

Children's rights to contact in Croatia: decision-making and enforcement

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Outline

- **1. Recent law on children rights to contact**
 - Brief intro into Croatian legislation;
 - International legal instruments
 - Family Law Act 2003
- **2. Research of decision-making and enforcement**
 - Decision - making;
 - Enforcement of contact orders.
- **3. What can the law do?**
 - Principle of no delay;
 - Different age – different approach;
 - Compensation for violation of child's right to contact.

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Child's Right to Contact in Croatian Law

SOURCES OF LAW:

- **International legal instruments**
 - UN Convention on the Rights of the Child (1989)
 - European Convention on Human Rights and Fundamental Freedoms (1950)
 - Hague Convention on the Civil Aspects of International Child Abduction (1980)
- **Domestic law**
 - Family Law Act (2003)

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Contacts under Family Law Act 2003

Child's Right to Contact

Art. 87:
"A child has a right to contact with a parent if they live separately."

Art. 107:
"A child has a right to contact with a grandparents and siblings."

Art. 100: "If the contacts have negative effects on a child then they can be restricted, supervised by the authorized person or prohibited."

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Procedural Principles regarding Contacts

Urgency (supressing delays)

The Obligatory Role of
Social Welfare Centres (SWC)

Mandatory Mediation

The Child's
Right to be Informed,
Consulted and to
Express its Opinion

Supporting Parents'
Agreement

Family Act 2003

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Enforcement of Contact Orders

- **Initiation of the enforcement proceedings:**
 - by the court *ex offio*,
 - by SWC,
 - by the non-resident parent
 - by the child (if mature enough).
- **Ways of enforcement:**
 - fine
 - imprisonment and
 - process of child delivery.

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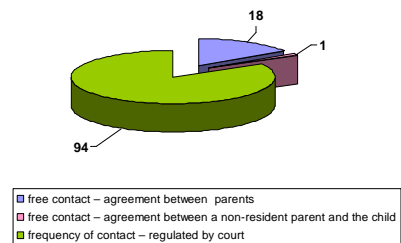
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Research results

- Subject of the research
 - decisions and processes at the Municipal Court in Zagreb in 2003
- Background
 - before January 1, 2006:
 - parallel jurisdiction over contacts of both courts and SWC;
 - since January 1, 2006:
 - family courts have had sole jurisdiction.
- Sources
 - 113 court decisions
 - 589 decisions referring to marriages with minor children
 - 6 enforcement cases initiated.

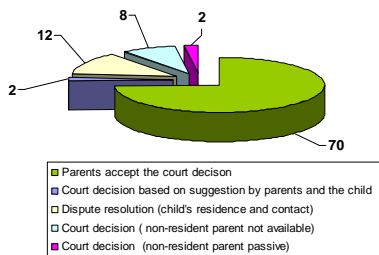
Decision – making

Agreement (a part of court decision)



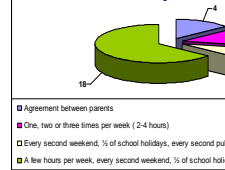
Frequency of contacts

Frequency of contact – regulated by court

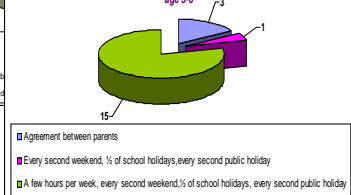


Contact arrangements (Pre-school children, age 1-7)

Contact arrangements for pre-school children age 1-4

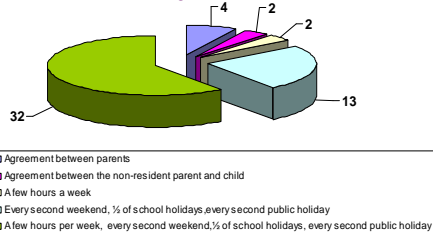


Contact arrangements for pre-school children age 5-6



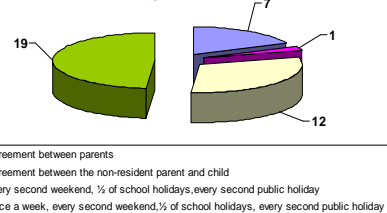
Primary-school children, age 7-13

Contact arrangements for Primary-school children age 7-13

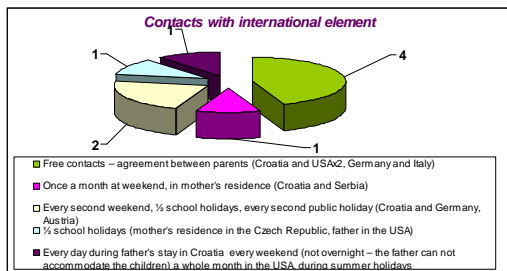


Secondary-school children, age 14-18

Contact arrangements for Secondary-school children age 14-18



Contacts in cross-border cases



Enforcement of contact decisions

In 2003, altogether 6 processes were initiated.

Who initiated the processes?

in 4 cases the father; in 2 cases the mother requested from father to deliver the child after the contact.

The time lag between the finality of the divorce and initiation of enforcement;

5, 6, 9 months in 3 cases,
5 years in 2 cases,
9 years in 1 case.

Children's age at the time of enforcement;

3, 6, 10, 11, 12 and two children of 14 age.

Enforcement of contact decisions

In 4 cases there was a dispute between parents concerning residence and contacts in time of divorce process.

An overview of enforcement processes outcomes:

1. temporary prohibition of contacts between the father and child (age 10) who refused contact;
2. in 2 cases the fathers abandoned the enforcement (the mothers changed residence moving to a town 500 and 600 km away);
3. one case was not completed for procedural reasons;
4. **just two cases were successfully finalised:**
 - the process of child delivery (not without problems)
 - after the court had intervened on several occasions, the contacts between two daughters (age 12 and 14) and father were more frequent than as decided by court; mother was not participating in agreement between them

Final remarks...

In lieu of a conclusion... three submissions about what the law can (and cannot) do.

What can the law do?

1. Well-known principle of no delay

- Principle of urgency could be an integral part of the principle of the child's best interest.
- Every delay when making a decision can result in child's alienation from the non-resident parent.
- Parental Alienation Syndrome
 - It could be expected that negative influence can not be created "overnight" or among infants.

What can the law do?

2. Different age – different approach

- Contact arrangements should not be the same for e.g. a child who is 4 or the one who is 16.
- The child's age is very important at the moment of divorce and decision-making.

Infants and toddlers
Attachment of a child to the mother and the father is of significant importance for the child's development. It lays foundations for a future relationship between a child and its parents. They should be as frequent as possible.

Primary school children
At this age children can express their will. Therefore, expert's role is very important when determining child's maturity, will and the best interest.

Adolescents
The basic relationship between parents and children have already been created. An adolescent needs to be advised on how to prevail the consequences of a divorce. A child is also entitled to act in some cases.

Should a 16 years old child also be under obligation to contact with its parent?

What can the law do?

3. Compensation for violation of child's right to contact

- The law can not do a lot if a parent does not want to have contact with a child.
 - Enforcement of order does not make sense - a child's right becomes a *nudum ius*.
- The non-resident parent should bear the costs of the compensation for violation of child's right to contact.
 - A child will get more than just inheritance, especially in cases when there are other children with whom the father had lived.

Thank you!