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Processing incoming return cases by courts

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European Judicial Network
(in civil and commercial matters)



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")?

Brno Municipal Court (Městský soud v Brně) (the court competent for the district in which the central authority - i.e. the Office for International Legal Protection of Children (Úřad pro mezinárodněprávní ochranu dětí) - is located)

Brno Regional Court (Krajský soud v Brně) (in appeal proceedings)

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?

The jurisdiction to hear requests for returns is confined to the Brno Municipal Court as the first-instance court and the Brno Regional Court for appeal proceedings. This jurisdiction is exercised by four judges within the specialised court.

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

Allocation is governed by the general rotational and compensatory principle that ensures an even workload for each division and takes account of the basic specialisation of judges. Cases are automatically allocated by a computer using a rota system. The allocation is final and cannot be changed unless there are legal reasons for doing so, such as recusal of a judge on the ground of bias, a judge's departure or long-term absence, or other legal grounds. Any doubts as to the allocation of cases to the individual divisions are settled by the competent vice-president of the court.

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?

As an educational institution for courts, the prosecutor's office, and the Ministry for Justice, the Judicial Academy (Justiční akademie) offers yearly international training initiatives focusing on the 1980 Hague Convention / the Brussels IIb Regulation (international child abduction) in cooperation with the European Judicial Training Network (EJTN) and the Human Rights Education for Legal Professionals (HELP) programme of the Council of Europe. International seminars for judges and public prosecutors are offered every year.

As part of the HELP programme, e-learning courses are offered to the Czech judiciary in cooperation with the Council of Europe, specifically Family Law and Human Rights (a complete module) and Child-friendly Justice (in which Chapter 7 - Violence against children and interdisciplinarity - is the relevant part). These and other courses are constantly available for self-study on the website of the HELP programme (<http://help.elearning.ext.coe.int/>). Any interested members of the judiciary are made aware of these courses not only during seminars, but also by means of the Journal of the Judicial Academy.

Expert seminars devoted to international family law and international legal protection of children are regularly organised as part of the educational initiatives of the Justice Academy. These seminars deal with the application of the Brussels IIb Regulation and current CJEU case-law and include practical exercises based on case studies.

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 governed by Section 478–491 of Act No 292/2013 on special court proceedings (zákon č. 292/2013 Sb., o zvláštních řízeních soudních).

A summary is available at the website of [the central authority](#).

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

[Act No 292/2013 on special court proceedings](#)

Section 487(1)

The court will order a hearing in the matter, which is to be held within three weeks of the submission of the request.

Section 489(1)

As a rule, the court will decide on the case itself within six weeks of the commencement of the proceedings, unless there are grounds worthy of special attention; where a court issues a ruling after that deadline, the reasons why it was impossible to comply with the deadline should be stated in the grounds for the decision.

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?

Mediation is independent of court proceedings.

The court acts in accordance with Section 486 of [Act No 292/2013 on special court proceedings](#).

Section 486

(1) Even without a petition the court shall take appropriate measures to ensure the return of the child; in particular, it shall take measures aimed at:

- (a) judicial supervision of the child's movement on the State territory;
- (b) preventing the child from leaving the State territory without judicial consent;
- (c) preventing the disruption of the personal relations between the child and the applicant.

(2) At the applicant's request, the court shall also decide on provisional arrangements concerning the applicant's contact with the child where the applicant has proven their right to custody.

(3) The court shall immediately decide on the appropriate measures, as a rule without hearing the parties. Decisions imposing the measures referred to in (1) cannot be appealed against.

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 child's views are ascertained by the central authority, which represents the child in the proceedings as a guardian ad litem. The child is usually interviewed by a psychologist employed by the central authority. The psychologist's report is subsequently transmitted to the court and both parents. Taking account of the child's age and maturity, the child is usually also interviewed by the judge.

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 unlimited.

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

Yes, oral evidence is admitted at the hearing. Yes, it is admissible for written arguments to be supplemented with an oral statement.

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

No separate rules apply to the participation of the applicant in the hearing. [Section 101\(3\) of the Act No 99/1963 \(Code of Judicial Civil Procedure\) \(občanský soudní řád\)](#) states that where a duly summoned party fails to attend the hearing and to request a deferment in a timely manner and for a valid reason, the court may hear the case and decide on it in the absence of that participant; in such cases, the court relies on the file and the evidence available. It is, however, recommended for the applicant to attend the hearing, as their questioning constitutes important evidence.

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?

Courts are equipped with videoconferencing facilities allowing remote participation.

Hearings in return proceedings are governed by the general rules laid down in [Section 102a of the Act No 99/1963 \(Code of Judicial Civil Procedure\)](#).

Section 102a

The use of videoconferencing equipment

(1) At the request of a party or when it is deemed useful, a court may use videoconferencing equipment in the performance of a procedural act, in particular in order to enable the presence of a party or interpreter at the hearing or in order to interview a witness, an expert or a party.

(2) A procedural act may be performed by means of videoconferencing equipment provided that the identity of the person concerned by the act has been properly verified. In the case of questioning it is particularly important to ensure that the person interviewed is not subject to any undue influence at the place where they are.

(3) Prior to the commencement of an act performed using videoconferencing equipment the presiding judge shall inform the person concerned by the act about the manner of performing it.

(4) A party or the person concerned by the act may object to the quality of the video or audio transmission at any time during the act performed using videoconferencing equipment.

