

INTERDISCIPLINARY COOPERATION IN THE CZECH  
REPUBLIC AND COCHEM PRACTICE

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**Abstract:** *The following article aims to present the principles of interdisciplinary cooperation with a focus on the Cochem practice and to show the possibilities of its application in courts not only in the Czech Republic – attention will also be paid to the situation in Slovakia. In proceedings in family law matters, in which the arrangements between parents and minor children are regulated, it involves a relatively new and still not yet institutionalised approach. The basic characteristic of the Cochem practice is the attempt to minimise parental conflict and to make parents find an amicable solution together. The process involves professionals from different sectors to help parents in the divorce period to find a joint solution to their conflict, one that works best for their child (Rogalewiczová, 2019, p. 236). In this article, I mainly point out how this method of interdisciplinary cooperation is applied in practice in Czech courts, with a comparative overlap to the Slovak court environment.*

**Key words:** *Interdisciplinary Cooperation; Cochem Practice; Shared Custody; Parental Responsibility; Children; Civil Law; Family Law*

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## 1. INTRODUCTION

Parental responsibility in the Czech Republic is currently regulated by Act No. 89/2012 Coll., the Civil Code, which entered into force on 1 January 2014. Parental responsibility is conceived as a set of rights, privileges and obligations. In particular, it refers to the duties and rights to "[...] take care of the child, protect the child, maintain personal contact with the child, ensure the upbringing and education of the child, determine the place of residence of the child, represent the child and take care of the child's property." (Zuklínová et al., 2016, p. 114). Parental responsibility is vested in both parents: "Both parents have parental responsibility equally. Every parent has parental responsibility, unless he has been relieved of it."<sup>1</sup>

## 2. FORMS OF CHILDCARE

If the court decides on the dissolution of a marriage, the decision on the dissolution must be preceded by a decision on the post-divorce arrangements for the child: "If spouses have a minor child who has not yet acquired full legal capacity, the court shall not divorce the marriage until it decides on the situation of the child at the period after the divorce."<sup>2</sup> If the spouses have multiple children, the court issues a separate decision for each of them (Zuklínová, 2016, pp. 111-122). The court may also decide to approve the parents' agreement provided that its terms are not contrary to the best interests of

<sup>1</sup> Section 865(1) of the Civil Code.

<sup>2</sup> Section 753(3) of the Civil Code.

the child. The main criterion for the court's decision is therefore the child's best interests. In its assessment, the court takes into account not only the child's relationship with each parent, but also with siblings and grandparents (Zuklínová et al, 2014, pp. 543-545).

A different situation arises when the child's parents are not married. In such cases, the parents may independently agree on childcare arrangements. However, if they fail to reach an agreement, they may petition the court for an authoritative decision. However, from this point onward, any further modification of child custody arrangement must always be regulated by the court (Šmíd et al., 2017, p. 79).

Section 907(1) of the Civil Code enumerates the various forms of child custody: *"A court may entrust a child to the care of one of the parents or to shared or joint care; a court may also entrust a child to the care of a person other than a parent if it is necessary with regard to the interests of the child. If a child is to be entrusted to joint care, the consent of both parents is required."* When determining the appropriate form of custody, the court considers *"[...] the child's personality, especially his talents and abilities in relation to the potential to develop and to the life situation of the parents, as well as the emotional inclination and family background of the child, upbringing skills of each parent, existing and expected stability of the upbringing environment in which the child is to live in the future, emotional ties of the child to his siblings, grandparents, or other relatives and unrelated persons. A court shall always take into account which of the parents has until that point properly cared for the child and properly provided for his emotional, intellectual, and moral upbringing, as well as which of the parents is better suited to provide the child with healthy and successful development."*<sup>3</sup> The legislator may not itself prescribe which of the above-mentioned forms of custody is the preferred and primarily applicable care. *"It is never certain which of the whole register of possible arrangements will best suit a particular child."* (Zuklínová, 2015, p. 101).

