance to the holders of parental responsibility seeking the recognition and enforcement of decisions on their territory, in particular concerning the rights of access and return of the child under Article 55 of Brussels II bis.
- According to Section 7(1) of Act No 305/2005 on social and legal protection of children and social guardianship amending certain laws as amended, every person has the duty to report violations of children's rights to the body for social and legal protection of children and youth. If the child's parent who is in another Member State reasonably suspects that the child is neglected or abused and he or she is unable to personally ensure proper care or protection of the child, he or she may request assistance from the relevant state administration bodies through Central Authorities.

o *What documents does the local OLSAF need in order to process the request?*

All documents and information mentioned in the previous sections, in particular:

- Identification data of the child, his or her parents and relatives (name, surname, date of birth), last known address, or address of permanent residence in the Slovak Republic;
- Information about the current location of the child and child custody arrangements (parental custody or custody of another person or a facility which has a similar function as the Slovak facilities for enforcement of court decisions) and the relevant custody decision;
- Current information about the child available to the parent requesting information;
- Information on whether the parent manifests interest in his or her child, exercises visitation rights, or cooperates with the competent social services agency;
- Information about the manner in which the parent manifested interest in/contacted the child and the other parent, and with what result;
- The reason for cooperation/request;
- Clearly and distinctly formulated requirements for the COLSAF and local OLSAFs;

- Information should always be provided in the Slovak language.

All the above data are necessary mainly to assess the current situation of the child in order to give appropriate information to the child's relatives.

This information is also necessary for taking timely child protection measures, if necessary.

 Mechanism of cooperation between the Central Authority, the court and the local OLSAF prior to and during return proceedings:

- In the proceedings on the return of a child to his or her country of habitual residence under the Hague Convention on the Civil Aspects of International Abductions of Children of 25 October 1980, Slovak courts usually appoint the local OLSAF to act as guardian ad litem.
- The local OLSAF will verify whether the child stays at the specified address and whether he or she is properly taken care of by the other parent.
- The left-behind parent who is in the Slovak Republic can be provided social counselling by the local OLSAF, addressing the parent's current situation, i.e. the wrongful removal of the child from the country of habitual residence.
- The court decision also specifies who is responsible for its enforcement but the actual enforcement usually falls within the remit of the competent court. If requested, the local OLSAF can assist the court in enforcement of its decision.

 If, in case of transfer of children to Slovakia, their transport is only secured up to their arrival in the Vienna Airport, who is authorised, and on what basis, to collect the children at that airport situated in the territory of a third country and bring them to Slovakia?

If a child who was removed from parental custody is to be transferred to the Slovak Republic and subsequently placed in a facility for enforcement of court decision by a final court decision, the child must be transported to the Slovak Republic where the actual transfer of the child is to take place. The minor child will be taken over by the entities specified in the court decision. Because of the limited territorial jurisdiction of the authority for social and legal protection of children, the transport must be organised in conformity with the competence of this body.

Ministry of Interior of the Slovak Republic and law enforcement authorities

Criminal offence of neglect of mandatory maintenance

Section 207 – Neglect of mandatory maintenance

(1) Any person who fails to fulfil, even if by negligence, his or her statutory obligation of maintenance or support of another person during at least three months over a two-year period shall be liable to a term of imprisonment of up to two years.

(2) Any person who intentionally avoids the fulfilment of his or her statutory obligation of maintenance or support of another person during at least three months over a two-year period shall be liable to a term of imprisonment of up to three years.

(3) The offender shall be liable to a term of imprisonment of one to five years if he or she commits the offence referred to in paragraphs 1 or 2

a) exposing the obligee to the risk of destitution,

b) in an aggravated manner, or

c) in spite of having been convicted for the same offence during the past twenty-four months or released from serving a sentence of imprisonment for such offence.

Paragraphs 1 to 3: Maintenance means the satisfaction of all necessities of life of the person to which it is due.

The Family Act stipulates that parents have a statutory maintenance obligation towards their children (Section 62(1)). In addition, the Family Act lays down the maintenance obligation of children towards their parents (Section 66), between other relatives (Section 68) and between spouses towards one another (Section 71). Spousal maintenance can be claimed also by a divorced spouse (Section 72) and by an unwed mother (Section 74).

The amount of maintenance is defined by the possibilities and capabilities of the obligor. As a rule, it is determined in accordance with the level of the obligor's income and assets (Section 62(2) of Family Act).

Person entrusted to the care or placed under the supervision of another person for Criminal Code purposes – see Section 127(8).

In their decision-making on criminal liability, law enforcement bodies and courts are not bound by the amount of maintenance awarded in civil proceedings under Section 62(3) of the Family Act. For the purposes of criminal proceedings, the maintenance amount may be fixed independently depending on the degree of the offender's culpability (including e.g., deliberately declining a better paid job with higher income) and financial circumstances. It is determined pursuant to Section 7(1) CCP – Assessment of preliminary questions.

The neglect of mandatory maintenance is a continuous (Section 122(10)) or a perpetual criminal offence with elements of a multiple criminal offence (Section 122(11, 12)). Thus, if the accused continues to default on maintenance payments after having been served the indictment notice (Section 179 CCP) this is considered a new criminal offence as from the issuance of a first-instance or appellate court decision – Section 122(13) CC. The indictment notice thus may, but need not, mean that the criminal offence of the neglect of mandatory maintenance has been completed. A criminal offence is completed when the accused defaults on maintenance payments during a period of three consecutive months, or intermittently within a two-year period from having received the indictment notice. This does not mean that non-payment of maintenance even before the two-year period that preceded the service of the indictment notice cannot be included in the verdict.

The wording “even if by negligence” in paragraph 1 referring to culpability means that the default can be intentional or it can be due to negligence; however, paragraph 2 refers only to intentional default (Section 15). In practice, application of paragraph 1 or paragraph 2 will depend on whether the accused is found to have intentionally failed to meet or deliberately avoided his or her maintenance obligations.

The criminal offence of neglect of mandatory maintenance will be deemed to have been committed also if the offender has culpably failed to meet his or her maintenance obligation, and the obligee was therefore granted substitute maintenance payments under Act No 452/2004 on substitute child maintenance allowance. Regarding the amount of substitute child maintenance allowance, see Section 4(1) of the Act.

According to Section 567(2) of the Civil Code, maintenance payments can be made through a post office or through a financial institution.

The place of commission of the criminal offence of neglect of mandatory maintenance is the place of residence of the obligor at the time of defaulting on maintenance payments and also the place of residence of the obligee.

The threat of destitution (paragraph 3) means that the obligee lacks basic life necessities and must rely on another person or the state for assistance.

According to Section 2 of Act No 599/2003 on assistance in material need and on amendments to certain laws as amended, the situation of material need occurs when the combined income of the person concerned and of jointly considered natural persons is lower than the subsistence minimum, and the person and jointly considered natural persons are not able to obtain or increase their income through their own efforts.

The commission of this criminal offence in an aggravated manner is always determined by the circumstances, such as when the failure to fulfil one’s maintenance obligation results in undernourishment of the child or a health problem that need not be a life-threatening condition.

Regarding the expression “in an aggravated manner” see also Section 138.

Paragraph 3(c) mentions recurrent commission of the same type of crime. As to who is considered to be convicted, see Section 128(6).

On extinction of criminal liability for neglect of mandatory maintenance – see Section 86(a)(b).

R 22/1992: In their decision-making concerning the criminal offence of neglect of mandatory maintenance pursuant to Section 207 CC, the courts must always assess the issue of the amount of maintenance that the accused had been capable of paying by considering all relevant circumstances, including the accused’s renouncing of a better paid job or property

benefit without a valid reason. It is not sufficient to merely establish that the accused is currently unemployed and that his or her only income is a state benefit. (Amended wording).

R 18/1993: The fact that the accused is unemployed and receives only a jobseeker's allowance does not *per se* affect his or her child maintenance obligation and, consequently, does not relieve him or her of criminal liability for the failure to fulfil the maintenance obligations, taking account of the situation of material need according to relevant legal provisions.

In these cases, it is necessary to assess the preliminary issue of the child maintenance amount that was payable by the accused in the critical period and whether the culpable failure to fulfil his or her maintenance obligations, possibly also pursuant to Section 10(2) CC, can be considered the criminal offence of neglect of mandatory maintenance pursuant to Section 207 CC. (Amended wording).

R 23/1999–I: If the perpetrator of the criminal offence of neglect of mandatory maintenance under Section 207 CC is a private entrepreneur, the determination of his or her culpability cannot be based simply on the fact that he or she has no deposit account in a financial institution. A person who has the statutory obligation of maintenance towards another person must take every opportunity to fulfil this obligation at the level he or she can afford (Section 7(1) CC) even if his or her business activities do not temporarily generate profits at the level that had been considered as the basis for the determination of the level of his or her maintenance obligations. (Amended wording).

R 23/1999–II: The criminal offence of neglect of mandatory maintenance pursuant to Section 207 CC is considered to have been committed against a person towards whom the offender has a statutory maintenance obligation (generally a minor child). If the offender fails to fulfil his or her statutory maintenance obligation towards several children, it is necessary to determine whether this constitutes a single criminal offence or several concurrent criminal offences; the decisive factor is the number of educational environments in which the children live. (Amended wording).

Statistical data concerning the criminal offence of neglect of mandatory maintenance under Section 207(1)(2)
during the period 1 January to 30 April 2015

	Section 207(1)	**Section 207(2)**
Number of recorded criminal offences	2,194	87
Number of resolved criminal offences	1,674	79
%	76.30	90.80
Persons prosecuted – total	2,065	122

during the period 1 January to 30 April 2014

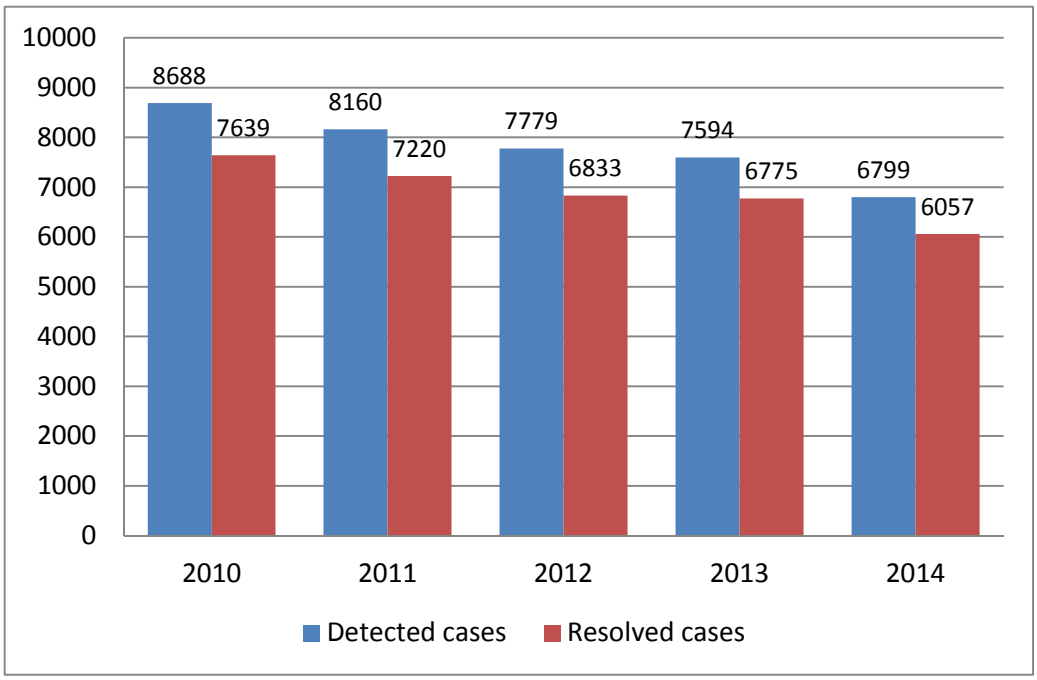
	Section 207(1) 1	Section 207(2)
Number of recorded criminal offences	2,349	138
Number of resolved criminal offences	1,772	127
%	75.44	92.03
Persons prosecuted – total	2,256	170

The total number of criminal offences under Section 207(1) recorded in 2014 was **2,349** compared to a slightly lower number of **2,194** in the same reporting period in 2015. The offence resolution rate in 2014 was 75% with **1,772** resolved cases. With **1,674** resolved cases in 2015, the resolution rate of criminal offences pursuant to Section 207(1) was 76%. The total number of offenders prosecuted for this criminal offence in 2014 was **2,256** compared with **2,065** offenders in 2015.

These statistics seem to indicate a moderately falling incidence of this type of criminal offence.

No statistics are being compiled by the Police Force SR on the number of offenders who avoid prosecution by staying abroad.

