

first aid
for international **families**
in Crisis

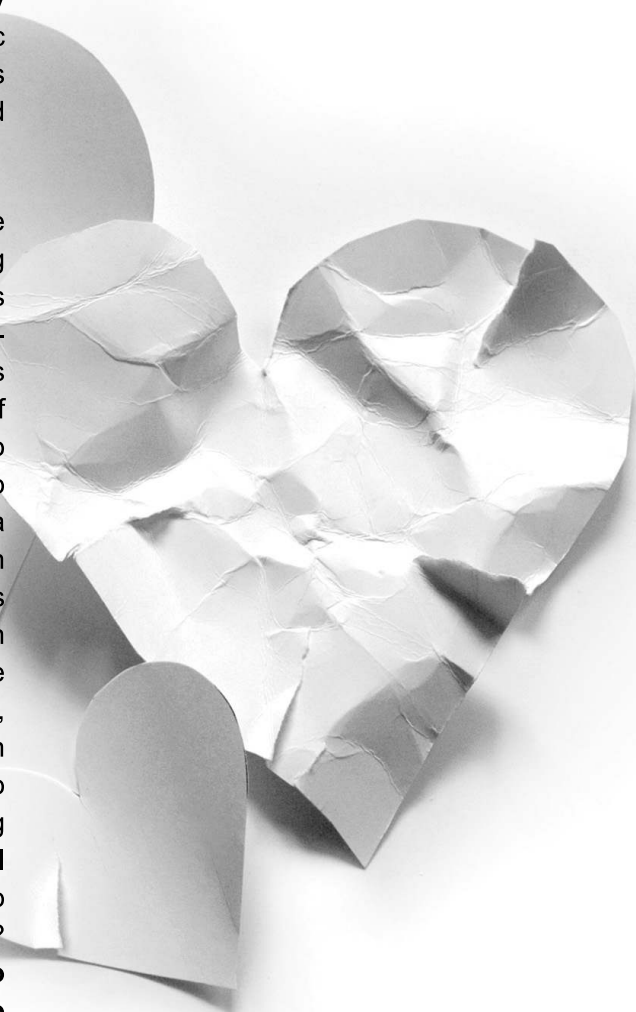


Things you should know
before you start dealing
with your family crisis
on your own

families in Crisis

Open borders and easy travelling give rise to many international couples who get married. Coexistence of two people coming from different cultures may however present some specific difficulties. Resolving such situations becomes even more complicated if children are involved.

At the very beginning, people are seldom aware of the fact that getting married to a foreigner may have serious consequences in case of disagreements between the partners. This is why this leaflet was created for those of you whose partner is a foreigner, who got married to a foreigner or those who are preparing to get married to a foreigner. This leaflet is designed as an information material which warns against some manners of dealing with crisis situations and points out possible legal consequences of your actions, if you decide to resolve the situation on your own. The role of the leaflet is to provide 'first aid' by way of answering basic questions such as: What should I do? How am I supposed to act? and Who should I contact in a difficult situation? **It is not the objective of this leaflet to substitute legal advice nor to provide complex legal overview of this field.**



The Hague Convention or your liability if you act on your own initiative

The **Hague Convention on the Civil Aspects of International Child Abduction** of 1980 represents the most important international legal document in this field. Under this Convention one parent may not without the consent of the other parent arbitrarily leave with the child for another country (removal) nor they may stay in another country with the child against the will of the other parent (retention). Therefore if the right of custody of the other parent is violated, it is a **wrongful act**. Child custody is governed by the laws of the state on the territory of which your family lives. This means that your **subjective impression, according to which your partner fails to fulfil parental duties, is not decisive. The decisive thing is the legal situation**, that is the fact that your partner's parental rights are governed by the law of the state where you live together. Czech citizenship of the child is not decisive either.

Essential advice and basic rules or what am I supposed to do when ...