Below, I will focus on the importance of viewing the situation from the child's perspective rather than treating the child as a mere object of dispute. The necessity of an individualised approach to each case is confirmed by the Constitutional Court's judgement that shared custody is not an 'automatic' option following the separation of the child's parents. The decisive criterion remains the best interests of the child and shared custody further presupposes that both parents are interested in such an arrangement. Moreover, in the case at hand, the children expressed that they have a significantly more positive relationship with the intervener (aunt), whose upbringing environment suits them, and that they feel uncomfortable in the father's home due to their negative relationship with his partner. It can therefore be concluded that they do not want to be placed in shared custody themselves.<sup>4</sup>

It is generally recognised that the following forms of child custody: joint custody, shared custody, and custody entrusted to one parent are defined not only in Act No. 89/2012 Coll., the Civil Code – but also in Section 24 of Act No. 36/2005 Coll., the Family Act, and on the Amendment of Certain Acts. Nevertheless, I will briefly outline these forms here, as they are essential for understanding the later context of Cochem practice.

## 2.1 Joint Custody

This is often regarded as one of the best arrangements, where the child and parents still form a single family (Zuklínová, 2016, p. 122). However, this institution is not widely used and the court cannot decide on joint custody if one of the parents does not

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<sup>3</sup> Section 907(2) of the Civil Code.

<sup>4</sup> Decision No. III. ÚS 2396/19, of 29th October 2019 of the Constitutional Court of the Czech Republic.

agree to it. The court itself cannot order such custody, so the only way to decide on such custody is to approve the parents' agreement. Joint custody is considered appropriate primarily in cases "[...] where the child is almost an adult and no longer lives in the same household as the parents (the child is studying in another city or abroad or is already self-supporting, etc.). In addition, joint custody is an option if the parents plan to continue living in the same apartment or house after the divorce and are in agreement on matters relating to the child and its maintenance." (Linhartová, 2018, p. 57). However, the best interests of the child must always remain the decisive criterion. Before approving an agreement on joint custody, the court should always ascertain whether any disagreements exist between the parents and whether they are capable of reaching consensus on matters concerning the child. One of the advantages of joint custody is the absence of authoritative court intervention. The upbringing and maintenance of the child are still handled solely by the parents (Tomešová, 2017). The Constitutional Court has also described this form of custody (alongside shared custody) as an ideal arrangement.<sup>5</sup>

## 2.2 Sole Custody

When a child is entrusted to the sole custody of one parent, it is often necessary to regulate the child's contact with the other parent (Frencllová, 2019). According to Section 888 of the Civil Code "A child who is in the care of only one of the parents has the right to have contact with the other parent to the extent in which it is in the interests of the child, and that parent has the right to have contact with the child, unless such contact is limited or prohibited by a court; a court may also specify conditions of the contact, especially where it is to take place, as well as to identify persons who may or may not participate in the contact. A parent who has the care of the child is obliged to prepare the child for the contact with the other parent, duly facilitate the child's contact with the other parent and cooperate with the other parent in the exercise of his rights to contact to the necessary extent." Both parents are required to refrain from making any negative comments about the other parent with the intention of undermining the child's relationship with that parent. Furthermore, the parents have a mutual duty to share relevant information, so they remain obliged to communicate with each other on some level and communication should be conducted through the child<sup>6</sup> (Zuklínová, 2016, pp. 123-124).

The parent who has sole custody of the child is required to fulfil three key obligations: to prepare the child properly for contact with the other parent, to facilitate such contact and to cooperate with the other parent. Proper preparation of the child includes both material and psychological aspects. Material preparation involves ensuring that the child has appropriate clothing, necessary medication and, where appropriate, personal items such as toys. Psychological preparation is more demanding: it should be carried out continuously. It requires, as noted above, refraining from negative comments and to actively promote a positive relationship between the child and the other parent. Another point is to allow the child to have contact with the parent. This builds on proper preparation and involves ensuring that the child is handed over to the other parent at an agreed place and time, and subsequently returned to the custodial parent at an agreed time and place. A child's illness should not in itself be an obstacle to the visit of the other parent, unless the illness is so serious that the child cannot be transported to the other parent. If the non-custodial parent is capable to care for the sick child, contact cannot be obstructed. The final obligation is cooperation between parents. They should strive to

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<sup>5</sup> Decision No. III. ÚS 2298/15, of the 15<sup>th</sup> March 2016 of the Constitutional Court of the Czech Republic.