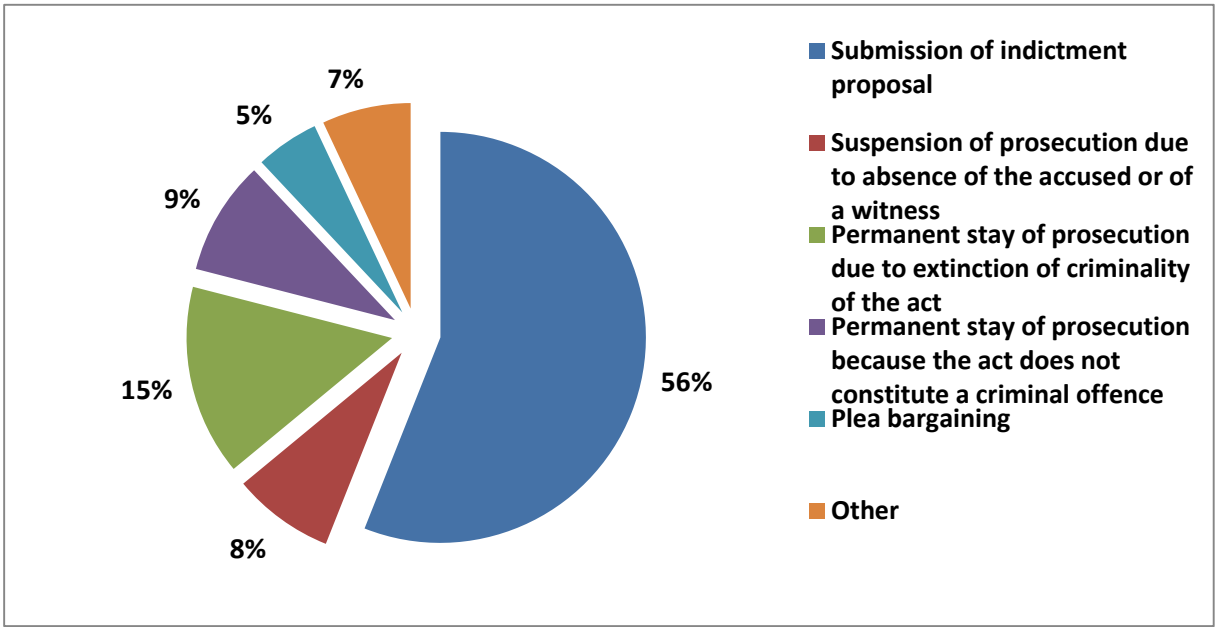
Trend of incidence of criminal offences of neglect of mandatory maintenance (Section 207 of the Criminal Code), years



The number of criminal prosecutions for neglect of mandatory maintenance is falling (see the Table). The largest decline was observed in 2014 when the number of new prosecutions fell by 11% compared with 2013. This was primarily the result of tougher

sanctions imposed on maintenance defaulters, such as the possibility of applying different enforcement methods to recover maintenance (such as deductions from wages or other income, garnishment, sale of movables, sale of securities, sale of real estate assets, sale of a business undertaking, retention of a driver's licence); in case of prosecution for neglect of mandatory maintenance, the maintenance defaulter could face an imprisonment penalty. These sanctions have been positively reflected in the recovery of maintenance arrears. Moreover, the legal concept of effective contrition applies also to the criminal offence of neglect of mandatory maintenance; this means that criminal liability for this offence becomes extinct if the offence did not cause permanent harm, or if the obligor voluntarily fulfils his or her maintenance obligation before the court retires for final deliberations.

Termination of prosecution for the criminal offence of neglect of mandatory maintenance pursuant to Section 207 of the Criminal Code in 2014



In 2014, most prosecutions for neglect of mandatory maintenance resulted in the accused ending up in court. The second most frequent form of termination of prosecution in these cases was the permanent stay of prosecution because of extinction of criminal liability for the offence under Section 215(1)(h) CCP or because the act did not constitute a criminal offence under Section 215(1)(b) CCP. In many cases, law enforcement authorities had to stay the prosecution because of the absence of the accused or a witness that prevented proper clarification of the case. Five per cent of prosecutions in 2014 were closed with a plea bargain when the accused pleaded guilty to the crime and accepted the guilt.

Is it difficult to locate the perpetrators?

Specialised police search units actively search for perpetrators of this criminal offence staying at an unknown location and avoiding criminal prosecution or execution of the sentence. Although the Slovak courts make use of the possibility of issuing a European arrest warrant for this criminal offence, its practical enforcement is problematic. The neighbouring countries where the perpetrators may be hiding are reluctant to surrender them for various reasons (such as the costs of extradition proceedings, the fact that the act is not considered a criminal offence and constitutes only a misdemeanour, the fact that the perpetrator has close links to the country such as permanent residency, upbringing of children, marriage to one of its nationals, etc.). It is therefore more difficult for the police to bring perpetrators before the Slovak courts than to locate them.

Legal classification of the crime of parental abduction

The legal classification of the criminal offence of abduction pursuant to Section 210 of the Criminal Code, a so-called parental abduction:

(1) Any person who, as a parent or a relative in the first degree, takes a child or a person suffering from a mental disorder or a person of unsound mind away from the care of a person who has an obligation under the law or arising from an official decision to take care of him/her shall be liable to a term of imprisonment of between six months and three years.
(2) The offender shall be liable to a term of imprisonment of one to five years if he or she commits the offence referred to in paragraph 1
a) in an aggravated manner, or
b) with a specific motive.

According to the interpretation of the Prosecutor General's Office, an act can be legally classified as a criminal offence of **abduction pursuant to Section 210** of the Criminal Code only if there exists a **final child custody award** or a **court-approved final parental agreement**. This does not apply to the decisions on provisional measures. Under other circumstances, an action may be classified as the criminal offence of **harming the rights of another under Section 375** of the Criminal Code.

The legal classification of the criminal offence of harming the rights of another under Section 375 of the Criminal Code:

(1) Any person who causes serious prejudice to the rights of another by:
a) misrepresentation of another or
b) taking advantage of a mistake of another
shall be liable to a term of imprisonment of up to two years.
(2) The offender shall be liable to a term of imprisonment of between six months and three years if he or she commits the offence referred to in paragraph 1
a) in an aggravated manner,
b) against a protected person,
c) by pretending to be a public official

(3) The offender shall be liable to a term of imprisonment of one to five years if he commits the offence referred to in paragraph 1 and obtains substantial benefit for himself or another through its commission.

In practice, however, the legal classification of parental abduction is inconsistent. The act whereby a parent removes a child from the other parent, preventing him or her to exercise his or her parental rights is sometimes classified as a criminal offence of harming the rights of another (this also applies to cases where there is no court decision). If the court issued a provisional measure entrusting the child to the custody of one parent, which the other parent deliberately does not acknowledge, his or her conduct is classified as **obstructing execution of an official decision under Section 349 CC.** In our view, there is a need to harmonise the relevant legislative provisions.

When the local police department receives a criminal complaint, it brings it – within the 3-day statutory time – to the attention of a designated police officer in case of suspicion of a criminal offence of harming the rights of another, or of an investigator of the district police directorate in case of suspicion of the criminal offence of abduction.

Law enforcement procedures

Basic police unit procedures upon receiving a report

Article 7(1)(a) of Decree No 53/2007 of the Slovak Republic's Ministry of the Interior on the search for persons and objects, as amended, stipulates that the officers of basic police units (local police departments) are *obliged to acknowledge the report on the search object and to perform urgent initial procedures.*

Thus, after a person (parent) has reported to the police that he or she does not know where his or her child is and that the child could be staying with the other parent at an unknown location, the officer of the basic police unit **always and without delay** acknowledges the report about the missing child and performs urgent initial procedures – i.e. notifies all police patrols on the ground and the relevant operations centre of the district police directorate. The police officer receiving the report focuses primarily on obtaining all relevant data such as a description of the child, of the parent, possible or probable places where the parent and the child could be, and all known contacts. The police officer subsequently takes steps to launch operational searches at the possible locations of the child. When interviewing the notifier, the duty police officer also focuses on ascertaining the **parental rights' situation** and the existence of any legally relevant document.

The officer of the district police directorate's operations centre who receives the notice of a missing child always creates an alert in the PATROS information system and ensures the performance of other actions and measures as needed, depending on the seriousness of the case (such as a search operation, enquiries at the place of permanent residence, etc.), particularly if there is an indication that the life or health of the child might be in danger.

If the child is found without being accompanied by his or her legal guardian or without any care **or** if the child's life, health or mental, physical and social development are in danger, the officer of the police department with jurisdiction over the place where the child was found informs the local authority for social and legal protection of children and social guardianship (hereinafter the "*authority for social and legal protection of children*") (i.e., a constituent part of the local office of labour, social affairs and family) having territorial jurisdiction over the location where the child was found of this fact. The local police department having jurisdiction over that location then assists local authority for social and legal protection of children in ensuring the safety of the child. At the same time, it informs the police department that launched the search that the child has been found so that the latter department may inform the notifier and call off the search, attaching a report on localisation of the missing person.

In other cases, where the missing child is found in the care of his or her parent or of another legal guardian, the police officer who found the child informs the notifier – through the police department with jurisdiction over the notifier's place of residence – that the child is alive and well and where and in whose care the child was found.

If the missing child is not found during initial actions and measures, the relevant member of the search division of the district police directorate's criminal police department brings information about the missing child on the next working day to the attention of the local authority for social and legal protection of children with jurisdiction over the child's place of residence and ascertains the legal status of parental rights and the locations where the child could be, subsequently verifying this information.

If the local authority for social and legal protection of children indicates that there is a possibility that the child is with his or her other parent in a specialised facility the police officer in charge of the search verifies this information and draws up a record. If this information proves to be correct, the police call off the search and inform the person who reported a missing child that the child is alive and well.

If the missing child is not found and there is suspicion that a crime may have been committed, the district department refers the case to the competent police unit within 3 working days.

Law enforcement procedures upon receiving a criminal report

Upon receiving a report on suspected parental abduction pursuant to Section 210 CC, the police investigator of the competent district police directorate takes the following actions:

- interviews the notifier;
- asks the notifier to present the relevant court decision (child custody award);
- orders the conduct of operational verification of the notifier's allegations (if the mother alleges that the child has been abducted by his or her father, these allegations must be supported by additional evidence: for instance, if a teacher saw the child leaving the school with his or her father, it is necessary to also verify whether the father had been served the final court decision on awarding child

custody to the mother; to this end, the criminal police department verifies forthwith – for instance with the court – whether the court received a signed acknowledgement of service of its decision from the father. If there is a suspicion that the father has deliberately ignored the court decision, this must be proven.);

- takes a decision on the case within a 30-day statutory time limit days from the date of receiving the complaint; however, if the facts of the case have been reliably verified, the investigator must act without delay;
- thus, in an "ideal situation" the investigator may decide the case on the same day by issuing the resolution to open criminal prosecution and a simultaneous resolution on laying charges.

If the action is classified as a criminal offence of harming the rights of another under Section 375 CC, the police officer assigned to the case employs the same procedure as the police investigator above.

European Arrest Warrant (EAW)

- is provided for in Act No 154/2010 ;

- the Act lays down the procedure applied by Slovak authorities in the process of surrendering persons between the Member States of the EU on the basis of European arrest warrants and the related proceedings;

- a European arrest warrant may be issued

  a) with respect to an offence which carries a custodial sentence of at least twelve months of imprisonment under Slovak law;

  b) if the surrender of a person is requested for the purpose of execution of an existing imprisonment sentence in case the prison term to be enforced or its remainder is at least four months long; multiple sentences and remainders of multiple sentences to be enforced are added up;

  - in practice, the EAW is usually issued within one week (the investigator submits a surrender motion to the prosecutor who subsequently submits a petition to the court);
  - the EAW may be issued only after the suspect had been charged (on the basis of reliably proven facts of the case) and after a national arrest warrant had been issued against him or her pursuant to Section 73 CC;
  - the EAW is issued if the location of the accused is not known and it was ascertained through operational enquiries that he or she could be avoiding prosecution by staying abroad.

International Arrest Warrant (IAW)

- is provided for in Section 490 of Act No 301/ 2005 (hereinafter the "*Code of Criminal Procedure")* (*CCP*);
- is issued if the accused is abroad and his or her extradition must be requested;

- is issued by the presiding judge of the competent court;
- in the pre-trial, the judge for preparatory proceedings issues the international arrest warrant upon a petition from the prosecutor;
- the IAW has the same effect on the territory of the Slovak Republic as a national arrest warrant;
- the IAW is issued in cases where operational findings indicate that the wanted person is in a country outside the EU;
- the IAW is issued on the basis of charges laid against the suspect (after a thorough verification of the facts of the case) and of a national arrest warrant being issued pursuant to Section 73 CCP;
- the IAW is issued when the location of the accused is not known and operational enquiries suggest that he or she could be avoiding prosecution by staying abroad.

Search for persons

One of the basic tasks of the police force under Section 2(1)(l) of Police Force Act No 171/1993 is a search for persons and objects. It is very important to note that a search may be launched only for persons or objects that have unique features and cannot be misidentified. According to internal regulations of the Police Force, searches for persons include:

- search for wanted persons
- search for missing persons
- localisation of persons
- identification of persons
- identification of corpses, body parts and skeletal findings.

Wanted persons are

- persons who are reasonably suspected of having committed a criminal offence whose locations are not known,
- the accused who had been duly summoned for prosecution purposes and failed to appear without sufficient justification,
- persons subject to arrest warrants,
- sentenced persons subject to prison committal warrants,
- persons subject to European arrest warrants,
- persons subject to international arrest warrants,
- escaped sentenced prisoners or sentenced prisoners who did not return to the penitentiary facility after an interrupted imprisonment sentence,
- persons subject to court-imposed protective treatment who either did not start the treatment or escaped from the protective treatment facility,
- witnesses subject to court-ordered restriction of freedom.

Missing persons are

- persons reported missing to a basic police unit or reported missing in another country, whose location is not known, other than criminal offenders or wanted persons,
- patients of psychiatric hospitals or other medical facilities, nursing homes, retirement homes or other similar facilities,
- persons reported missing to a local police department if available information indicates that there is a reasonable suspicion of immediate threat to their life or health, until such time as the threat is averted.

The person whose current location is unknown means a person whose presence is necessary for criminal prosecution purposes or for other important reasons who is not staying at his or her place of residence and the attempt to bring them in has failed.