(5) Where videoconferencing equipment is used in the performance of a procedural act, an audio and video recording shall be made in all instances. If a report is drawn up alongside a recording, the person whom the task concerns does not have to sign the report.

2.9 What type of measures, including provisional or protective measures (safeguards), can be

taken to ensure the safe return of the child?

[Act No 292/2013 on special court proceedings](#)

Section 486

Measures taken by the court

(1) Even without a petition the court shall take appropriate measures to ensure the return of the child; in particular, it shall take measures aimed at:

- (a) judicial supervision of the child's movement on the State territory;
- (b) preventing the child from leaving the State territory without judicial consent;
- (c) preventing the disruption of the personal relations between the child and the applicant.

(2) At the applicant's request, the court shall also decide on provisional arrangements concerning the applicant's contact with the child where the applicant has proven their right to custody.

Section 489(2)

In its decision, the court may make the return of the child conditional or conditionally defer return until appropriate guarantees have been met by the applicant or other measures have been taken by the authorities of the state to which the child is to be returned.

In practice, courts most often use financial guarantees, such as depositing a certain amount with the defendant in order to ensure their accommodation and food in the case of return together with the child.

3 Appeals

3.1 Is there an appeal from the first instance court?

Yes

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 appeal is absolute and is automatically admitted provided that it has been submitted within the time-limit.

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

Decisions taken by first-instance courts are provisionally enforceable. The court of appeal may suspend the enforceability of a decision ordering the return of a child if the child has not been returned.

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

A second appeal is not possible.

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

N/A

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?

The time-limit for deciding on an appeal is governed by Section 490 of [Act No 292/2013 on special court proceedings](#).

Section 490

(1) Where an appeal has been submitted against a return order, the first-instance court shall refer the case to the appeal court within 7 days of the submission of the appeal. The appeal court shall decide on the appeal within 30 days of the submission of the case.

(2) The court of appeal may suspend the enforceability of a decision ordering the return of a child if the child has not been returned. The court shall decide on suspending enforceability within three days of the submission of the

case.

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?

Please see above.

4 Enforcement of the return order delivered by the court

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

[Act No 292/2013 on special court proceedings](#)

Section 500(2)

In cases of international child abduction decisions shall be enforced by the competent court that issued the decision.

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?

Yes, return orders are automatically provisionally enforceable. This follows from Section 484 [of Act No 292/2013 on special court proceedings](#).

The defendant may ask for enforceability to be suspended – an appeal has no suspensive effect.

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?

The enforcement of decisions on custody of minor children, including the possibility to remove the child, is generally governed (i.e. not only in respect of return procedures) in Section 500 et seq. [of Act No 292/2013 on special court proceedings](#).

A summary of the procedure is available at the website of [the central authority](#).

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

The law does not explicitly allow parties to submit requests for suspension and refusal of the enforcement of return orders. Return orders are provisionally enforceable (Section 484 of Act No 292/2013 on special court proceedings). This means that the child must be returned within the time-frame specified in the decision. This time-frame starts to run on the day when the decision is served on the defendant.

However, at the defendant's request or of its own motion, the court may make the return of the child conditional or conditionally defer return until appropriate guarantees have been met by the applicant or other measures have been taken by the authorities of the state to which the child is to be returned (Section 489(2) of Act No 292/2013 on special court proceedings). Appropriate and proportionate guarantees depend on the circumstances of the specific case. For instance, the applicant may agree to not remove the child from the de facto care of the other parent following the child's return, to reimburse the costs of the return journey, or to render a specific material performance (food, providing accommodation or a vehicle etc.) for the child and the parent that is to return with the child. However, ensuring the safe and trouble-free return of the child to the place of habitual residence must be the overriding concern. Providing the child or the defendant (the other parent) with material resources therefore is not of the first importance.#

Where the child is not returned within the specified time-frame, the court may invite the defendant to comply with that obligation (Section 501 of Act No 292/2013 on special court proceedings), impose a fine on the defendant (Section 502 of Act No 292/2013 on special court proceedings) or take other measures (Section 503 of

Act No 292/2013 on special court proceedings). Where the child still has not been returned and the defendant submits an appeal against the decision within the statutory 15 days of the receipt thereof, the court of appeal may defer enforceability of the decision, but is not obliged to do so (Section 490 of Act No 292/2013 on special court proceedings). As a rule, the reason for deferring enforceability is the assumption on the part of the appeal court that the defendant's appeal will be successful.

Where a court has already ordered enforceability in the return order, it may subsequently discontinue enforcement wholly or in part, upon request or of its own motion (Section 269(1) of the Act No 99/1963 (Code of Judicial Civil Procedure)). In case of statutory grounds, the court has to do so of its own motion irrespective of the party's request (Section 268 of the Act No 99/1963 (Code of Judicial Civil Procedure)).

However, in exceptional cases the court may proceed directly to remove the child where other measures have failed, or where the circumstances of the case after the initiation of proceedings indicate that other measures evidently would not result in the child being returned. In such cases, the decision is served on the defendant only when the act is performed (Section 504 of Act No 292/2013 on special court proceedings).

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 Ia Regulation or a foreign privileged decision pursuant to Article 29(6) of the Brussels Ib 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

It is the court of the place where the child is located.

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 (IHJ)?

Yes

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

Yes, the judge is a sitting judge.

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