<sup>6</sup> Section 890 of the Civil Code.

maintain functional communication, e.g., by handing over the child to a different place than usual because of an unexpected event, the caring parent should assist in learning to care for the child in situations involving illness, work to mitigate any negative reactions the child may have towards the other parent and encourage the child to develop a relationship with the other parent<sup>7</sup> (Šínová et al., 2016, pp. 138-140).

### 2.3 Shared Custody

In shared care, the child resides with one parent for a designated period of time and then, usually after one week or fourteen days, resides with the other parent (Kovářová, 2015). This arrangement may be viewed as a form of 'compromise' where parents share caregiving responsibilities. A notable advantage is that the child does not lose contact with either parent and the parents are forced to cooperate and communicate (Malá, 2019). On the other hand, a significant drawback is the potential instability of the child's social environment and the bonds (Vraštilová, 2022, p. 19).

In recent years, a new type of shared care, called "Bird's Nest", has emerged, where the child remains in a single household while the parents alternate residence. In practice, this means that the child does not change environments, instead the parents take turns staying with the child at certain intervals (Zuklínová, 2016, p. 122). However, this form is rejected by a substantial proportion of parents.

The effort to maintain the child's social bonds has also been reflected in recent years in case law. According to this case law, shared custody may be implemented if the arrangement allows the child to continue attending the same school, clubs and be close to his/her peers (Kovářová, 2015). However, courts do not always prioritise these social bonds. In connection with this issue, worth mentioning is the rejected judgement in case No. ÚS 1506/13 of the Constitutional Court, which dealt with the issue of shared custody between parents living at a considerable distance from one another (Česká Lípa - Olomouc) and the implications for the child's upcoming school attendance. The complainant disagreed with the decision of the Constitutional Court on several grounds, one of which was the issue of the aforementioned school attendance. According to the Regional Court's decision, the girl was to spend two weeks a month with her mother and two weeks a month with her father. The mother disagreed with this arrangement, arguing that the girl would have to alternate school facilities. The Constitutional Court reasoned that the upbringing environment was stable, as the girl had been used to this model since her parents' separation (approximately two years). The Constitutional Court therefore found no compelling reason to change the system in place and, in addition, stated in the next paragraph that there was no reason why such arrangement could not continue in the upcoming school year, given the current possibilities for individual education. However, this view was challenged in a dissenting opinion by Judge David. According to David, the current arrangement of moving between such distant residences is very challenging but manageable at present (since the child is pre-school age). However, unlike the Constitutional Court, he sees that real difficulties would arise in the upcoming schooling.<sup>8</sup> *"Unlike in kindergarten, where we cannot yet speak of a children's collective in the full sense of the word, in primary school such a collective is already beginning to form, with all the educational advantages and childhood vices that accompany it. Although today's children find very little surprising, a minor can cope with the fact of a permanent change of school environment [...] Can she cope, for example, with the different learning*

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<sup>7</sup> Section 888 of the Civil Code.

<sup>8</sup> Decision No. I. ÚS 1506/13, of 30<sup>th</sup> May 2014 of the Constitutional Court of the Czech Republic.

*demands that will undoubtedly make her teachers uncomfortable? How will she be able to really enjoy her extra-curricular activities if she has to move from place to place every fourteen days to do them?"* (David, Dissenting opinion to judgement mentioned above) Psychologist Mertin expressed a similar view regarding compulsory schooling: *"Once a child is older, he needs not only parents but also social ties in place. The law does allow for the attendance of two kindergartens and possibly primary schools, but I find it almost inhumane. Why make it any harder for a child than it has to be."* (Bulletin advokacie, 2014).