The person of unknown identity is a person who is not able, cannot or does not want to prove his or her identity.

A corpse, body parts or skeletal findings of unknown identity or the remains of a person whose identity was not established during the inquest and initial procedures carried out on the spot.

Forms and means of search

Depending on the method used, the search may be operational or administrative.

Operational search means systematic, purposeful and active efforts deployed to locate an object directly in the field. It includes mainly the acquisition and evaluation of specific information concerning the object, the development and verification of investigative versions, and the adoption of appropriate measures at the time of locating the object.

Administrative search consists of the development and application of various administrative tools to conduct the search. The most frequently used tools include information systems of the Ministry of the Interior in searches for persons and identification of unidentified bodies (hereinafter the "*PATROS*"), the motor vehicle tracking system – PATRMV, the Schengen Information System and the Interpol database of wanted persons. The search is conducted by several services and only in exceptional cases is limited to a single police officer. If the immediate measures are not effective, additional police officers and units at the various levels of the organisation are deployed to join the search. Certain types of searches involve the police apparatus as a whole. The basic principle governing the search is **coordination** of deployed measures and procedures. The failure to observe this principle results in a lack of consistency, interference between the various actions, procedures, etc., ultimately endangering or frustrating the objective of the search. The situation of the object of the search changes quite frequently. This results either from movements of the wanted person over the area, or from changes in the locations or uses of the object sought. Information available to the police should therefore keep pace with changes in the situation. An important prerequisite for a successful search is the ability of the police to ascertain and evaluate and to

appropriately respond to such changes. This is a prerequisite for **responsiveness** of the search operation: it is necessary to ascertain whether the measures proposed or implemented are appropriate as well as the need for new measures. The lack of flexibility in responding to changes in the situation by appropriate adjustments of the search plan and dogmatic implementation of the search plan prevent reaching the desired objective. Responsiveness of the search operation is closely related to **proactive and speedy** response to newly-discovered evidence or new situations even before another change would make it necessary to exert additional efforts at its discovery.

And, like most police activities, search operations also require **assistance from the public**. The decision whether to involve the public in a given case depends on the circumstances of the search and on the discretion of the duty officer. The most suitable and the most effective forms of achieving cooperation from the public are personal contacts between the police and individual citizens or groups of people. Mass media is engaged in those cases where it is necessary to involve wide groups of the population in the search.

The search methodology must correspond to the individual circumstances of each case and reflect the diversity of police operations carried out during the search. Generalised experience is used to adapt and modify the procedures used in the particular case in accordance with its specific features. These procedures include, in the first place, collection and assessment of information relevant for the search obtained:

a) through personal search efforts of all members of the Police Force;
b) through a search operation aimed at locating and seizing the particular object;
c) from the statements of persons who may provide concrete information about the search target;
d) by entering a private home, performing a house search or search of other premises where the search target could be staying or hiding;
e) by using police or other available records and any information obtained from available sources;
f) by comparing identification data of found dead bodies or human skeletons of unknown identity with the description of wanted or missing persons;
g) through operative casework.

These activities and objective evaluation are followed up by activities aimed at proposing and checking the places where the search targets could be, setting the relevant procedures for each specific case. **The tools used in the search** correspond to the specific search operation and include, in particular:

a) information systems of the Police Force;
b) tracking devices;
c) using all types of mass media;
d) deployment of the Ministry of Interior’s helicopter, technical equipment and service dogs in search operations;
e) use of electronic surveillance.

The objective of all the above activities is to bring the search operation to a successful conclusion.

Initiating the search for a person

The Police Force initiates a search for a person on a reasoned request from a natural or a legal person or on the basis of their own findings. The search for a person is launched by the district police directorate's department having jurisdiction over the domicile of the applicant, the place of permanent residence of the person sought, or the seat of the court that issued the relevant decision. The search begins by entering the data in the PATROS information system. Basic identification data, a current photograph, and an exact description of any special features of the person are required for carrying out the search; it is also very important to give the reason for the search (e.g. a national arrest warrant under Section 73 CCP, a European arrest warrant, an international arrest warrant, a committal warrant, search for the place of stay, search for the accused, etc.), the entity requesting the search (a law enforcement body, criminal police, an organisation, etc.). If the person sought is the perpetrator of a violent crime, this information is also entered in the PATROS system to make the police departments aware of this fact when locating the individual. After launching a search operation, various forms and means of tracking persons are used, described in the section "2. Forms and means of the search".

Procedures following location of the person sought

Police procedures after locating the individual being sought vary depending on the reason for the search.

- **the person was sought for prosecution purposes** – the police department that requested the search is notified,
- **the person being sought was subject to an arrest warrant** – the person is brought before the requesting court no later than within 24 hours,
- **the person being sought was subject to a committal warrant for serving a custodial sentence –** the person is transported to the relevant or nearest prison for convicted prisoners,
- **the person being sought was subject to an arrest warrant issued in another state –** the procedure under Article 34 applies (the Police Force Presidium's Bureau for International Police Cooperation and the competent regional prosecutor are notified),
- **the person being sought was a fugitive prisoner** – the person is brought to the nearest prison for convicted prisoners,
- **the person being sought was subject to a protective treatment order** – the police department requests the relevant facility to take over the person,
- **the purpose of the search was to locate the place of residence** – the police department requests the person to give a statement on his or her place of residence.

Initiating the search for a missing person

The police department that has received a missing person report initiates the search for that person. The police officer who has received the report on a missing person draws up a

record comprising the statement of the notifier and obtains all relevant information concerning the missing person (basic identification data of the missing person, description, clothing, unique features – such as tattoos, birthmarks, abnormalities). The police also obtain vital information for the search, i.e.:

- since when was the person missing;
- possible reasons for the person going away;
- any physical, mental or venereal disease, alcohol abuse, drug abuse, gambling or suicide attempts in the past;
- any medical treatments in the recent past, where and when;
- family situation of the missing person;
- hobbies and interests of the missing person;
- a special predilection for certain places (e.g. typical holiday destination of the missing person, a cottage, a camp, etc.);
- a current photo of the missing person.

After all the facts have been ascertained, the search for the missing person is initiated by entering the data into the PATROS information system; all police patrols on duty in the police district of probable disappearance of the person are notified of the on-going search. Police search procedures in missing person cases vary depending on the seriousness of the case. If there are reasons to believe that the life or health of the missing person is in serious danger (e.g. in case of a minor child, a person suffering from a serious mental disorder or a person dependent on certain medications, etc.) the search operation is deployed at a large scale involving a larger number of police officers, emergency services, special equipment for use in the field, localisation of the mobile phone of the missing person, and information about the search in the mass media. In less serious cases of missing persons (e.g. persons having repeatedly run away from home), conventional means of locating the missing person are used, such as interviewing friends, relatives, school officers, railway and bus station staff, etc. After launching the search for a missing person, the responsible criminal police officer contacts the notifier and/or the relatives of the missing person with a view to obtaining more detailed information about the missing person and continues cooperating with them until the search for the missing person has been called off.

Procedures following location of the missing person

The decisive consideration in a search for missing persons is their age; depending on the person's age, the police procedure is as follows:

- **if the located missing person is older than 18** – the police officer requests his or her permission to **inform the notifier of his or her whereabouts; the police do not restrict personal freedom of that person !!!** The officer then notifies the police department that launched the search of the place of stay of the located missing person.

- **if the located missing person is younger than 18** – the police officer **notifies the parents or the legal guardian and asks them to take over the located person** or

ensures **the transfer of the person to a safe place** (through the local authority for social and legal protection of children).

Calling off the search for wanted or missing persons

If the person is not located, the search for that person is called off:

- upon the death of the person;
- after the disappearance of the reason for the search (the wanted or the missing person makes himself known to the police, the court cancels the arrest warrant, etc.);
- when a body, body part or skeletal finding is identified as belonging to a wanted or a missing person;
- after the lapse of 20 years from launching the search in case of missing persons and unidentified bodies.

International police cooperation

The search for wanted or missing persons is conducted at both the national and the international level. In the framework of international cooperation, information about wanted or missing persons is published in the Interpol information system and the Schengen Information System. International cooperation takes place through Interpol's National Central Bureau, the national SIRENE Bureau, police attachés or through direct personal contacts with partner departments abroad.

INTERPOL - International Criminal Police Organisation

INTERPOL is the International Criminal Police Organisation with 190 member countries. According to the international statute of the organisation, the main task of Interpol is to ensure effective international exchange of criminal information to support detection and prevention of criminal offences.

The activity of INTERPOL's National Central Bureau for the Slovak Republic is governed by Interior Ministry Decree No 51/2009 as amended by Interior Ministry Decree No 54/2009. The National Central Bureau of Interpol ensures international cooperation of Interpol members on a global scale, except where international cooperation is secured through the national SIRENE Bureau or Europol.

In addition to cooperating with law enforcement bodies in the conduct of its activities, Interpol cooperates with the state authorities of the Slovak Republic, in particular the Ministry of Justice, the courts and the prosecution authorities, the customs office, the Ministry of Foreign and European Affairs and the Ministry of Culture.

In particular, the National Central Bureau of Interpol secures exchange of information in the area of the fight against crime, participates in the conduct of international searches for criminal offenders, missing persons and stolen items, of identification of bodies or skeletal findings of unknown identity, organises and carries out extraditions and surrenders of persons from abroad to the Slovak Republic and vice versa. It also provides assistance when parents

fail to meet their child maintenance obligations. It cooperates very closely with the Centre for the International Legal Protection of Children and Youth in locating parents who avoid their maintenance obligations by leaving the Slovak Republic.

Interpol's priorities in the areas of crime:

- Helping to track down sought persons;
- Exchange of information with 190 countries through Interpol's National Central Bureau at the Police Presidium's Bureau for International Police Cooperation;
- Issuing search notices.

Interpol notices

Interpol notices are international requests for cooperation or alerts enabling the police of its member states to share critical crime information. Notices are published by the General Secretariat of Interpol in Lyon at the request of a National Central Bureau or an authorised person in one of the official languages of Interpol – Arabic, English, French and Spanish.

Types of notices:

1) Red Notice

- tracking down and arresting persons with a view to their extradition
- the following conditions must be met for issuing a red notice:

- the act must constitute a serious criminal offence;
- in the search for a person for prosecution purposes the criminal offence concerned must carry a custodial sentence of at least two years;
- in the search for a person for the purpose of serving a custodial sentence, the sentence must be for at least six months of imprisonment and/or the remainder of the sentence to be served must be at least six months.

- The General Secretariat may issue a red notice in consultation with the National Central Bureau of Interpol even if the conditions under a) and/or b) are not met if the publication of the notice may be of considerable importance for international police cooperation

a) Yellow Notice

- tracking down missing persons, who are often minors, or identification of persons unable to identify themselves
- the following conditions must be met for issuing a yellow notice:

a) the police have received a report of a missing or found person;
b) the whereabouts of the missing person or the identity of the found person are not known;

c) if the missing person is an adult, national legislative provisions do not prohibit the publication of such request;
d) sufficient information is available on the missing person or the circumstances of his or her disappearance or localisation of the person.

- the yellow notice concerning a missing person can be published only if it contains the necessary identifiers:

a) surname, name, sex, date of birth; and
b) a description of the person, a good quality photograph, the DNA profile or fingerprints.

a) Blue Notice

Gathering of additional information on the identity, whereabouts or activities of a person of interest in relation to a criminal investigation

b) Black Notice

Seeking information about unidentified bodies

c) Green Notice

Warning and providing operational information about persons involved in criminal activities who may be expected to commit similar crimes also in other countries

d) Orange Notice

Warning of an event, a person, an object or a process that represents an imminent threat and danger to persons or property

e) INTERPOL – United Nations Security Council Special Notice

Informing INTERPOL's members that an individual or an entity is in the focus of interest of the UN Security Council

f) Purple Notice

Seeking or providing information on *modi operandi*, procedures, objects, devices or ways used by criminals to hide their criminal activities

A notice is published only if it complies with Interpol's Constitution (not to be an infringement of Article 3 of the Constitution, which prohibits Interpol from undertaking activities of a political, military, religious or racial character) and with **Interpol's Rules on the Processing of Data** (which ensure the legality and quality of information and data protection).

Cooperation with the Police Force Presidium's Bureau of International Police Cooperation of the Slovak Republic

Cooperation with the Police Force Presidium's Bureau for International Police Cooperation is also provided for in **Section 484 of the Code of Criminal Procedure No 301/2005**

Transmission of requests and information via Interpol and SIRENE

(1) Incoming or outgoing requests under this Chapter can also be transmitted through the International Criminal Police Organisation (hereinafter "*INTERPOL*") and, in case of incoming or outgoing requests in relation to the states using the Schengen Information System also through a special Police Force unit, SIRENE.

(2) Interpol or the special Police Force unit SIRENE may also be used to exchange data and information concerning the time and other details of surrendering, taking over or transferring a person or an object under Section 485.

Comment (interpretation): Ad Section 484

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Paragraph 1: This provision formally establishes the place of Interpol (the International Criminal Police Organisation) in the legal provisions of Part Five of the Code of Criminal Procedure (Legal relations with abroad).

The requests are transmitted to Interpol by facsimile; their originals are submitted in the official manner. The transmission of requests submitted on the basis of reciprocity takes place through diplomatic channels. The requests submitted on the basis of international treaties are transmitted in conformity with the procedures set out therein.

The advantage of this mode of transmission is automatic reliability of the source, speed, experience, and the possibility of ascertaining the address if not known.

Interpol is recognised by the states as a trustworthy official channel. The requests submitted through Interpol are promptly processed. Another advantage is the large number of national units and their well-tested mutual communication on the follow-up to the processing of the request.

