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Processing incoming return cases by courts

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European Judicial Network
(in civil and commercial matters)



Slovakia

1 Concentration of jurisdiction

1.1 Which authority is competent to hear requests for return under the 1980 Hague Convention/Article 22 of the Brussels IIb Regulation ("requests for return")?

The court with territorial jurisdiction as defined by law.

1.2 Is the jurisdiction to hear requests for return confined to specialist courts? - If yes, to what courts is it restricted? How many judges within the specialist court exercise the jurisdiction? - If no, are the judges hearing return requests specialised?

In Slovakia, we have 3 competent courts for proceedings for the return of a minor child:

(a) Bratislava II Municipal Court for the district of Bratislava Regional Court, Nitra Regional Court and Trnava Regional Court;

(b) Banská Bystrica District Court for the district of Banská Bystrica Regional Court, Trenčín Regional Court and Žilina Regional Court;

(c) Košice Municipal Court for the district of Košice Regional Court and Prešov Regional Court.

There are 123 active judges at Bratislava II Municipal Court, 107 at Banská Bystrica District Court and 73 at Košice Municipal Court.

1.3 By which method are the requests for return allocated to a judge?

Unless otherwise provided for by law, cases identified according to the subject matter of the proceedings are allocated to each chamber or single judge by random selection in accordance with the work schedule, using technical means and software approved by the Ministry of Justice of the Slovak Republic, so as to exclude the possibility of bias in the allocation of cases.

1.4 What specialist training is provided for the specialist judges? In particular do they have the opportunity to attend multi-national conferences specialising on International Family Law? Is there a regular conference within your jurisdiction to which all judges dealing with requests for return are invited?

Judges can choose programmes dedicated to international family law organised by the Judicial Academy (Justičná akadémia) (a Slovak educational institution for judges, public prosecutors and judicial officers) and can also attend international conferences. Within the Slovak Judicial network in civil matters (Súdna sieť pre občianske

veci Slovenskej republiky), contact points meet on an approximately semi-annual basis and have the opportunity to attend meetings of the European Judicial Network.

2 Practice and procedure for requests for return in first instance court

2.1 Are there special rules of practice and procedure for requests for return? If yes, please provide a brief summary of the procedure and if relevant, provide a link

The procedure is specifically provided for in Sections 123 to 134 of the Non-Contentious Civil Procedure Code (*Civilný mimosporový poriadok*), also taking into account the need for an expedited decision with shortened time limits for providing a statement (Section 131 of the Non-Contentious Civil Procedure Code – 7-day time limit for the ‘abductor’ to provide a statement, with no possibility of waiving the expired time limit – Section 129 of the Non-Contentious Civil Procedure Code) and for the overall decision (Section 134 of the Non-Contentious Civil Procedure Code – 6-week time limit), in line with the Abduction Convention and the Brussels IIb Regulation. At the same time, the court has the possibility to rule without ordering a hearing under Section 132 of the Non-Contentious Civil Procedure Code; however, this is not used in practice as the parties do not consent to having a ruling issued without a hearing.

2.2 What steps are taken to meet the 6 weeks target described in Article 24(2) of the Brussels IIb Regulation?

The necessary documentary evidence is secured, also taking into account the experience from other return proceedings in the past, usually so that the case can be decided at the first hearing (e.g. documents to prove the minor child’s habitual residence, the hearing of specific witnesses, shortening the period for which consignments are held at the post office for collection by the parties from the standard 18-day period to approximately 10 days).

- As soon as the court receives an application for the return of the minor child to a foreign country, the court requests that the Centre for the International Legal Protection of Children and Youth (Centrum pre medzinárodnoprávnu ochranu detí a mládeže) provide assistance by stating whether mediation has taken or is taking place between the minor’s parents and with what result.
- The court also requests that the Office of Labour, Social Affairs and the Family (Úrad práce, sociálnych vecí a rodiny) provide assistance in order to assess the minor child’s current circumstance at home and to establish other relevant facts.
- A third request is directed at the parent who has unlawfully relocated the minor child to provide a statement on the application for the return of the minor child to a foreign country.

2.3 If mediation is used, what steps are taken to ensure that the referral to mediation does not risk a breach of the 6 weeks target? How does the court examine whether contact should be ensured, in accordance with Article 27(2) of the Brussels IIb Regulation? Does the court examine whether contact should be ensured only on the basis of a request from one of the parties or can do so on its own motion?

Certain courts have no experience with mediation in the context of specific proceedings, and the court is not required by law to oblige the parties to participate in mediation. However, once the hearing has been opened, the judge has the opportunity to initiate a conciliation procedure, to make a preliminary point of law and to give the parties the opportunity to end the return proceedings amicably while adjourning the hearing; in practice, a conciliation procedure is generally unsuccessful, given the strained relations between the parties. The court also examines the need for contact arrangements on its own motion, on the basis of written and oral statements submitted by the parties. Contact arrangements may be made by the court at a party’s request or on the court’s own motion, depending on the circumstances of the case, following the same principles that apply to the ordering of a provisional measure to temporarily arrange contact between the parent and the minor child (Section 360 of the Non-Contentious Civil Procedure Code).