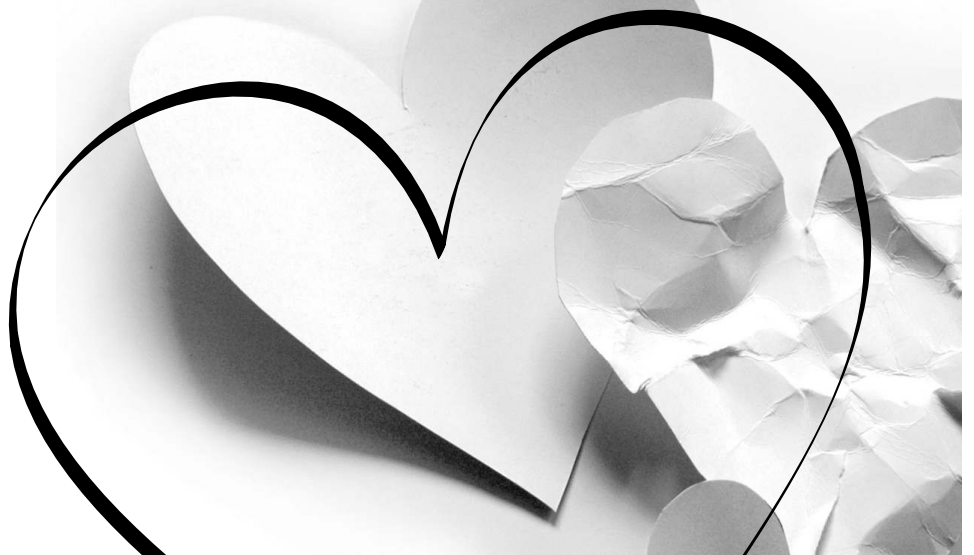
...I live abroad and want to leave with the child for my home country...

If you are about to leave the country where you live and you are planning to go to your home country or to any other country, remember that agreement with the partner is always at the top of the list. Even though agreement often seems impossible, at least try to agree. Try to contact organisations and institutions that may give you advice on how to proceed in accordance with law in your situation and that will provide the background you will need to find a solution as quickly and as smoothly as possible. Always use the opportunity to consult the local mission (the list of all missions of the Czech Republic abroad is available at: <http://www.mzv.cz/wwwo/mzv/EncTemata.asp?IDT=53>). You should at least receive information on the relevant institutions providing expert assistance.

Family law is very complex and it may well happen that your intuitive behaviour which you subjectively consider fair and logical, encroaches upon the rights of the other parent in relation to the child as well as upon the rights of the child itself. Numerous countries of the world acceded to the Convention on the Rights of the Child which, among other things, warrants for each child the right of custody by both parents, the right of protection against separation from parents against their will and against illegal transport abroad and being retained there. **At first the regulation may appear harsh in a specific situation, however do not forget that the same rights apply to you as well.**

If the reason for you and your child's departure for another country is domestic violence, it is essential to collect evidentiary materials required. It is usually hidden violence which takes place behind the door and this is why often it is very difficult to prove that it occurred. It is necessary to seek expert assistance as soon as possible go to see a doctor, inform him and require medical report and a record in your medical file. Report everything to the police, to the local social security office, contact an asylum house or one of the non-profit organisations focusing on the issues of domestic violence. **All these documents may be used as evidentiary material in the trial. Under no circumstances should you assume that when deciding on return of the child the court will rely purely on your allegation that you or your child was exposed to domestic violence from your partner. Only the above listed documents have probative value.**

Under no circumstances should you leave for your home country or for another state together with your child without previous agreement with your partner! Escape is not a solution and your act may be even qualified as a criminal offence. If the situation is tense, try to discuss the issues (including your possible departure with the child) with the partner in the presence of witnesses or try to gain your partner's written consent.



...I left the habitual residence together with the child...

If you lose your head and decide for such a solution, you must be aware of the fact that the other parent will use the existing legal instruments to protect the affected rights. Even at this point you still have the possibility to moderate the qualification of your act, for example by demonstrating an effort to reach an agreement and to resolve the issue with the partner. In such a case, assistance of a mediator may be very helpful. A mediator is a professional negotiator who is neutral to both parties to the dispute and professionally manages the process in order to find constructive solution acceptable for both parties. For more information on the role and the functioning of mediators please go to the website of the Association of Mediators of the Czech Republic at <http://www.amcr.cz/>.

Contact the relevant bodies, particularly the department of social protection of children at the town authority in the place of your residence and ask for assistance and advice in dealing with your situation. Cooperate on solution of the issue even in case child return order is issued, because settlement of the dispute and mutual agreement are always preferred to forced return of the child to the foreign country. Hiding with the child or rejecting to take-over mail do not represent lasting solution to the issue.