The requests received through Interpol do not need to be verified for credibility; they are subject to the rules referred to in the explanatory notes to Section 483.

The provision also formally establishes the place of the SIRENE unit in connection with the use of legal aid instruments within the EU by Member States using the Schengen Information System. In the judicial cooperation framework, it is mainly used to transmit urgent requests for cross-border surveillance and supplementary information concerning wanted persons and objects.

Paragraph 2: Interpol ensures the transmission of information concerning practical implementation of transfer, extradition, surrender and takeover procedures. EU Member States using the Schengen Information System may transmit such data and information via the SIRENE system.

Cooperation between the Centre for the International Legal Protection of Children and Youth and Interpol

Police cooperation – one of the instruments for the protection of security and public order – reflects the society-wide need to combat criminal activities having a transnational or a cross-border element. The methods and forms of police cooperation have undergone several innovations introduced by law enforcement bodies in response to current developments in society and the demands of society. The most widely known, oldest and largest organisation in terms of membership continues to be INTERPOL, created in 1923 for exchanging police information and requests between the bodies and services whose role is to provide protection and fight crime; it is currently represented in 190 countries worldwide.

Police cooperation methods have evolved from the simplest ones such as providing, receiving and sharing police information, through providing assistance in connection with natural disasters or major events and joint implementation of various operations, to sophisticated and secure forms of electronic and direct access to individual police databases of other countries.

INTERPOL, as the international criminal police organisation, ensures international exchange of criminal information with the aim of fostering detection and prevention of criminal activities. In connection with locating parents who avoid their maintenance obligations by leaving the Slovak Republic, Interpol closely cooperates with the **Centre for the International Legal Protection of Children and Youth.**

The Centre can help in recovery of maintenance from abroad if:

- the location of the obligor abroad is known (no assistance may be provided if both the obligee and the obligor are in the same country);

- the country from which maintenance recovery is to be sought is a member of the European Union or has ratified international conventions that provide the basis for recovery of maintenance;
- the maintenance decision has been issued by a Slovak or a foreign court and is final and enforceable;
- the obligor fulfils his or her maintenance obligation irregularly or not at all.

Maintenance recovery within the European Union

In cases involving recovery of maintenance within the European Union, assistance may be provided if the obligee staying abroad has a maintenance obligation towards a person under age 21 (according to Article 46(1)1 of Council Regulation (EC) No 4/09).

The recovery of maintenance from an obligor who is in a non-EU country

a) Recovery of a maintenance claim from countries that acceded to international conventions

The Centre provides free legal aid to applicants claiming recovery of maintenance claims from countries outside the European Union under the **Convention on the Recovery Abroad of Maintenance** of 20 June 1956, the **Convention on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations Towards Children** of 4 April 1958, the **Convention on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations** of 2 October 1973 (Albania and Andorra acceded to the Convention in 2012), on the basis of reciprocity (e.g. the United States, Australia, several provinces of Canada – British Columbia, Manitoba, Ontario, Alberta), or bilateral agreements concluded between the Slovak Republic and the country concerned.

b) The recovery of a maintenance claim from countries that did not accede to international conventions

The recovery of maintenance claims from countries that do not belong to the European Union and are not State Parties to international conventions on the recovery of maintenance is not possible through the intermediary of the Centre.

The recovery of maintenance when the obligor's place of residence is unknown

The Centre can provide free legal aid in the recovery of maintenance claims based on a final and enforceable court decision from a country that acceded to the international convention on the recovery of maintenance or is a Member State of the European Union. The minimum requirement for successful recovery of maintenance is knowledge of the obligor's country of residence. If both the obligee and the obligor are in the Slovak Republic, the Centre does not have authority to act.

If the place of residence of the obligor is unknown, the Centre recommends that a criminal complaint be filed against the obligor for the criminal offence of neglect of maintenance obligations (Section 207 CC).

Based on the affidavit confirming that a criminal complaint has been filed, the Centre may request assistance from the National Central Bureau of **INTERPOL** in locating the obligor. Alternatively, if it is at least known in which country the obligor is (this, however, applies only to the EU countries), the Centre must be informed of this fact so as to be subsequently able, within the meaning of specific provisions of Council Regulation EC No 4/09, to request the central authority of the country in which the obligor is presumed to be to verify this information.

Overview of the number of requests received by Interpol from the Centre for the International Legal Protection of Children and Youth

in 2012	62 requests
in 2013	80 requests
in 2014	124 requests
in 2015 (January - June)	49 requests

When processing received requests, the National Central Bureau of Interpol performs:

a) verification whether the request meets all the requirements;
b) translation of the request into a foreign language;
c) transmission of the request to the relevant State.

The precondition for sending a request to an Interpol Member State is dual criminality. In practice, this requirement often presents an obstacle to locating a person because many countries do not consider neglect of mandatory maintenance to be a criminal offence (e.g. the UK, Ireland, Cyprus, and others.). In such cases, the requested country sends a reply stating that national legislative provisions prevent it from carrying out requested enquiries. If the condition of dual criminality is satisfied, Interpol sends the request to its partner National Central Bureau; after it has received the reply, it informs the Centre of this fact.

SIRENE Bureau at the Police Force Presidium's Bureau of International Police Cooperation

The national SIRENE Bureau (hereinafter the "*SIRENE Bureau*") at the Bureau of International Police Cooperation ensures international police cooperation with the countries using the Schengen Information System (besides the Slovak Republic, this applies to 25 Schengen countries + 3 other Member States that do not fully apply the Schengen *acquis*: the United Kingdom, Romania and Bulgaria).

As part of its agenda, the SIRENE Bureau performs international searches for perpetrators of parental abductions in the countries using the Schengen Information System ("the SIS"); it is in charge of all communications with these countries concerning on-going

searches and takes active part in the coordination of steps taken after locating abducted children or abductor-parents.

In practice, the SIRENE Bureau most often deals with three types of cases.

Firstly, situations where the SIRENE Bureau receives information, either from the Centre or from another source, that a child has been abducted by his or her parent who plans to leave the Schengen area with the child. This situation calls for urgent action involving all the parties concerned and for their flexible cooperation since there may be very little time available before the parent boards a plane with the child.

It must also be mentioned that any communication by the SIRENE Bureau with its foreign counterparts in countries operating the SIS must be preceded by an alert entered in the SIS system (the SIS entry). It is therefore ESSENTIAL that at least the abducted child be reported missing in the Slovak Republic and that the child search alert be entered in the relevant search information system. According to internal Police Force rules, the search is initiated by the police department which receives the missing person report. Launching the search in the Slovak Republic will simplify and speed up the entire subsequent process of exchanging case-related information with parties abroad.

To ensure the return of the child to the custodial parent, the subsequent exchange of information must absolutely include relevant court decisions, which will serve as the basis for authorities of the country where the child is located in assessing the case. It is important that all decisions be final (ideally with an enforceability clause). In one case, the decision on a provisional measure sent to the SIRENE Bureau never became final or, more precisely, never took effect because after it had been issued the mother withdrew her motion for a provisional measure. Such situations will have to be avoided in the future in order to avert the possibility of challenging the legality of police procedures.

After the child has been located, the SIRENE Bureau ensures subsequent communications aimed at ensuring the return of the child to the custodial parent. There have been cases where charges were brought against the abducting parent by the authorities of the country in which the child was located.

The case-related communication is ensured at the SIRENE Bureau by round-the-clock service working in a 24/7 regime; it requires a prompt response and effective cooperation of all the services concerned. It proved to be useful in the past to give contact data for a person who is available at the Centre in such regime until the completion of the given case.

In the second group of cases, the current location of the child or the parent who removed the child from the care of the custodial parent is not known. In these cases, it is possible to issue a European arrest warrant against the abducting parent and to launch a search with a view to his or her arrest and surrender to the Slovak Republic. In these cases, standard steps and measures are taken to locate both the parent and the child. The standard procedure after they have been located is to ensure the safety of the child and return him or her to the

custodial parent. The parent who is subject to the European arrest warrant is arrested and brought before competent judicial authorities that will decide whether to remand him or her into custody and on the subsequent (non)execution of the European arrest warrant.

In the third category of cases, the child has been returned to the custodial parent but the search continues for the abducting parent on the basis of an arrest warrant issued either for abduction pursuant to Section 210 CC, harming the rights of another under Section 375 CC, or obstructing execution of an official decision under Section 349 CC. The steps to be taken after the person has been located are governed by national legal provisions related to the European arrest warrant.

From the perspective of the SIRENE Bureau, the following elements must be present in order to successfully resolve a case where a parent removes a child from the care of the custodial parent and departs from the Slovak Republic with him or her, or makes an attempt to take him or her out of the Schengen area:

- the missing child alert must be entered in the Slovak Republic's national source system; this automatically generates an entry in the SIS – the necessary prerequisite for international operational communication between national SIRENE bureaus; if circumstances permit, a search should be launched also for the perpetrator of the parental abduction;
- existence and availability of final judicial decisions (preferably with an enforceability clause);
- immediate response from all parties concerned and prompt communication with the partner abroad.

As soon as the missing child is located in a Member State, this fact is immediately provided to the national SIRENE bureau, which transmits this information equally expeditiously to the competent police department that initiated and performed the search, or to other authorities cooperating in the case (e.g. the court, the Centre, etc.). The competent police department informs the custodial parent of the fact that the child has been found and of the subsequent steps taken by the bodies of the Member State where the child was located. After the relevant decision has been passed in the country where the child was located, the way in which the child will be brought back from abroad is agreed with the parent. It may be assumed that a similar procedure will be used in most Member States because of the common legal basis laid down in legal acts on SIS II, although understandably there are certain differences between individual jurisdictions. (Information about the procedures used by the authorities in countries not operating the SIS system falls within the remit of the national Interpol unit.)

- **How do the law enforcement bodies assess the criminality of a parental abduction?**

Neither the SIRENE Bureau nor the Interpol Bureau are law enforcement bodies: they represent a communication channel enabling international police cooperation. The answer to this question is therefore given on the basis of the SIRENE Bureaus' practical experience.

In certain cases, the removal of a child from the care of the person who is obliged to provide care to the child either by virtue of the law or by official decision was classified as abduction pursuant to Section 210 CC; the perpetrators of this offence, if found guilty, were liable to imprisonment of up to 5 years. However, it needs to be noted that in these cases there was a court decision on child custody.

Depending on the specific circumstances of the case, the above conduct can also be classified as obstructing execution of an official decision pursuant to Section 349 CC, or harming the rights of another pursuant to Section 375 CC.

- **To what extent can law enforcement bodies inform the Centre about a search?**

In parental abduction cases, the Centre is provided necessary assistance from the SIRENE Bureau. This applies mainly to missing children cases requiring immediate action because of the risk that the children might be taken out of the Schengen area and it would then not be possible to secure their return. In these cases, the SIRENE Bureau transmits information acquired during the search not only to the competent police authorities but also to the Centre.

- **How can the Centre help in the search?**

International police cooperation today is an essential component of the protection of safety and public order, as well as an important element of creating an area of freedom, security and justice based on respect for fundamental rights in the European Union.

International police cooperation in the Slovak Republic takes place through the Police Force Presidium's agencies for international police cooperation – the national central bureaus of SIRENE, EUROPOL, and INTERPOL, joint contact centres, and a network of police attachés and liaison officers.

From the territorial point of view, international police cooperation in the Schengen area and the UK, Romania and Bulgaria takes place mainly through the national SIRENE bureau, joint contact points and the EUROPOL national unit; in cases beyond the remit of the national SIRENE bureau, it is also ensured through the National Central Bureau of INTERPOL together with police attachés and liaison officers. Cooperation with EU Member States that are not using the SIS and with other countries is secured by the National Central Bureau of INTERPOL together with police attachés and liaison officers.

National SIRENE Bureau within the Police Presidium's Bureau of International Police Cooperation

Under the legal acts on SIS II, a national SIRENE Bureau is to be set up in each Member State operating the SIS. The national SIRENE Bureau within the Bureau of International Police Cooperation facilitates international police cooperation in the Schengen countries, the United Kingdom, Bulgaria and Romania (the states operating the SIS), and is mainly designed to serve as a single contact point for exchanging all supplementary data on

SIS alerts, and for coordinating activities after the search target has been located. The SIRENE Bureau is also responsible for the quality of national alerts issued in the SIS, has the competence for the area of personal data protection, and addresses the issue of rights of data subjects whose personal data are recorded in the SIS.

To the extent necessary to fulfil its tasks, the SIRENE Bureau cooperates with state authorities, in particular the Ministry of Justice, the Ministry of Foreign and European Affairs, the courts and prosecution authorities, the Customs Administration and the Office for Personal Data Protection of the Slovak Republic.

Schengen Information System (SIS)

After the abolition of controls at internal borders, the freedom of movement guaranteed within the Schengen area may also give rise to safety concerns, such as an influx of illegal migrants or a general worsening of the security situation, with the resulting risk of intensified organised crime or international terrorism. The so-called compensatory measures introduced to minimise these negative factors include the SIS. The Schengen Information System makes it possible to not only improve and intensify the search for persons and stolen things, but also to ensure the exchange of important information needed by the designated authorities responsible for security, protection of public order, people and property.

Schengen Information System is one of the most effective tools in the fight against crime and one of the most important conditions for lifting internal border controls. The main purpose of the SIS is to preserve internal security of the Schengen area in the absence of internal border controls.

The bodies that have access to information in the SIS are police and customs authorities, judicial authorities and the authorities responsible for issuing residence permits or visas. These entities use information and data from the Schengen Information System to carry out their tasks and to subsequently adopt the necessary measures concerning persons or things subject to alerts.

