

Adjustment of contact of both parents with a child, disputes between parents in carrying out the contact

1. What are the consequences of a disturbed relationship of a child to one of the parents?

It is often the case that as a result of the break-up of a relationship between parents, one of the parents or a person into whose custody the child was entrusted is trying to manipulate the child in order to separate it from the other parent. In some cases when the child is entrusted into the foster care of a third person, such conduct occurs in an effort to separate the child from both parents. Manipulation sometimes occurs on the part of a parent into whose custody the child was not entrusted, e.g. during the contact of the child with such parent, when the child is not returned to custody (see below) and so on. Although legislation contains tools enabling quite effective defence against such conduct and it also imposes a duty on parents to abstain from anything that disrupts the relationship of a child to either parent or that jeopardises the upbringing of a child, it is necessary to call on both parents to abstain from building a negative attitude of a child toward the other parent, since such conduct disrupts in a serious manner the successful development of a child and usually also turns against the parent or the person doing the manipulation. This serious condition, which is quite common, develops in a hidden form for a long time and it is therefore usually underestimated.

2. Who has a right of contact with a child?

The right of contact with a child belongs to persons related to the child, both closely and distantly, and also to persons close to the child socially, if the child has an emotional and not only temporary bond to them and if it is apparent that the absence of contact with such persons would harm the child. The child also has a right to have contact with such persons if such persons agree to the contact. This most frequently involves contact with a grandparent and other relatives of the child but also for example contact with a former partner of the parent, if the child has formed an emotional bond with him or her.

3. How to proceed when one parent prevents the other parent or other entitled persons from having contact with the child?

If there is no court arrangement, the parents, institutions and citizens must follow the legal regulation in force, according to which both parents have in principle the same parental responsibility, i.e. the same rights and duties. Both parents always need to free themselves of aversions to each other in the interest of the child and agree on the arrangement of contact as soon as possible or make an agreement on the most frequent and regular contact possible of the child with the parent not living with the child in the same household or with another entitled person.

If an agreement is not reached or if it is not respected, it is necessary to file immediately a motion with a court to determine the extent of contact. In determining the contact, the court decision is based on the fact that a child entrusted to the custody of only one parent has a right to have contact with the other parent to an extent that is in the interest of the child unless the court restricts or prohibits such contact in the interest of the child. The court may also determine the conditions of contact, in particular the place of contact¹ and

¹ If the court determines the place of contact, it most frequently involves so-called assisted contact – contact on the premises of a specialized centre or contact with the presence of a psychologist or an employee of a body of social and legal protection of children.

also the persons who may or may not take part in the contact (e.g. a partner of the parent). The exercise of parents' right to maintain personal contact with a child cannot be entrusted to another person.

In justified cases, the court may decide on so-called indirect contact, which means contact by electronic devices (e-mail, social networks - Facebook, internet communication - Skype or by phone). The court makes such decision in particular in cases when personal contact is not possible due to, for example, long-term illness, and large geographical distance or due to imprisonment).

Even after the child is entrusted into the custody of one parent by court, both parents still have parental responsibility. A parent into whose custody the child was not entrusted is only limited to the extent that he or she has a shorter period of time, i.e. the period of contact, set to influence the child's upbringing. Nevertheless, the parent continues to have a right to require of the parent into whose custody the child was entrusted cooperation in upbringing, i.e. in particular to receive information about the child's health, school results and conduct outside school, to monitor proper upbringing of the child, participate in decision-making about the future profession of the child, etc. At the same time, parents are obliged to notify each other of anything important concerning the child and his or her interests ("duty to inform"). A parent into whose custody the child was entrusted is obliged to prepare properly the child for contact and to enable contact and to cooperate with the other parent in the necessary extent.

4. How can a body of social and legal protection of children help?

A body of social and legal protection of children (BSLPC, formerly the department of child care) does not have any direct authority with respect to mutual relations between parents or the settlement of disputes between parents etc. and it cannot ensure the enforceability of parental rights of one of the parents. Nevertheless, it may talk to the parent who does not respect the rights of the child or of the other parent (e.g. the right to care, regular contact), advise him or her of legal regulations and the consequences of his or her behaviour.

Unless a court has already decided on the matter, parents may make a mutual agreement themselves or at a relevant BSLPC adjusting contact with a child (see above). The advantage of such agreement is that with the consent of both parties, it may be supplemented, changed, extended or adjusted to the needs of the child at any time. If a parent does not respect this agreement, such behaviour could be perceived by the court as the display of the inability to respect the rights of others (child, the other parent), and ultimately as the display of the incompetence to raise the child. In making such an agreement, a body of social and legal protection of children renders assistance to parents. Unless parents agree on matters connected with the custody of a child, only a court is competent to make a decision on the matter. BSLPC may then help to solve problems in the family through its social work and, in the position of a guardian ad litem in proceedings, by forwarding its findings about the behaviour of the parents to the court.