If mediation is used, the date of the hearing needs to be adjusted accordingly and the mediation takes place during the court proceedings to make efficient use of the period between the time the hearing is scheduled and the time the hearing takes place. The court has the opportunity to verify the exercise of contact by means of

statements made by the adult parties to the proceedings, as well as on the basis of a report presented by the Central Office of Labour, Social Affairs and Family (Ústredie práce, sociálnych vecí a rodiny) or an interview with the child, as applicable. The court looks after the minor child's best interests, but the exercise of contact is a parent's right, rather than an obligation, so unless the parent wishes for such arrangement, the court will usually not step in.

2.4 How is the child given an opportunity to express his or her views in return proceedings? Please describe who hears the child's views and at which stage of the proceedings are their views heard

The method of hearing a minor child is assessed according to the child's age and the needs of the proceedings. The child is heard by the judge in person, in a specially designed room, known as the 'children's room', typically on the day when the court also holds a hearing on the merits, or by a special guardian ad litem, in the presence of a psychologist who represents the minor child in the proceedings before the court, before the hearing opens, in the context of providing a report on the investigation of family circumstance. However, this does not prevent the judge from rehearing the minor child.

2.5 Is the number of court hearings for requests for return subject to judicial discretion, or does your legal system establish a minimum/maximum number? If so, please indicate

The number of hearings is not established in the Slovak legal system, i.e. it is subject to judicial discretion.

2.6 Is oral evidence admitted at the hearing? If it is, are oral submissions admitted to supplement written argument?

Yes, because the personal appearance of the parties is one of the means of evidence and takes place directly at the hearing. (Anything that can contribute to the proper clarification of the case and has been obtained in a lawful manner on the basis of means of evidence may serve as evidence. The means of evidence include, without limitation, the hearing of a party, the taking of witness statements, a document, an expert statement, expert evidence and an inspection. If the method of taking evidence is not prescribed, it is determined by the court.)

Oral submissions to supplement written arguments are admissible, but failure to comply with a time limit cannot be waived in the proceedings.

2.7 Is the applicant required to attend the hearing? Are there any procedural consequences if the applicant does not attend the hearing?

The applicant is not required to attend the hearing and there are no procedural consequences.

However, if the applicant is not represented by a lawyer, they must provide an address for the service of documents in the Slovak Republic. If the applicant does not appear in person at the hearing, they run the risk that the court will not be aware of all the material circumstances and evidence necessary to decide the case in their favour. The Non-Contentious Civil Procedure Code regulates only the procedural consequences for the other party, i.e. the person who infringes a right in the applicant's view, in the event of failure to attend or act in the proceedings (Sections 131 and 132 of the Non-Contentious Civil Procedure Code).

2.8 Are the courts equipped with videoconferencing facilities to allow for remote participation through videoconferencing? What is the legal framework for using videoconferencing at the hearing? Is there a specific legal framework for hearings in return proceedings?

The material equipment of the courts with regard to videoconferencing in this case is insufficient; the equipment is available in certain courtrooms only.

The legal framework for the use of videoconferencing at the hearing is governed by Section 175(2) of the Contentious Civil Procedure Code (*Civilný sporový poriadok*).

There is no specific legal framework for using videoconferencing and other technical facilities at the hearing in

return proceedings.

2.9 What type of measures, including provisional or protective measures (safeguards), can be taken to ensure the safe return of the child?

The court takes 'appropriate measures' on its own motion to ensure the conditions for the return of the minor child. The court decides on appropriate measures without delay, typically without hearing the parties (e.g. arranging the applicant's contact with a minor child, imposing a temporary prohibition on a parent or a person who has the minor child with them to relocate the child outside the territory of the Slovak Republic without the court's prior consent, registering such prohibition of relocation also in the records of the Border and Aliens Police Authority (Úrad hraničnej a cudzineckej polície prezídia) of the Police Headquarters of the Slovak Republic, registering the blocked passports of minor children in the records of the Border and Aliens Police Authority of the Police Headquarters of the Slovak Republic, and imposing an obligation on parents to notify the court of any change in the child's place of residence in Slovak territory).

3 Appeals

3.1 Is there an appeal from the first instance court?

Yes, there is.

3.2 If there is a right of appeal, is it absolute or is permission to appeal required? Or is it on points of law alone?

The right of appeal is limited only in terms of the time limit for lodging an appeal, which is 15 days. No special permission is required.