The operation and the use of the SIS is governed by European Parliament and Council Regulation (EC) No 1987/2006 of 20 December 2006 on the establishment, operation and use of the Schengen Information System (SIS II), EU Regulation (EC) No 1986/2006 of 20 December 2006 concerning access by the services responsible for issuing vehicle registration certificates in the Member States to the Schengen Information System (SIS II), and Council Decision 2007/533 / JHA of 12 June 2007 on the establishment, operation and use of the Schengen Information System (SIS II) (hereinafter "*Council decisions*").

The system that is currently in operation is the second-generation SIS system; it provides users with enhanced possibilities of identifying persons and objects due to a larger amount of personal data and information, pictures of persons, objects and fingerprints, and also makes it possible to download copies of relevant decisions by competent authorities. The second-generation SIS offers enhanced alerts on objects (including boats, aircraft, containers,

industrial equipment, securities and means of payment), as well as the functionality of linking alerts, which makes it possible to make connections between entries.

The data entered into the SIS by individual Member States are subsequently made available to the designated law enforcement bodies of the other Member States to enable them to take adequate measures – such as detaining persons subject to a European arrest warrant, preventing the entry into the Schengen area of a person who has been refused entry to another Member State, or searching for a missing person.

The following categories of data are entered into the SIS:

1. alerts on persons wanted for arrest for extradition or surrender purposes;
2. alerts on persons refused entry into the Schengen area;
3. alerts on missing persons;
4. alerts on persons for the purpose of communicating their place of residence for law enforcement agencies and courts;
5. alerts on persons and vehicles for the purpose of discreet and specific checks;
6. alerts on stolen, misappropriated or lost objects, or objects sought as evidence in criminal proceedings.

In terms of structure, each entry in the SIS contains not only information that makes it possible to clearly identify a particular person or object entered into the system but also clear instructions on how to proceed after the search object has been found.

Prior to entering a Slovak alert in the SIS, an alert proposal must be created in the national source tracking system. The search for wanted or missing persons in connection with parental abductions is entered into the PATROS information system by police departments. Except for alerts created on the basis of European arrest warrants, alert proposals are automatically transferred to the SIS: the alerts thus become available to all countries using the SIS as soon as they are created. A big advantage of the SIS is that the alert becomes available to all users in other Member States within a few seconds after its creation in the national system.

There are certain exceptions to the rule of automatic transfer of created alerts. These concern the cases in which the SIRENE Bureau – which checks upon, completes and decides on the creation of alerts – actively enters the alert creation process. Any change to the alerts can only be made in the national source tracking system from which they are automatically transferred to the SIS.

This means that a Slovak alert can be updated or deleted only by the Slovak Republic and that no other Member State can make any changes to the alert created by the Slovak Republic.

International searches for persons

International searches for persons are carried out with the help of SIS and Interpol search databases. In the countries operating the SIS system, the search in the SIS database takes precedence over the Interpol database search; this means in practice that in a search for a missing or wanted person launched in both international search systems, international communication concerning the SIS entry is ensured in these countries as a priority through the SIRENE Bureau. In these search cases, Interpol ensures only necessary communication with the countries not using the SIS.

In the cases of parental abductions, three types of SIS alerts are most frequent:

- alerts on missing persons under Article 32 of Council Decision on SIS II;
- alerts on persons wanted for arrest for extradition or surrender purposes under Article 26 of Council Decision on SIS II;
- alerts on persons for the purpose of communicating their place of residence for law enforcement agencies and courts under Article 34 of Council Decision on SIS II.

Missing person alerts in the SIS (alerts under Article 32 of Council Decision on SIS II)

According to Article 32 of Council Decision on SIS II, data on missing persons who need to be placed under protection and/or whose whereabouts need to be ascertained are entered in SIS II.

Two categories of missing persons are entered in SIS II.

The first category comprises persons who need to be placed under protection for their own safety or in order to prevent threats to their surroundings. When the person who has been located is to be placed under protection, the competent authorities that located the person notify the authorities of the Member State which issued the alert about the place of residence of the person. At the same time, these authorities may, subject to their national law, transfer the person that is to be placed under protection to a safe place to prevent him or her from continuing movement.

The second category of missing persons sought under this Article includes persons who do not need to be placed under protection. These are mainly adult missing persons whose place of residence may be communicated only with their consent.

Minors who are victims of parental abduction fall into the first category of missing persons. In these cases, the child who has been located should be placed under protection and subsequently handed over to his or her legal guardian.

Experience shows that the cases which other countries consider to be the least ambiguous are parental abduction cases in which there has been a court decision awarding custody of the child to one of his or her parents, or a provisional measure prohibiting a parent from removing the child from the territory of the Slovak Republic. If a missing child is located on the territory of another Member State, relevant documents are made available to the authority hearing the case in that state. In the past, Austrian authorities recognised

provisional measures issued by Slovak courts; in one case they even handed a child over to his Slovak mother despite the fact that his father also possessed a child custody decision issued by a Greek court.

Search in the SIS on the basis of a European arrest warrant for the purpose of surrender or extradition (alert under Article 26 of Council Decision on SIS II)

If the competent judicial authority in the Slovak Republic has issued a European arrest warrant against a parent who has removed a child from the care of the other – custodial – parent, the Slovak police immediately enter the alert in the national source tracking system. The search launched in the PATROS system, after being completed by the SIRENE Bureau, is transferred to the SIS where an alert is created for the arrest of that person for the purpose of surrender or extradition under Article 26 of Council Decision on SIS II. Alerts under this Article are created also by other Member States on the perpetrators of parental abductions subject to European arrest warrants. If the person for whom this type of alert has been made is located in the territory of a Member State, he or she is arrested and brought before competent judicial authorities that then decide whether to remand the person into custody and execute the European arrest warrant.

The procedure under Article 26 is the only possible way in which the freedom of an abducting parent may be restricted. Otherwise, the freedom of a natural person can only be restricted if he or she is subject to an arrest warrant having the necessary legal force; in the Slovak Republic this can only be a European arrest warrant and neither a national nor an international arrest warrant would meet that requirement. No other legal instrument other than a European arrest warrant authorises the arrest of a person at the request of another Member State in the countries operating the SIS.

In Slovak court practice, there have been several parental abduction cases where the courts applied the above procedure. They issued a European arrest warrant against persons who committed the offence under Section 210(1)(2) CC; in these cases, the court awarded custody of a minor child to the mother but the father removed the child from the mother and left the Slovak Republic with the child. In all these cases, the child was returned to the mother and because the fathers of these children were located in the territory of other Member States they were surrendered to the Slovak Republic to be prosecuted for the said criminal offence.

Search for the place of residence or domicile (alert under Article 34 of Council Decision on SIS II)

Another alert in the SIS, which does not have the necessary legal force to arrest a person and can only serve to locate the place of residence or domicile, is an alert issued under Article 34 of Council Decision on SIS II.

In the legal system of the Slovak Republic, this alert can be created in the SIS under Article 34 of Council Decision on SIS II on the grounds of:

- warrant of arrest pursuant to Section 73 of CPC;

- committal warrant pursuant to Section 408(4) of CCP;
- warrant of attachment pursuant to Section 448a of CCP;
- arrest warrant pursuant to Section 490 of CCP (international arrest warrant).

Furthermore, searches are launched in the SIS under this Article for the following categories of persons:

- escaped convicts from prison facilities;
- persons undergoing protective treatment;
- witnesses;
- search for the place of residence or domicile (persons wanted by law enforcement bodies or a court or several courts);
- search for the accused (wanted by law enforcement bodies or a court).

If no European arrest warrant has been issued against the abducting parent and it becomes necessary to track down him/her, it is possible to launch a search for his or her place of residence, subject to certain conditions. However, if it is found that the person is in a Member State, it is not possible to expect his or her arrest but only a communication on the current place of his or her residence.

In exceptional cases, especially when the court having jurisdiction issues a European arrest warrant immediately after locating the person, the authorities of the Member State where the person was located can be expected to accept a Slovak request for his or her arrest and surrender.

In the SIS, it is possible to link inter-related alerts (e.g. the search for a missing minor with the search for a person subject to a European arrest warrant) in order to speed up interventions by relevant authorities.

Search for the place of residence or domicile (alert under Article 34 of Council Decision on SIS II)

A search for the place of residence or domicile is launched by the relevant Slovak police unit in the national source information system PATROS (‘the search for persons’ information system) at the request of a law enforcement agency or court. After an alert has been created in the national search system, an alert is automatically generated in the Schengen Information System (“SIS”), which is then available to all other Member States operating the SIS.

The necessary prerequisite for creating an alert in the SIS under Article 34 of Council Decision on SIS II is the existence of criminal proceedings conducted against the person before relevant Slovak authorities.

Under Slovak legislation, an alert under Article 34 of Council Decision on SIS II can be created in the SIS on the grounds of:

- arrest warrant pursuant to Section 73 of CCP;
- committal warrant pursuant to Section 408(4) of CCP;
- warrant of attachment pursuant to Section 448a of CCP;
- arrest warrant pursuant to Section 490 of CCP (international arrest warrant).

The above-mentioned Article also makes it possible to search for the place of residence or domicile of persons and of the accused (in both cases, the search must be requested by law enforcement agencies or courts), witnesses, persons undergoing protective treatment, and escaped convicts from prison facilities.

If a search for the place of residence or domicile of a wanted person has been launched in the Schengen Information System and the person is located in a territory operating the SIS, the police of that state interview the person to ascertain his or her current place of residence. The SIRENE Bureau of that Member State transmits information on the place of residence without delay to the SIRENE Bureau of the Slovak Republic (national SIRENE Bureau) that immediately communicates this information to the competent police department. On the basis of such information, competent Slovak authorities may take further necessary steps in the matter.

The existence of an alert in the SIS is an essential condition for communication by the national SIRENE Bureau with countries using the SIS. Thus, if there is an alert in the SIS, it is possible to request that an enquiry be made with the aim of ascertaining/verifying the place of residence of the wanted person abroad; the request must be filed by competent authorities – in this case by the Centre for the International Legal Protection of Children and Youth. However, in order to request such enquiries, it is necessary to have at least information about the country/countries where the wanted person is/could be. In accordance with the rules of communication, SIRENE channels cannot be used to request that all countries using the SIS perform the enquiry concerning the place of stay. The SIRENE Bureau cannot accept a request formulated in such a manner.

If the Centre for the International Legal Protection of Children and Youth requests an investigation in connection with the criminal offence of neglect of mandatory maintenance where a criminal complaint has been filed against the obligor but no search has been instituted, such request should be addressed to Interpol which, in the absence of a SIS alert, communicates with the partner abroad. However, regardless of which national bureau of the Police Presidium's Bureau of International Police Cooperation will be addressed (SIRENE or INTERPOL), the national bureau concerned will properly process the request.

The national SIRENE Bureau is currently unable to statistically evaluate the number of alerts created for the purpose of locating the place of residence of perpetrators of the criminal offence of neglect of mandatory maintenance, but the alerts created with respect to this type of criminal offence are a rather frequent part of the agenda of the SIRENE Bureau and its communication with partners abroad.

Search for the purpose of arrest (alert under Article 26 of Council Decision on SIS II)

In accordance with Section 5(1) of Act 154/2010 on a European arrest warrant as amended by Act No 344/2012 , if the accused may be assumed to be staying or is staying in another Member State and it is necessary to request his or her surrender, the presiding judge of the panel or the judge of the competent court issues a European arrest warrant for the accused. In the pre-trial, the judge for preparatory proceedings issues the European arrest warrant upon a motion by the prosecutor. According to Section 5(2), the European arrest warrant referred to in paragraph 1 can be issued if a national arrest warrant, international arrest warrant or a final and enforceable custodial sentence has been issued against the accused for the same offence.

the competent court has issued the European arrest warrant, the warrant is served to the police tracking department of the relevant district police directorate or to the national SIRENE Bureau which, in cooperation with the relevant tracking department, ensures the creation of an alert in the SIS. In the countries that enforce European arrest warrants but are not yet connected to the SIS (Ireland, Croatia, Cyprus), an international search is declared through Interpol. The same applies to the communication in relation to these countries after locating the person, which is also conducted through the National Central Bureau of Interpol.

In some countries operating the SIS, the act which constitutes the offence of neglect of mandatory maintenance under Slovak law, is only dealt with in civil proceedings. This is particularly true of the "Nordic" countries, i.e. Sweden, Finland, Denmark, Norway, and Iceland, as well as the UK, the Netherlands, Liechtenstein and Latvia. This fact plays an important role in cases where a sought person is located in the territory of one of these countries.

All the above-mentioned countries will add an indication, called a flag, to the alert created by the Slovak Republic in the SIS for the person sought on the basis of an European arrest warrant issued for the criminal offence of neglect of mandatory maintenance. This means that if the person wanted is located in the territory of these countries, the measures requested on the basis of this alert (i.e. arrest for surrender) will not be implemented. The alert is flagged regardless of the probability of the presence of the wanted person in the territory of the country concerned.

After the wanted person has been located in the country that will not act upon the alert, only the place of residence of that person is verified and this information is sent to the national SIRENE Bureau. The procedure applied in this case will be identical with that used in case of an alert pursuant to Article 34 of Council Decision on SIS II.

If the wanted person has been located in a country whose legal system considers neglect of mandatory maintenance to be a criminal offence, the competent authority decides on whether to place that person under arrest and subsequently execute the European arrest warrant. If it has been finally decided that the person is to be surrendered to the Slovak Republic for criminal prosecution or execution of sentence, the police will carry out the physical transfer of the person within 10 calendar days of the decision.