Further, BSLPC may commence, on its own initiative or on the basis of a submission of another person (usually a parent), administrative proceedings and decide on the imposition of a coercive measure according to the provision of Sec. 13 of the Act on Social and Legal Protection of Children.² If an administrative authority does not find grounds to commence administrative proceedings, it notifies the applicant of this fact within 30 days if the applicant so requests at the time of the submission (a similar coercive measure may be also imposed by a court according to the provision of Sec. 925 of the Civil Code, unless

² Coercive measures include admonition, adjudicated supervision over a child, imposition of restrictions, imposition of a duty to use expert help or a duty to take part in the first meeting with a registered mediator in the extent of 3 hours or a therapy.

BSLPC has already done so). BSLPC may also recommend that the parents make use of expert help (e.g. family therapy) to overcome problems in the family and it may recommend cooperation, for example with a mediator. If parents do not take advantage of this possibility and are not able to solve problems connected with the upbringing of a child without expert help, BSLPC may issue an administrative decision obliging them to make use of such expert help, in particular in disputes regarding the adjustment of the child's upbringing or contact with the child.

5. How can the court intervene in mutual family relations?

To protect the child's interests, a court leads the parents to find an amicable settlement in proceedings on the custody of minors. The court may impose an obligation on the parents to participate for the maximum of 3 months in out-of-court conciliation or mediation sessions or family therapy or order a meeting with an expert in paedopsychology.

If the parents agree on the form of custody to be carried out in the post-divorce period and on the maintenance and support of the child, the court will approve such agreement of the parents, provided it is in accordance with the interest of the child.

If the parents fail to agree on the manner of performing their parental responsibility, the court, upon a motion of one of the parents or upon the filing of BSLPC will decide on entrusting the child into the custody of one parent (or to alternating or joint custody³) and impose a duty on the other parent to pay maintenance and support.⁴ In decision-making concerning the custody of a child, the court makes a decision that corresponds to the child's interests. In doing so, the court takes into account the personality of the child, in particular its talents and abilities in relation to developmental possibilities and the life situation of the parent as well as the emotional orientation and background of the child, the ability of each parent to raise the child, present and future stability of the environment where the child is to be raised, emotional bonds to the child's siblings, grandparents or other related or unrelated persons. The court always takes into account which of the parents has so far taken due care of the child or duly cared for the child's emotional, intellectual and moral education and at which parent the child has better conditions for healthy and successful development. Attention is also paid to the ability of a parent to agree with the other parent on the child's upbringing.

The court may further approve an agreement on contact or, upon a proposal of an authorised person, to determine the scope of contact with the child (it does not decide on contact on its own initiative).

The performance of the final agreement approved by the court is enforceable in the same way as the performance of a final and conclusive court judgment or resolution. Where irreversible harm due to delay is imminent, particularly the alienation of the child from the other parent, this parent may request that the court decide by means of a preliminary ruling, in which case a potential appeal does not have a suspensory effect.

6. How to proceed if a parent does not respect the court decision on the custody of a minor?

The final and conclusive court decision (agreement approved by court) must be respected by both parents. If the parent who has the child in his or her custody prevents the other parent unreasonably and permanently or repeatedly from contact with the child, such behaviour constitutes a ground for a new court decision on which parent should have custody of the child.

³ A child may be placed into joint custody only with the consent of both parents.

⁴ It is possible to follow the status of all ongoing judicial proceedings through infoSoud (www.justice.cz, click on infoSoud). After entering the relevant file ref. No and the court, you may find information about the status of the given case.

If one parent does not respect the court decision on custody of the child or contact with the child, then it is possible to:

- Cooperate with a body of social and legal protection of children and report any prevented contact to a social worker. BSLPC should advise the parent into whose custody the child is placed of his or her duty to respect the court decision and of the consequences of failing to do so, and it should do so also without the request of the entitled parent. The parent who is prevented from contact with the child may ask the municipality to impose a coercive measure (Sec. 13 of the Act on Social and Legal Protection of Children).
- File a motion to the court to order and perform the enforcement of a decision, which may be filed every time contact is prevented. A court in whose district the child lives has local jurisdiction over the matter.
- The court may, if the enforceable decision is not being carried out, order the enforcement of the decision by imposing a fine of up to CZK 50,000. The fine may be imposed repeatedly.
- If it is purposeful, the court may order the parent who is not carrying out voluntarily the enforceable decision to meet with an expert in paedopsychology, decide on the duty to carry out contact under the supervision of a body of social and legal protection of children or order the first meeting with a mediator in the extent of 3 hours.
- The court may determine an accustoming plan, if this is in the interest of the child, enabling gradual contact of the child with a person entitled to contact with the child, for example by determining the place of contact of the child with the parent. Before determining the plan, the court usually obtains expert opinions about the suitability, content, extent and the length of contact. The court authorises a suitable person or facility to check the fulfilment of the plan, unless it is directly checked by the court. If the court finds that the plan is being violated by some party to proceedings, which has an impact on the purpose of the accustoming plan, or if it concludes that the accustoming plan is not fulfilling its purpose, the court cancels the plan and proceeds to apply the measures described below.
- If the court procedure is futile, the court orders the enforcement of the decision against the person with whom the child should not be according to the decision or agreement by taking the child away and delivering it to the person into whose custody the child was entrusted on the basis of the decision or agreement or to whom the child should be returned. The enforcement of the decision by taking the child away and delivering it to the person who has been granted the right of contact with the child for a limited period by the decision or agreement may be ordered only in exceptional cases. If the interest of the child requires it and coercive measures pursuant to Sec. 13 (1) of the Act on Social and Legal Protection of Children have not led to remedy, the court may temporarily take the child away from the custody of the parents or another person responsible for raising the child; at the same time, it orders a stay of the child for the maximum of 3 months e.g. in an education centre or a facility for children requiring immediate help or in a facility of the provider of health care services.⁵ In connection with the settlement of parents' dispute regarding the upbringing of a child, the court may decide on the stay of the child in a health care facility only provided the child's health conditions require it and provided other conditions are met as stipulated in Sec. 13a (4) of the Act on Social and Legal Protection of Children (urgent need of such

⁵ A list of recommended facilities suitable for the care of children – victims of disputes between parents – has been compiled (communication of the Ministry of Justice of 25 August 2008, ref. no. 258/2007-LO-SP/96). It is an indicative list for judges and it serves as a guarantee that a child will not be placed in completely unsuitable environment. If a court does not select a facility from the list, it may select another suitable facility that will ensure due care according to the definition stipulated in the law.

placement has been established; the use of other measures to protect the child is not sufficient; the court limits the duration of the child's stay beforehand; at the same time, the parents are obliged to make use of expert counselling). In exceptional cases, the court may extend the duration of such measure. The total period of uninterrupted duration of the coercive measure must not exceed 6 months, and the periods in different facilities where the measure is being carried out is added up (for more details see Sec. 13a (6) of the Act on Social and Legal Protection of Children).

7. How to proceed if a parent refuses to return a child to the parent in whose custody the child was entrusted?

- At every failure to return the child, it is possible immediately to file a motion to the court to enforce its decision, with the final and conclusive decision awarding the custody of the child to one of the parents attached.
- It is also possible to contact a social worker of the relevant BSLPC, inform the social worker of the actions of the other parent and request an investigation at the place of residence of the parent who was to return the child in order to determine whether the child is all right etc.
- The entitled parent has a right to take the child into his or her care at any time. A body of social and legal protection of children cannot remove the child from the parent, i.e. enforce the decision; only the court is competent to do so. The Police of the Czech Republic may intervene in case of abduction. The Police may be called by the entitled parent also in case of a physical attack by the other parent. Nevertheless, again, the child must be collected by the entitled parent.
- If a parent who has kept the child unlawfully does not ensure the child's proper school attendance, his or her action constitutes a suspicion of committing a criminal offence of jeopardizing the upbringing of a child according to Sec. 201 of the Criminal Code and the parent's competence to bring up the child may be challenged. In addition, the submission of a report on the commission of a crime to the Public Prosecutor's Office or the Police of the Czech Republic due to the suspicion of an offence of obstructing the enforcement of an official decision may be considered.

8. How can the Public Defender of Rights help in these disputes?

The Public Defender of Rights cannot handle disputes between parents or assess or change court decisions because she is not competent to do so. Act No. 349/1999 Coll., on the Public Defender of Rights defines her mandate as acting to protect persons against unlawful or in other way incorrect conduct of authorities and other institutions stipulated in the law but solely during the performance of governmental administration. She is thus not competent to interfere in private-law and family-law relations or criminal proceedings. However, if a parent has reservations about the procedure of a body of social and legal protection of children, he or she may submit a complaint to the Defender. First of all, however, the parent needs to file a complaint about a specific procedure or an employee of the body of social and legal protection of children to the head of the relevant authority because the authority alone should have the possibility to provide for remedy. If remedy is not achieved, the Public Defender of Rights will look, if an inquiry is launched, into the procedures chosen by the body of social and legal protection of children and assess whether the body or an appellate body acted in compliance with legislation and the principles of good administration or whether it failed to act. If shortcomings are found during the inquiry, she will propose and call for remedy of the shortcomings found.