### 3. COCHEM PRACTICE

If a situation arises in which the court must regulate the arrangements for a minor child, it is always preferable for the parents to reach a mutual agreement on this matter (Mach and Šmolka, 2008, p. 136). The essence of the Cochem practice lies precisely in fostering such parental agreement. Within this arrangement, parents are encouraged to cooperate with the court, lawyers, psychologists and social workers to reach their own consensual agreement - an agreement that they both support.

#### 3.1 The Origin of the Cochem Practice

The Cochem practice began to take shape in the Cochem court district (Germany) in 1992. A conference was convened that brought together professionals from five disciplines, namely judges, lawyers, child welfare workers, staff of professional counselling centres and experts. The aim of the conference was to assess both the perception of their own profession and the perception of the other professions (Rudolph, 2010, p. 21).

The discussions revealed that the different professions were critical of each other and showed prejudice regarding the abilities and expertise of others. The greatest tensions arose between the child welfare department and attorneys, followed by the family law judges' criticism directed at the child welfare departments. The reports on the child's current family situation that were submitted to the court by this department tended to focus primarily on how the children's rooms were equipped and the cleanliness of the home. Based on these findings, the courts often awarded custody to the parent, who stayed in the residence on that basis alone. These meetings demonstrated the need for interdisciplinary cooperation.

In the subsequent conferences, the need for collaboration with psychologists also became evident (Rudolph, 2010, p. 21). Interactions between representatives of specific professions and gaining insight into each other's methods of work proved also beneficial in terms of efficiency. The lengthy formal processes of establishing contact are disappearing, so, for example, a simple telephone conversation is sufficient (Rogalewiczová, 2019, p. 229).

The most significant outcome of these negotiations was the idea that the child should retain meaningful relationships with both parents even after the divorce (Rudolph, 2010, p. 21). Children who maintain close contact with both parents have a better opinion of themselves. *"They know that dad is still actively involved in their lives, even though he no longer lives with mom."* (Warshak, 1996, p. 165). They don't doubt themselves and don't explain away *"Dad's relative disinterest by blaming themselves."* (Warshak, 1996, p. 165).

Moreover, in Germany, until 1998 (i.e. until the reform of the German Civil Code), parental custody was often not granted to both parents. If the child's parents were unmarried and did not live together, parental custody was, by court decision, always assigned to only one of them, and the other parent thus lost the right to participate in the

child's upbringing, to maintain contact with the child, and to take part in the child's future life. In the case of unmarried couples, parental custody belonged exclusively to the mother, and the father could obtain it only in cases provided for by law.

Given this legal framework, the events before the court were frequently dramatic, and the relationship between the two parents tense. The judges based their decision almost exclusively on the expert's report. These recommended that the child be entrusted to the care of one parent and advised that the other parent should either have no contact with the child for a certain period of time or should resume contact only after a long break. The reason for such a measure was that, according to the expert, the child needed a break from parental conflict. In reality, however, these restrictions had rather negative consequences on the child's relationship with the non-residential parent and led to mutual alienation. Moreover, the parental conflict itself remained unresolved and, once the judgement was issued, no one monitored whether the court's decision was being respected (Rogalewiczová and Círbusová, 2015, p. 5).

A series of negotiations in 1992 was followed the next year by the adoption of the Cochem Convention, which aimed to *"re-establish joint parental action even in highly disputed cases"* (Rudolph, 2010, p. 24), to bring the child's parents together for dialogue and to encourage them to view the situation through the child's eyes. *"The result - also of the court hearing - should be a judgment: the parents' decision"* (Rudolph, 2010, p. 24).

The reason for the parents' reluctance to resolve childcare arrangements through a joint agreement is that they are unable to detach themselves from their partner conflicts, so they cannot fully perceive the interests of their common child. The involvement of professionals is therefore intended to help parents overcome their partnership problems and to view the situation as objectively as possible, placing the child's interests at the forefront. Lawyers themselves often initiate the first meetings with the child welfare department and visits to counselling centres. Such a procedure can, in certain cases, resolve parental conflict amicably and avoid the need for court proceedings (Rudolph, 2010, pp. 24-25).