Is the incidence of this type of criminal offences on the rise and what penalties are most frequently imposed for this offence? It is difficult to locate the perpetrators?

In September 2007, the national SIRENE Bureau took over the European arrest warrant agenda from Interpol. The national SIRENE Bureau has kept statistics on European arrest warrants since 2008.

The data below show the number of EAWs issued by Slovak judicial authorities.

Year	The total number of EAWs issued in Slovakia	The number of EAWs issued with respect to the criminal offence of neglect of mandatory maintenance	The number of persons located abroad with respect to the criminal offence of neglect of mandatory maintenance
2008	265	53	32
2009	349	66	40
2010	356	64	46
2011	349	60	52
2012	371	86	54
2013	366	78	28
2014	359	98	58
Total	2415	505	310

Regarding the range of punishments for this criminal offence, the national SIRENE Bureau does not keep relevant statistics. To this end, an overview was compiled of European arrest warrants issued in 2014 for the purposes of enforcement of imprisonment sentences. Under Section 207 of the Criminal Code, the criminal offence of neglect of mandatory maintenance carries a sentence of imprisonment for up to 5 years. In 2014, 44 European arrest warrants were issued for the purposes of enforcement of imprisonment sentences. The sentences imposed during this period ranged from four-month imprisonment to three-year imprisonment.

One fifth of the total number of European arrest warrants issued in Slovakia in 2008-2014 were EAWs issued with respect to the criminal offence of neglect of mandatory maintenance. Approximately three-quarters of the persons wanted for this offence were eventually found in the Czech Republic where they were staying because of the absence of a language barrier or because of personal ties. Other countries where these offenders were found, and from where they were surrendered either for prosecution or sentence enforcement purposes, included Spain, Italy, France, Germany, Austria, Hungary and others.

There were some cases in which the European arrest warrant was issued against the same person over a short time span or shortly after the person was surrendered to the Slovak authorities.

Ministry of Foreign and European Affairs of the Slovak Republic

Communication between the Ministry of Foreign and European Affairs of the Slovak Republic (MFEA SR), its representations and the Centre has been smooth, operational and mutually helpful.

In the context of their competencies, possibilities and territorial specificities, our diplomatic missions provide support and help resolve the cases of Slovak citizens under the age of 18. This support means mainly informing, without delay, the Centre, the Central Office of Labour, Social Affairs and Family and other institutions involved, as well as providing relevant consular information, allowing communication with the closest relatives and helping the parties overcome the language barrier. Within its competencies, the Slovak diplomatic missions communicate with the relevant central government authorities and institutions of the receiving state.

What are the options of the Slovak diplomatic missions to act in cases of parental child abduction to countries that are not signatories to the Hague Convention?

The Slovak diplomatic missions collaborate and communicate with authorities for social and legal protection of children, i.e. the Central Office of Labour, Social Affairs and Family and the Centre in line with their competencies laid down in the relevant provisions of Act No 305/2005 on social and legal protection of children and social guardianship.

A unified procedure of diplomatic missions in the area of consular assistance and protection for Slovak citizens who are abroad and find themselves in distress is regulated by the Decree on Consular Help and Protection, which is an internal ministerial regulation. Individual forms of help are provided by the diplomatic missions on a case-by-case basis, depending on each specific case. Diplomatic and consular missions of EU member states are not the entities that should be necessarily informed, pursuant to Council Regulation (EC) No 2201/2003 (1) on the recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility. They are brought in, particularly, when a citizen approaches them. Equally, the personal participation of representatives of Slovak diplomatic missions during trials is subject to the national legal regulation of the relevant country and depends on the specific nature of individual cases.

The MFEA SR cannot be the only and exclusive entity responsible for cases of unlawful removal and retention of a child in countries that are not parties to the Hague Abduction Convention.

Also, the degree of legal and consular help provided to Slovak nationals by our diplomatic and consular missions depends, to a degree, on the number of staff. Diplomatic and consular missions with a higher number of staff have a greater potential to provide help. A strict, unified procedure would have to be adapted to the capacities of the smallest diplomatic or consular missions, which would curb the higher quality and standards of other

missions.

If the Centre has been contacted abroad by a Slovak national who is in distress and his or her situation calls for involvement of the relevant diplomatic and consular mission, how can the relevant diplomatic mission be contacted? Is it possible to contact the relevant Slovak diplomatic mission directly and include the relevant MFEA Consular Section only in a copy or one should only contact the MFEA Consular Section?

In cases when a Slovak diplomatic mission has been contacted by a natural person or legal entity (i.e. also by the Centre) that is authorised to do so by law and has been asked for help in a case of parental child abduction, or has been informed about such a case by the relevant authorities of the country where the mission operates, the diplomatic mission shall do especially the following:

a) contact the relevant governmental authority of the Slovak Republic, i.e. the Centre and/or the Central Office of Labour, Social Affairs and Family,
b) provide the Centre and/or the Central Office of Labour, Social Affairs and Family with all the data and documentation that has been made available to the mission and which is necessary in order to commence the proceedings,
c) inform the ministry of foreign affairs of the country of its accreditation and/or the relevant judicial, police or other authorities in the country (as a rule, via diplomatic channels in the form of a *Note Verbale*) and request assistance in the case (mostly as regards international child abduction and refusal of the right of parents to see their child in countries that are not signatories to the Hague Convention),
d) provide further assistance to the parent of a minor child, and to other Slovak authorities and institutions that are involved in the process, while observing the decision made by independent courts and bodies of social guardianship.

If the Centre and Slovak diplomatic and consular missions communicate directly, the Consular Section of the MFEA SR will appreciate receiving copies of the relevant communication and significant requests.

It is sometimes necessary to arrange for the assessment of the social situation of a child or his or her relatives in a non-EU member state. In a recent case, the Central Office of Labour, Social Affairs and Family directly contacted a Slovak diplomatic mission requesting the consul to assess the situation. How does the MFEA SR proceed in such cases?

If the nature of the case requires so, pursuant to the provisions of an internal MFEA regulation on consular assistance and protection, a diplomatic mission of the Slovak Republic continuously provides information on the state-of-play of the case, and – upon request – cooperates with the Centre or the Central Office of Labour, Social Affairs and Family, also providing assistance with the assessment of the social situation and living conditions of the children. The process typically means to channel back the requested information in cooperation with relevant competent authorities of the involved state. Given the specific nature of legal and social systems of different countries, their security situation,

as well as the presence of diplomatic and consular missions of the SR in a given country, options of the Slovak diplomatic and consular mission in the matter are restricted. This is why it is not possible to give one unified answer about the cooperation provided by Slovak diplomatic and consular missions when assessing the social situation of the child or his or her relatives in the country in question. Based on experience and practice so far, however, it seems that the collaboration with the Centre and the Central Office of Labour, Social Affairs and Family has been very good and that Slovak diplomatic and consular missions undertake their best, within their capacities, to provide support and assistance.

Service of documents

When and under what circumstances is it possible to use a diplomatic bag?

The conditions for transport of diplomatic consignments between MFEA SR and Slovak diplomatic and consular missions are stipulated in an internal regulation according to which the consignments may be transported using the following:

a) the post,
b) diplomatic air cargo services,
c) vehicles,
d) ad hoc couriers,
e) diplomatic couriers.

The sender of the consignment from the ministry is the competent ministerial unit – its head is responsible for the content of the consignment. In order to carry consignments that call for extra fast delivery it is possible to use, with the consent of the head of the staff, services of special carriers (such as UPS, DHL and others). The Consular Section of MFEA SR and Slovak diplomatic missions remain ready to provide assistance to the Centre with the delivery of urgent consignments by diplomatic channels (particularly in cases of international parental child abductions) to foreign states' authorities.

Proceedings in the cases of minor children and the programme of consular training of employees of the Ministry of Foreign and European Affairs of the Slovak Republic

Protecting the interests of minor Slovak nationals living abroad is one of the most sensitive areas of consular assistance. Even though the number of proceedings in cases of protection of minor rights in which consular services have been engaged is not high when compared with other consular agendas, there has been a trend of continuous growth in recent years. This was one of the reasons why training in issues of protection of minor rights was introduced into the programme of preparation of staff of the Ministry of Foreign and European Affairs of the Slovak Republic before their secondment to Slovak diplomatic and consular missions abroad.

One of the basic kinds of training ministerial staff receive before their secondment to diplomatic and consular missions to hold consular functions is the so-called pre-secondment consular preparation. This type of special training takes about 3 weeks in the form of lectures

and practical assignments on various issues related to the execution of consular functions at the diplomatic and consular missions of the Slovak Republic. In addition to lectures delivered by internal lecturers of the Ministry, the pre-secondment preparation programme includes also lectures delivered by experts from various institutions, *inter alia* also a lecture delivered by the director of the Centre for the International Legal Protection of Children and Youth. This lecture is compulsory for all participants of the pre-secondment consular preparation, thus it is not limited only to consular employees seconded to diplomatic missions where the cases of minor rights protection occur in higher numbers. In the lecture, the lecturer of the Centre for the International Legal Protection of Children and Youth advises the participants (half of whom, as a rule, are employees of the MFEA SR who do not have any experience with the execution of consular functions) on the mission and tasks of the Centre for the International Legal Protection of Children and Youth, international conventions regulating the area of international protection of children and youth, and also about specific ways of cooperation in this area between the Centre, partner institutions in respective countries, and the consular service of the Slovak Republic. A final exam on the subject matter is taken by all participants of the pre-secondment preparation.

The Consular Section of MFEA SR has included the subject of international legal protection of children and youth not only into the consular preparation programme but a reduced version is also part of the orientation training that must be attended by all new employees of the Ministry. As part of the session on practical consular issues delivered to the participants at the orientation course, the lecturer (a member of the Consular Section staff) informs the participants about the experience of consular missions in the area of protection of minor rights, forms of assistance when dealing with individual cases, and cooperation between the consular service and the Centre for the International Legal Protection of Children and Youth. The decision to include a session on international legal protection of children and youth in the orientation course was driven by the fact that new employees of the Ministry often do not have sufficient knowledge or even a basic idea about issues in protection of rights of children and youth that are handled by consular missions operating as part of the Slovak diplomatic missions abroad in collaboration with the Centre for the International Legal Protection of Children and Youth. Since the orientation course also includes internships by the participants at key units of MFEA SR, the new employees have the possibility to acquire more information about the activities of the consular service in the area of protection of minors' rights during their short-term stay at the Consular Section of the Ministry.

Attestation training is part of the professional training of MFEA SR employees and attending it is a prerequisite for the awarding of various diplomatic positions. Similarly to the orientation training, this type of training also includes a session on issues related to consular law and practice and covers issues related to consular services provided in the area of protection of minors' rights.

Regular evaluation of the activities and analyses of the results achieved in the area of consular assistance is part and parcel of the tasks carried out by the Consular Section of the

Ministry of Foreign and European Affairs of the Slovak Republic in the area of methodical guidance provided to consular units of the diplomatic missions. Annual reports on the activities of the consular service present the knowledge gathered based on the activities of the whole network of consular missions in all areas covered by consular services pursuant to the Vienna Convention on Consular Relations, including issues related to protection of minors' rights. These reports are meant not only for the purposes of the Ministry of Foreign and European Affairs and diplomatic missions of the Slovak Republic operating abroad; anyone interested may read them at www.mzv.sk

The most recent report on the activities of the consular service (evaluation of the activities in 2014) concludes that in general the number of cases when the parental rights of parents – Slovak nationals – were terminated by decisions of foreign courts has increased. In 2012, there were 63 cases. In 2013, the number went up to 97 and in 2014 there were 110 cases in which courts in foreign states issued a decision to terminate parental rights on the grounds of violation of the laws regulating the obligations of parents and their actions in relation to children. Clearly the highest number of cases was in the United Kingdom of Great Britain and Northern Ireland whose legal framework is very strict in assessing breach and/or negligence of parental obligations in relation to children. The diplomatic missions concerned have been closely monitoring individual cases and in collaboration with the Centre for the International Legal Protection of Children and Youth have adopted measures concerning the decisions and procedures of the respective authorities of the foreign judiciary and social guardianship.

The procedure covering the assistance and protection provided by the consular service in cases of minors is set out in an internal ministerial directive on consular assistance and protection. Consular protection of children and youth is dealt with in a separate part of the directive as well as in a separate annex thereto.

The duty of the diplomatic missions of the Slovak Republic to inform relevant authorities and institutions concerning consular assistance to children

If a diplomatic mission of the Slovak Republic receives a request for assistance to a Slovak national who is younger than 18 years of age (hereinafter the "*child*") and who remains abroad without a legal guardian, or without another closely related adult, the diplomatic mission shall inform the child's legal guardian without delay.

The diplomatic mission that is competent pursuant to the permanent address of the child shall also inform the respective Office of Labour, Social Affairs and Family, Section of Social Affairs and Family, in order to initiate assistance in the case of repatriation of the child to the Slovak Republic and arrange for the compensation needed for the child's repatriation. The diplomatic mission shall inform the above-described authority also if the return of the child from abroad to the Slovak Republic has been arranged for by his or her legal guardian without the engagement of the Section of Social Affairs and Family of the competent

Office of Labour, Social Affairs and Family.

Should the nature of the case require so, the diplomatic mission shall provide the above information also to the police authorities of the Slovak Republic.