3.3 In the event of an appeal is the return order automatically suspended or may it nevertheless be enforced?

Under Slovak legislation (Section 133(2) of the Non-Contentious Civil Procedure Code), the enforcement of a return order is suspended by lodging an appeal, except where the court may, at a party's request, rule on the provisional enforceability of the decision (Section 233 of the Contentious Civil Procedure Code); in such a case, the decision is enforceable upon service (note for the EU: the Brussels IIb Regulation applies and admits provisional enforceability; the Hague Child Abduction Convention does not provide for provisional enforceability).

3.4 Is there a second appeal? If yes, is permission required?

There is no second appeal.

There is an extraordinary appeal against a final decision – an action for a retrial.

3.5 What specialist experience and expertise is there in the appellate courts?

There are specialised appellate courts for guardianship cases (not just return cases).

3.6 What is the time scale for the determination of an appeal and, if applicable, a second appeal? If expedited, is priority given by statute, rules of court or practice?

Slovak legislation does not strictly lay down the time scale for the appeal court to determine an appeal.

3.7 In accordance with Article 24(3) of the Brussels IIb Regulation, what are the procedural steps that need to have been taken for the 6-week target to start running for the higher instance court to be able to examine the appeal?

The service of the appeal (with a 15-day time limit for lodging), and the reply and rejoinder, for which a minimum 10-day period must be observed and which cannot be shortened under Slovak law, leads to undue delays in the appeal proceedings.

4 Enforcement of the return order delivered by the court

4.1 Which authority is competent for the enforcement of return orders?

The same court which decided to return the minor child to their country of habitual residence (Section 371(5) of the Non-Contentious Civil Procedure Code).

4.2 Are return orders provisionally enforceable? If so, is it decided automatically by the court or does the applicant have to request it? When a return order is challenged, how is the provisional enforceability affected?

Return orders (resolution for enforcement under Slovak legislation) are provisionally enforceable (Section 377(4) of the Non-Contentious Civil Procedure Code).

It is decided automatically by the court.

When a return order is challenged/appealed, the provisional enforceability is not affected.

4.3 What is the procedure of the enforcement of return orders? Are there any legal measures (for example, some penalties) that may help to ensure the enforcement of the return order?

Once the entitled party (the applicant) has delivered the enforcement application where the obliged party has not voluntarily complied with the obligation to return the minor child to their country of habitual residence, the court treats the case as a matter of priority and urgency, given the nature of the proceedings, so that the return decision is enforced within 6 weeks. In the event of failure to enforce the decision or to discontinue the enforcement proceedings within that period, the court will immediately make an entry in the court file of the reasons for the delay. There is no need to order an enforcement hearing in return proceedings. If the application for enforcement clearly suggests that the obligation to voluntarily return the minor child to their country of habitual residence has not been fulfilled, the court will order the enforcement of the decision. As a rule, the court will enforce the decision, i.e. will remove the minor child from the person with whom the child is not to be, even without taking steps and measures to fulfil the obligation voluntarily, on the ground that they might have the effect of frustrating the removal of the child. The court may request voluntary performance directly on site, when removing the minor child. If enforcement of the decision (the removal of the minor child) is unsuccessful, e.g. because the obliged party is hiding with the child, fines of up to EUR 1 000 may be imposed, also subsequently and repeatedly, or parental allowance or family allowances may be withdrawn, and means under the criminal law are also available: putting out a search or filing an application for a suspected offence of obstruction of justice (Section 349 of the Criminal Code).

4.4 Please describe the procedure for requesting suspension and refusal of enforcement of return orders?

The enforcement application may be dismissed only if the enforceable title is not enforceable or if circumstances that occurred after issuing the enforceable title have caused the termination of the obligation imposed.

If none of these circumstances apply, the court will order the enforcement of the decision. An appeal against a decision ordering enforcement does not prevent the first instance court from enforcing the decision.

Suspension of enforcement is possible only in the cases provided for by law. Suspension may be granted, on application and on the court's own motion, where the minor child's life, health or wellbeing is seriously threatened by the enforcement or where this results from Article 56 of the Brussels IIb Regulation.

5 Enforcement of the privileged decision delivered by a foreign court

5.1 Which authority would be responsible for the enforcement of a foreign so-called overriding decision i.e. return order mentioned in Article 11(8) of the Brussels IIa Regulation or a foreign

privileged decision pursuant to Article 29(6) of the Brussels IIb Regulation entailing the return of a child following a refusal in the requested state under Article 13(1)(b) or 13(2) of the 1980 Hague Convention

The court of first instance.

6 Judicial Liaison

6.1 Has your jurisdiction officially/unofficially nominated a specialist judge to the European Judicial Network in civil and commercial matters (EJN-civil) / International Hague Network of Judges (IHNJ)?

Yes, also for the EJN and the IHNJ.

6.2 If yes, is the judge nominated a sitting judge? Was the nomination official or unofficial?

This is an official nomination and appointment by the Minister of Justice of the Slovak Republic.

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