...I was left behind by my partner who left with the child

In such a case your partner clearly violated not just your parental rights but also infringed on the rights of the child. The Hague Convention, which applies in the Czech Republic, makes it possible for you to request assistance from relevant bodies to recover the child, if the child is on the territory of a state that is also bound by the Hague Convention (the list of these countries is available at <http://www.hcch.net>). The relevant body in the Czech Republic is the Office for International Legal Protection of Children in Brno (<http://www.umpod.cz/>).



What may follow

The consequences will depend on specific circumstances. **The will of both parents to find a compromise and to settle the dispute is of utmost importance.**

If the court determines that one of the parents violated the law (removal or retention occurred), it will usually order return of the child to the state of habitual residence. In some cases your behaviour may be qualified as a criminal offence! This is why you should be aware of the fact that leaving the country does not exempt you from criminal liability.

Children first

Please remember that the child is important for both parents and both parents are important for the child which cannot be used as a tool to resolve disagreements between the partners.

When searching for the solution of the family crisis take into account the youngest family members whose delicate minds always suffer when the situation between partners is tense. Do not let your child become the victim of your private war.

“...Children must no longer be considered as parents' property, but must be recognised as individuals with their own rights and needs ...”

Recommendation of the Parliamentary Assembly of the Council of Europe, 31st regular session, Recommendation on a European Charter on the Rights of the Child, text adopted on 4 October 1979

“...the presumption generally stated is that the true victim of the 'childnapping' is the child himself, who suffers from the sudden upsetting of his stability, the traumatic loss of contact with the parent who has been in charge of his upbringing, the uncertainty and frustration which come with the necessity to adapt to a strange language, unfamiliar cultural conditions and unknown teachers and relatives.”

Dyer Report, p. 21 (a document of the Hague Conference on Private International Law)



**Important contact information and links
or who should I ask for help**

Úřad pro mezinárodněprávní ochranu dětí
(Office for International Legal Protection of Children)

Benešova 22, 602 00 Brno
E-mail: marketa.novakova@umpod.cz; ilona.durisova@umpod.cz
Tel.: (+420) 542215443-5, www.umpod.cz

Nadace Naše dítě

(Our Child Foundation)

Ústavní 95 , 181 00 Praha-Bohnice
E-mail: ipp@nasedite.cz
Tel.: (+420) 777 800 002 - **legal helpline** - legal advice concerning children (every
Wednesday 10 a.m. to 6 p.m.), www.nasedite.cz

Bílý kruh bezpečí

(unincorporated association)

U Trojice 2, 150 00 Praha 5
E-mail: bkb@volny.cz, Tel.: 257 317 110 (nonstop line), www.bkb.cz

ROSA

(unincorporated association)

Podolská 242/25, 147 00 Praha 4
E-mail: info@rosa-os.cz, poradna@rosa-os.cz, Tel.: 241 432 466
SOS tel.: 602 246 102 (Mo-Fri 9 a.m. to 6 p.m.), www.rosa-os.cz

Psychosociální centrum Acorus

(Acorus Psychosocial Centre)

Legerova 20, Praha 2
E-mail: acorus@iol.cz , Tel.: 283 892 772 (nonstop line), www.acorus.cz

Asociace mediátorů České republiky

(Association of Mediators of the Czech Republic)

K vodojemu 4, 150 00 Praha 5
E-mail: amcr@amcr.cz , Tel.: (+420) 251 553 461, www.amcr.cz

Ministerstvo zahraničních věcí ČR

(Ministry of Foreign Affairs of the Czech Republic)

Loretánské náměstí 5, 110 00 Praha 1

List of missions abroad: <http://www.mzv.cz/wwwo/mzv/EncTemata.asp?IDT=53>

Ministerstvo spravedlnosti ČR

(Ministry of Justice of the Czech Republic)

Vyšehradská 16, 128 10 Praha 2, www.justice.cz

Ministerstvo práce a sociálních věcí

(Ministry of Labour and Social Affairs of the Czech Republic)

Na Poříční právu 1, 128 10 Praha 2

Tel.: 221 922 450, www.mpsv.cz

Česká advokátní komora

(Czech Bar Association)

Národní 16, 110 00 Praha 1

Tel.: +420 221 729 011, E-mail: sekr@cak.cz
www.cak.cz