Collaboration between the diplomatic missions of the Slovak Republic and the Centre for the International Legal Protection of Children and Youth and the Central Office of Labour, Social Affairs, and Family

When a Slovak diplomatic mission has been contacted by a natural person or legal entity authorised to do so by law and has been asked for consular assistance and protection by the subject of this consular assistance and/or protection, or has been informed about such a case by the relevant authorities of the country involved, the diplomatic mission shall, in particular:

a) *contact the respective body of state administration of the Slovak Republic, i.e. the Centre for the International Legal Protection of Children and Youth, and the Central Office of Labour, Social Affairs and Family,*
b) *provide the Centre for the International Legal Protection of Children and Youth and/or the Central Office of Labour, Social Affairs and Family with all the data and documentation that it has access to that is necessary for commencement of the proceedings,*
c) *should the nature of the case so require, continuously inform about the status of the case, and on request, cooperate with the Centre for the International Legal Protection of Children and Youth and the Central Office of Labour, Social Affairs and Family in the following way:*
    1. collaborate in the issue of evaluation of the social situation and living conditions of the child abroad,
    2. on request, arrange for surrendering the child to the person entitled thereto on the premises of the diplomatic mission, if the decision of the responsible court had not been to surrender the child to one of the parents but to return the child to the jurisdiction of the Slovak Republic,
    3. provide assistance in the case of alerts made for minor children unlawfully removed to a foreign country,
    4. provide adequate support in order to cope with the language barrier when communicating with respective authorities in the country involved,
    5. provide the central office with information and documentation necessary for the commencement of proceedings in the case of repatriation of a child without their legal guardian or a person who has the custody of the child based on a decision of the court, who was born or has been living in the country where the diplomatic mission operates.
d) *inform the ministry of foreign affairs and/or other relevant judicial, police or other authorities in the country involved and request assistance, as a rule by means of a diplomatic note (in particular, if it is a case of international child abduction and removal of the right of access to a parent of the child in countries that are not parties to the Hague Convention.*

e) *request from the department of social legal protection of children and social guardianship of the competent Office of Labour, Social Affairs and Family to take relevant measures in order to:*
    1. arrange for the return of the child with habitual residence in the Slovak Republic who has been staying in another country without company of his or her legal guardian, relative or person with custody rights based on the decision of court, and to whom the Convention on the Civil Aspects of International Child Abduction does not apply, to the Slovak Republic,
    2. arrange for the removal of a child who was born in another country to a Slovak national whose legal guardian has not shown interest in the child, and his or her return to the Slovak Republic.

The diplomatic mission shall inform the nationals of the country involved interested in the adoption of a child with habitual residence in the Slovak Republic to what authorities of their home country their applications should be addressed, pursuant to the Convention of 29 May 1993 on Protection of Children and Co-operation in respect of Intercountry Adoption.

With respect to consular protection of children when cooperating with the Centre of International Legal Protection of Children and Youth and the Central Office of Labour, Social Affairs and Family, the diplomatic mission will adequately use the information on the activities of the Centre and the Central Office accessible on the CIPC website when providing information to applicants.

Collaboration of the diplomatic missions of the Slovak Republic

The Ministry of Foreign and European Affairs of the Slovak Republic pays appropriate attention to Slovak nationals who are minors and are remaining abroad for a long time or permanently. This commitment by the Ministry follows from the competent law, the Vienna Convention on Consular Relations of 1963, as well as from other international and bilateral legal instruments that are binding for the Slovak Republic and other countries with respect to protection of the rights of children.

Slovak diplomatic missions collaborate and communicate with the authorities of social and legal protection of children, i.e. the Central Office of Labour, Social Affairs and Family and the Centre in line with their competencies laid down in the relevant provisions of Act No 305/2005 on social and legal protection of children and social guardianship.

A unified procedure by diplomatic missions in the area of consular assistance and protection for a Slovak national who is in distress abroad is regulated by the Directive on Consular Help and Protection, which is an internal ministerial regulation. Individual forms of help are provided by the diplomatic missions on a case-by-case basis, depending on the specific case. Diplomatic and consular missions of EU member states are not the entities that should be necessarily informed, pursuant to Council Regulation (EC) No 2201/2003 (1) on the recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility. They are engaged in a case mainly when they are approached by their

citizens. Equally, the personal presence of representatives of Slovak diplomatic and consular missions during trials is subject to the national legal regulation of the involved country and depends on the specific nature of an individual case.

The Association of Towns and Communities of Slovakia

A request to inquire about the conditions of families in Slovakia and other information (the family's reputation in a village)

Contact: In villages, it is best to directly contact the mayor while in towns the office of the mayor should be contacted – both will give specific instructions to authorised staff, usually social and/or field workers.

The information concerning the reputation of a family is commonly provided by municipal authorities for various purposes. A comprehensive account is considered to be appropriate – including a family's housing and financial situation, money handling, employment, way of life, school attendance, health condition, reputation in the immediate environment, etc., as well as the consumption of alcohol and other substances, gambling, cohabitation of the parents, payment of local taxes and fees, relationships with the community and individual citizens, issues related to minor offences dealt with by the municipality or the police, care of children, hygiene, dressing of children, school attendance by children, preparedness for school lessons, and possibly also information from institutions that have most frequently come in contact with the family, in accordance with Act No 122/2013

In relation to the family information to be used by the Centre, it is important to state the following:

- how many family members there are
- how many minor children the family has and what ages they are
- the address of the previous permanent residence in the village and whether they might live at the same address after their return
- family relationships and social conditions – the family background in general
- the overall attitude towards providing for the family – i.e. an effort to find employment and keep it
- whether the parents were, during their previous stay in the village, involved with the municipal police because of minor offences, or whether they were dealt with by the members of the district police department (a tendency towards conflict)
- any other information, e.g. whether they are known to have consumed – while being permanent residents – alcoholic beverages, or what kind of care the children were given by their parents and what their school attendance was like.

The standpoint of the Association of Towns and Communities

Even if a family does not have a good reputation, the children should not suffer the consequences. A country like Slovakia, facing a decline in childbirth and high emigration rates, ought to do everything to support children, regardless of what their parents are like, and help them become economically productive citizens. This should apply to every individual child. Inclusion (also) means that whenever a person remains on the outside of society, the state not only suffers a total loss but also has to pay for it. The most essential changes in behaviour can be made in childhood. The reputation of a family should only serve as information that a broader, more holistic approach ought to be taken to deal with the family as a whole in order to safeguard the interests of the child.

How can towns and villages help citizens of Slovakia whose minor children were taken away from them abroad who want to return to Slovakia together with their children but their housing conditions do not make this possible (e.g. they do not have an apartment)? What are the conditions under which social rental apartments are assigned?

A question for the Association of Towns and Communities

If families with a good reputation that have gone abroad to work do not have any family or housing background in the village, could their life situation be solved by assigning a social rental apartment to them? What conditions would they have to meet?

Applicants for the assignment of a social rental housing have to follow the applicable legislation and the generally binding provisions of the town or village in question that regulate the conditions of apartment renting.

Usually, such conditions include the following:

- The applicant must have permanent residence in the town (sometimes a specified number of years);
- The applicant may not own or co-own any real estate;
- The tenant should be able to pay the rent and service fees for use of the apartment, i.e. must prove that he or she has an income;
- This income should not exceed three times the amount of the subsistence level in line with Act No 443/2010 on subsidies for housing development and social housing, Section 22(3)(a);
- If an apartment is available, its assignment is decided on by the Committee for Social Affairs and Public Order.

The requirements for the assignment of social housing can also include the settlement of all obligations to the town and the administrator of the social housing, as well as a good reputation. Additionally, if the applicant is not a permanent resident of the town, he or she should have a job in the town. If the income and permanent residence conditions are not met, in some towns the mayor can exercise the right to grant an exception.

The town of Bardejov is an example of this. The town provides (lower standard) social apartments for rent to citizens whose sole income are the social benefits they receive, or to those who have been long-term unemployed, or to families with several members – e.g. to the Roma community. A regular rental apartment, in common standard, can be assigned to a citizen with permanent residence in the town of Bardejov and with income as defined by the applicable legislation. The minimum income should be 70% of twice the amount of the subsistence level and the maximum income is three times the amount of the subsistence level. The income is calculated for the previous calendar year, per member of the household. Additionally, the applicants may not own an apartment or a house. If the applicants have lost an apartment or house in the past ten years because it was donated, sold or executed, they are not eligible to apply for a common-standard rental apartment.

Does your village/town operate a crisis centre that could be contacted by the Centre if necessary that is capable of working with people in need?

We recommend the central register of providers of social services. The same applies also to other forms of crisis housing.

Crisis centres for families are – according to the act on social services – in the jurisdiction of the regional self-governing bodies which also set up temporary housing facilities. Some towns have established reception centres where they offer shelter to clients in accordance with the law.

In some towns and villages, community centres have been established, e.g. in the village of Nálepkovo where the Community Centre has operated since 2002. The employees of the Centre for the International Legal Protection of Children and Youth can always contact the Community Centre to help resolve any issues.

In Brezno, the present crisis centre is the emergency housing facility "Náruč" (Embrace) which is part of the organisational unit of the Town Council in Brezno if necessary, the centre can provide crisis intervention and, subsequently, also help to solve family situations.

In Bošany, the crisis centre is the non-profit organisation Orchidea, n.o. residing in Prievidza. The villages around Prievidza enjoy good and close cooperation with the centre.

Crisis centres and their role. The conditions for the accommodation of persons in need and the price list of the services.

Crisis centres for families are – according to the act on social services – in the jurisdiction of the regional self-governing bodies which also set up temporary housing facilities. Some towns have already established or set up legal entities that operate emergency housing facilities, shelters, reception centres and crisis centres where they offer shelter to clients in accordance with the law. Information about services provided by these and other entities can be found in the link below – the central register of providers of social services:

http://www.employment.gov.sk/sk/centralny-register-poskytovatelov-socialnych-sluzieb/

The Union of Towns and Cities of Slovakia

The nature of the relations within a society hints at how the critical situations its members face are dealt with. If social cohesion is strong, it aids in integrating the citizens and makes it possible to seek solutions for people who have found themselves in an unfavourable economic and social situation. Returning children, or parts of families coming back to Slovakia to deal with intricate family situations, are always very difficult and critical – particularly when there was no family background in the country where the family relationships failed in the first place.

The government defines its policy in a set of legislative documents that are not always – even though they are mostly very detailed provisions – able to capture such specific situations that are dealt with by the Centre for the International Legal Protection of Children and Youth.

The Centre proactively develops collaboration with external bodies residing outside the Slovak Republic and strives to maintain transparent, efficient and prompt relationships with the relevant institutions, bodies of state and public administration throughout Slovakia.

Administrative barriers and bureaucracy resulting from inadequate funds, as well as a deficit in the number of social and rental apartments, inhibit effective aid. Also, there seems to be insufficient room for cooperation with executive bodies and non-governmental organisations that can be efficient and helpful when resolving critical situations.

Employees of the town councils associated within the Union of Towns and Cities of Slovakia are empathetic and willing to help returning families. Unfortunately, there are not enough effective instruments and facilities, not only in terms of accommodation capacities, but particularly in the therapeutic, advisory and educational services that would be helpful in the process of return.

What are the conditions under which social rental apartments are assigned?

Each application for assignment of a municipal rental apartment is reviewed individually and the assignment is discussed by the town's authorities.

It is a difficult procedure because there are very few social rental apartments and many applications – whenever an apartment becomes available, local citizens of Bojnice have priority. It would be good to offer social apartments to parents providing they prove to be morally, mentally and financially competent to take care of their children and to responsibly handle the entrusted property, i.e. the assigned social apartment.

None (Rajecké Teplice)

In the town of Nováky, we have three social rental apartment houses but all

apartments are occupied at present.

With the help of the family and in cooperation with the Central Office of Labour, Social Affairs and Family in Prievidza.

The assignment of a social rental apartment is decided by the apartment committee of the City Council in Rimavská Sobota after the generally binding regulations have been observed. It is also necessary to monitor the applicant's income in order to ensure the ability to pay the set monthly rent.

The town of Spišská Nová Ves owns 421 rental apartments of which over 150 are in the category of special-purpose apartments for the elderly and the sick. Another 142 apartments are located in a Roma settlement where the tenants are predominantly members of this community. All apartments are fully occupied because the number of potential tenants is constantly rising. In short, a social rental apartment can be provided only if the town has a vacant apartment available at a specific time.

Municipal rental apartments are offered only in accordance with the terms stated above that do not include such a specific criterion. (Svit)

The assignment of social rental apartments is possible only if the conditions defined by generally binding regulation No 90/2006 of the town of Hlohovec on the municipal procedures in matters related to housing, as defined in Annex 1 and Annex 2, are followed. In accordance with this regulation, in exceptional and relevant cases the town mayor can – after a prior discussion in the city council and following approval by the city representatives – approve the concluding of a lease to rent an apartment outside of the specified order required under the aforementioned generally binding regulation. Such approach can be taken only after an individual case has been assessed. The exceptionality or relevance can arise from the reasons given by the applicant.

If the parents meet the conditions defined by generally binding regulation No 4/2014 of the town of Poprad on the assignment of social rental apartments owned by the town and the town has an available vacant apartment at the time, the town shall provide the parents with a rental apartment.

Provided the conditions are met as stated in generally binding regulation No 10/2011 (see the annex – Banská Bystrica)

If an applicant meets all of the other conditions set by the above-mentioned generally binding regulation, he or she can be chosen by the social and housing committee to be entered in a drawing, or can be recommended to the mayor to be directly assigned an apartment.

The conditions governing the assignment of rental apartments in the town of Komárno are specified by generally binding regulations of the town of Komárno No 6/2011 on renting housing owned by the town of Komárno in the wording of generally binding

regulation No 10/2015. A social apartment is assigned outside of the waiting list in accordance with Section 7(1)(k) if the applicant is a person with permanent residence in the town, is at least 18 years old, and whose alternative, surrogate or institutional care has come to an end in line with special provisions.

If the parents meet the conditions defined by generally binding regulation No 9 of the town of Senica specifying the rules governing the assignment of apartments and/or by Act No 443/2010 in case of an apartment built using state subsidies they may be eligible to be assigned a rental apartment.

However, this is only if the municipality has a vacant apartment available.

Each application for an assignment of a municipal rental apartment – as long as the applicant meets the above-mentioned conditions – is placed on a waiting list and must be discussed by a housing committee that draws up a list of tenants to be sent to the mayor who can then make a decision when one of the municipal rental apartment has been vacated (e.g. after tenants did not pay their bills).

If an apartment is vacated, the tenants are selected according to the provisions of Section 5 of the generally binding regulation No 13/2012 on council housing. (Stará Turá)

The town does not always have available apartments. All apartments are occupied and if an apartment is vacated, new tenants are chosen from a waiting list. (Vrútky)

The existing legislation governing the assignment of rental apartments in the town district applies. In the territory of the town district, there are families whose housing situation requires action. Taking into account the lack of funds, we are trying to deal with the issue. In our town district, we administer a housing development on 36-38 Stavbárska St where – considering the economic situation in the society as well as the people's own doing (e.g. drug addiction) – some residents stop paying their bills and lose their housing. As I have written, the social policy of the town district cannot go beyond the legislative and financial means which is why these kinds of issues are dealt with using only short-term measures (e.g. providing one-off financial aid). (Košice town district)

If the parents find themselves in a situation in which their housing is the key decision-making factor to entrust a child into their care, they shall state this fact in their application. The housing and social committee will take into account the urgency of assigning an apartment to such a family, as applicable (if an apartment is available to be assigned).

Yes, if the legal conditions and the generally binding provisions are met. (Piešťany)

At present, this is not separately stipulated and an exception has to be granted. However, it is technically possible if, for example, a rental apartment becomes vacant and the situation of the applicants is assessed as critical. Currently, there are no vacant municipal rental apartments.

If a parent/applicant meets the criteria for the assignment of a rental apartment, that is, he or she had sufficient income in the previous calendar year, is employed and has been a citizen of the town of Trnava for at least two years prior to the submission of the application, an apartment can be assigned to him/her provided the housing committee includes him/her in a list of applicants and a suitable apartment is free and available. If such parents meet the conditions under the mentioned generally binding regulation and lower standard apartments are vacant, they can be assigned an apartment; however, the demand for this kind of apartment always exceeds the supply.

The town of Partizánske requires connecting housing issues (especially the assigning of housing) with social issues in line with the rules of the relevant advisory body – the committee for social and housing policy. When assessing applications for assignment of social housing, the committee takes into consideration aspects such as the possibility to stabilise the life of families and creating suitable conditions for the upbringing of children. Besides the above criteria (permanent residence, non-ownership of real estate), the committee assesses each family's economic self-sufficiency – e.g. the ability to pay financial obligations related to the use of the apartment, or to pay a potential debt, and to meet the instalment deadlines so that any such debt would be prevented. If such citizens/parents meet all criteria of generally binding provision No 3/2011 and apartments are available to be assigned, it is of course possible to assign a social apartment to parents who want to resolve their housing issue and make the process of entrusting a child to their care as smooth as possible.

When a situation must be dealt with urgently, the mayor of Zlaté Moravce may assign an apartment in accordance with the conditions specified in generally binding provision No 1/2006 outside the waiting list.

Yes, according to our conditions. (Beluša)

Only if social apartments are available; currently we do not have vacant apartments. (Kolárovo)

A request to inquire about the conditions of a family in Slovakia and other information (the family's reputation in the village)

Reply by: The section of education, social affairs and health care.

Applications are to be delivered to the Town Office (in hardcopy or electronic form). The mail separator will forward it to the appropriate employee. All requested information should be specified.

The Centre should contact the town by means of an application requesting cooperation to find information about the reputation of the family in question. The application should include the purpose for which this information will be used, the reasons why the family stayed abroad and why they returned to Slovakia, as well as details about the process of the family's adaptation in a new environment, on the labour market, in school and

pre-school institutions.

The Centre should formulate its questions for the municipal authorities according to the type of case it is dealing with and what the inquiry aims to find out about the family. After all, the town or village authorities are not aware of the specific family situation that the Centre is trying to resolve. Also, it is not known exactly who the Centre should address because smaller villages do not employ a social worker and the mayor is responsible for various types of issues. It is recommended to send the application to the municipal authorities and wait for the mayor's decision about who should take care of it.

In the application, the Centre should include particularly the address where the inquiry should take place as well as what is required. For example, what kind of environment the child would return to, whether the household is furnished and equipped, or whether the owner of the apartment/house agrees that the child should be returned to, e.g. the grandparents. The Central Office of Labour, Social Affairs and Family drafted a methodology for the examination of a family. It is advisable that employees of the Central Office of Labour, Social Affairs and Family conduct the family examination in collaboration with an employee of the municipality.

The report application should include, in particular, the following:

- identifying the body/organisation that is applying for the report,
- sufficient identification of the persons about whom the report will be made, in a way to prevent any confusion with other possible persons,
- identifying the regulation/decree and the relevant provision that authorises the body/organisation to request the sought information,
- the reason for the submission of such an application,
- specification/focus on particular areas in the desired report (e.g. the evaluation of the conditions for the child's return to the family environment, the reputation of the family in the place of residence, minor offences, etc.)

Crisis centres

- **Crisis centres – their role, conditions of accommodation for people in distress, and pricelist**

Crisis centres are facilities that are established pursuant to Section 62, Act No 305/2005 on social and legal protection of children and social guardianship. According to this Act, crisis centres shall:

a) *execute measures pursuant to this Act if a child, a family or an adult is in a life-crisis situation;*
b) *execute court decisions on measures according to a special regulation (Section 37, Act 36/2005 of the National Council of the Slovak Republic on family);*
c) *execute decisions of courts on a preliminary measure, pursuant to a special regulation (Sections 75 and 75a of the Civil Procedure Code);*

d) *execute education measures according to Sections 12 through 15 of the above-stated Act.*

An adult person may be admitted to the facility upon application and conclusion of a written agreement between the person and the facility. The clients usually come to the facility on their own volition or are referred to the facility by specialists.

Children are placed in the facility upon the above-described measures – either preliminary or educational measures.

The forms of stay are either short (out-patient) or longer (in-patient). Depending on the situation of the client, the longer stay may be from 6 to 12 months. During long-term stays, the following services are provided: meals, accommodation, and care. Also, services related to hobbies, treatment and education, cultural activities, and leisure-time activities are provided in a complementary manner.

The following specialists-professionals care for the clients at crisis centres: psychologists; social counsellors, pedagogue therapists and/or social pedagogues, tutors, and if possible also lawyers. Specialists provide the clients with specialised social counselling, special field services, social assistance, individual and/or group psychological counselling, psychotherapy, therapeutic pedagogy programmes like ergo therapy, music therapy, drama therapy, creative workshops, activities for children, and other activities helping the client spend their free time in a sensible way; it is up to each and every crisis facility to decide on the composition of these programmes.

A crisis centre prepares a so-called “Individual Crisis Management Plan” for each admitted client (an adult/child/family) that includes the methods of working with a child, adult individuals, families, and their relatives.

At the same time, a crisis centre prepares its Crisis Centre Programme which includes, in particular, target groups, the crisis centre’s specialization (if the centre specialises in helping certain types of crisis situations and/or a certain age group of children), conditions for admittance to the crisis centre, methods of work, work procedures, professional staff, rights and duties of the clients, offers for follow-up professional assistance for crisis management once the individual plan has been completed, and a place to stay – if the crisis centre has such capacities. In order to protect the security of individuals, the crisis centre does not make its Crisis Centre Programme public.

As part of their external cooperation, crisis centres collaborate with other institutions, most frequently the Central Office of Labour, Social Affairs and Family (social and legal agenda), the Police Corps (criminal complaints), courts, schools or health-care facilities, and accredited entities (UNICEF, Bratislava). The aim of cooperating with accredited entities is to help reconstruct the family environment, seek social support for the clients, and assist them in finding a job and potential accommodation.

After a child completes a stay in a crisis centre, the child is returned to his or her

biological family, or proceedings on the placement of the child to institutional care is commenced and the child is placed in a children's home. An adult with a child has significantly more limited opportunities because social housing does not exist in Bratislava and the only real solution at present are two city residential homes, Fortuna and Kopčany, that do not have sufficient capacities. Within its limits, Bratislava has been implementing the project "Young Families Home" and "Home for the Elderly"; potential clients must comply with admittance conditions that do not always apply to the clients of crisis centres. We see room for improvement in the area of housing which is closely linked to successful re-socialising of clients who had found themselves in a crisis situation and show interest in making progress in their lives.

Conclusion

Not only from the viewpoint of the Centre for the International Legal Protection of Children and Youth but also from the viewpoint of other authorities and institutions whose activities and competencies are inevitably linked to the Centre's agenda, there is a need to open a discussion on practical issues and set the milieu for their solution; it can become the basis for future progress in the legislative area and also in the practical work of individual authorities. Such discussion and approach to addressing the problems should quite clearly lead to the speeding up of processes, simpler modes of cooperation, improved efficiency as well as cost-effective procedures, and last but not least to the desired awareness of Slovak citizens and transparency of institutional procedures.

This is one of the reasons why it has been necessary to engage in a discussion on these issues and set the methodology for individual authorities and institutions on an expert level.

Thus, as far as the present methodology is concerned, it has become necessary to record the entire process of the development of methodology, in particular as regards the meetings with the representatives of individual authorities and institutions making up the so-called Council of Experts held under the umbrella of the Centre for the International Legal Protection of Children and Youth, as well as subsequent outputs and answers to questions addressed by the Centre to the representatives of individual institutions.

Concerning cooperation of the Centre with Slovak and foreign courts and the Ministry of Justice, judges have paid attention to issues like transfer of jurisdiction pursuant to Article 15, Council Regulation Brussels II bis, execution of decisions ordering return to the country of habitual residence, legislative changes in the new Code of Non-Adversarial Civil Procedure, practical aspects of return proceedings, maintenance, as well as general issues related to cooperation between the Centre and courts.

The employees of the Central Office of Labour, Social Affairs and Family described the situation regarding issues related to the assumption of minor children in cases pursuant to Articles 15 and 56 of the above-noted Council Regulation, collection of information about the situation of a child according to Article 55 of the same Regulation, and issues related to securing access to a parent applying for return of his or her child while the return proceedings

are still pending.

As for the cooperation of the Centre with the Ministry of Foreign and European Affairs of the Slovak Republic, the report mainly covers this cooperation in the area of parental abductions of children, removal of a minor Slovak national in other countries, collection of information and assessment of the situation of a minor Slovak national outside the EU member states, service of documents via a diplomatic bag, and consular preparation of employees of MFEA SR in the area of minor children.

The activities of the Ministry of Interior of the Slovak Republic and law-enforcement authorities (the prosecution service of the Slovak Republic) with emphasis on collaboration with the national bureaux of SIRENE, EUROPOL and INTERPOL were covered in the report, focusing mainly on international parental abductions, its criminal law aspects pursuant to the Slovak legal provisions, namely Section 210, Act No 300/2005 Criminal Code. This allows assessing the criminal nature of parental abductions, the speed of issuing an international arrest warrant and the conditions of its issuance, as well as whether it is possible to issue an international warrant in line with Section 210 of the Criminal Code and how the search for people is conducted.

Activities of other institutions such as the Association of Towns and Communities of Slovakia, the Union of Towns and Cities of Slovakia, and crisis centres covered various ways of making cooperation with the Centre more efficient.

The mentioned outcomes of methodologies applied by individual institutions and authorities as well as the meetings of their representatives in the Council of Experts are important not only because they constitute collected knowledge in the area of methodology but also because they are relevant for drafting and implementing the Public Awareness Policy Document, which is not only significant for the internal purposes of the Centre and the involved authorities but mainly also for informing the general public to increase awareness of individuals about issues related to parental abductions of children, removal of children, enforcement of maintenance from/to abroad, and issues related to prevention. It is of utmost importance that individuals – the general public – be familiar with the basics of the process related to this subject, primarily which authority and/or institution to contact when in the need to acquire general information or in case of a specific issue.

Based on the outcomes of the meetings of the Council of Experts and their

recommendations, the concept of the public awareness campaign should not be too broad; to make information materials understandable and to keep attention of the reader, they should be brief and to the point, with references to sources containing more detailed information and contact details. It is therefore necessary to take this into account when preparing information materials which, in terms of their form and substance, should be simple but should provide the reader basic yet relevant information as well as contacts.

In contrast, information materials for the professional public should have extended content and they should cover in a comprehensible way all important aspects of the subject. The reason is that the subject matter is extensive, which has been evident during the meetings of experts when, despite exhaustive discussions, the issues and their solutions could not be fully addressed or complete suggestions made for solutions.

Thus, the methodology setting and the expert discussion on the subject matter, including its conclusions, represent the basis for further course of action of the authorities and institutions acting in this area and its presentation to the professional public, preparing the Public Awareness Policy Plan, drafting information materials, and preparing steps to draw up and amend legislation; this, also in conjunction with the work of the Centre and relevant bodies and institutions, will make a positive contribution towards awareness and prevention, quality of information, speed of action of authorities and institutions, and legal certainty in this area for individuals and the general public.