As noted above, the result of this conference was the adoption of the Cochem Convention. The basic purpose of the Cochem practice is *"to restore the ability of parents to act together in the affairs of the child. The means to achieve this goal"* (Rogalewiczová and Círbusová, 2015, p. 8) lie in connecting all the professions together in an imaginary network. If one link falls out, the system can no longer function effectively. Under the Cochem Convention, each professional group commits to specific tasks, that it must fulfil throughout the proceedings (Rogalewiczová and Círbusová, 2015, p. 8).

### 3.2 Roles of Individual Professions

First, it is useful to outline the principles on which Cochem practice is based, as these principles constitute the hypothetical theses for the different actors, whose roles will be discussed in the following pages. The key principles are as follows: *"Decisions are primarily in the hands of the parents, as is the responsibility for their child's life; all professions are equal, their contribution to the solution is equal; the performance of the different professions must be coordinated - active collaboration, regular meetings, fine-tuning of procedures, capacity of services, etc.; respect, communication, orientation to the child's perspective (important for all involved)."*<sup>9</sup>

<sup>9</sup> Manual for establishing interdisciplinary collaboration. Cochem.cz. [accessed on 10. 10. 2021] Available at: <https://www.cochem.cz/wordpress/wp-content/uploads/MANUAL-final-cochem-bez-orez.pdf>. (Cochem.cz is an association that fights for the Cochem practice to be enforced in the Czech legal system.)

We will then introduce the different professional groups and their role within the Cochem practice. In the first place, it would be appropriate to highlight those who set the whole procedure in motion, which is not any member representing the professions, but the parents themselves. The parents must be willing to work on themselves throughout the proceedings, to learn to communicate with each other again, and to cooperate with the professionals, which we will mention further (Rogalewiczová, 2015, p. 20).

Sooner or later, both parents are represented by attorneys in a heated parental conflict. The first disagreements arise immediately after the filing of a suit. Once a parent receives a copy of the pleading, he or she might feel devaluated as a parent in the light of the harsh tone of legal language. As a result, the parent immediately turns to the attorney and asks to be portrayed in the best light before the court. In Cochem practice, attorneys are instructed not to act solely as advocates for their client, but also to emphasise the fact that both parties remain, first and foremost, parents who must continue to cooperate. Written communication between parents should also be completely minimised and replaced by verbal communication. Even these initial steps can significantly contribute to reconciliation. The aim is therefore not for one party to "win", but for both parties to reach a mutual agreement.

Another undoubtedly very important institution is the family law court (in German *Familiengericht* - family court). The court must set a hearing within two weeks from the date the petition is served to the court -this priority supersedes other court proceedings. It is the speed with which the whole situation is resolved that has a significant impact on how the child is affected by the separation of the parents. Delaying proceedings for several months, can irreparably damage the child's relationship with the parent with whom he or she does not live. This is confirmed, among other things, by a judgement of the Constitutional Court of the Czech Republic: "[...] cases concerning the care of children must necessarily be dealt with as a matter of urgency, delays in any of the stages of the proceedings may be tolerated provided that the overall duration of the proceedings is not excessive, since the passage of time may have irreversible consequences for the child's relationship with the parent with whom he or she does not live for that period and with whom he or she has either no or limited contact during that period."<sup>10</sup>

It is only at the first court hearing that the parents are able to present and elaborate on their ideas about the future arrangement of their "parenthood", as they usually do not have sufficient time to consult their attorney beforehand (as mentioned above, the proceedings are initiated very quickly). In most cases, this first hearing is accompanied by arguments, yet this is to the court's advantage, because in heated moments, the core issues tend to surface, which is a springboard for their subsequent resolution (Rudolph, 2010, pp. 26-27). The judge then has the task of communicating with all the professions involved (see above). The court guides the parents throughout the proceedings, but does not impose an authoritative decision, rather, assists them in reaching their own agreement (Rogalewiczová and Cirbusová, 2015, p. 20).

The Department of Child Welfare is expected to work with the family as a whole, and its representative must be present at all court hearings. When working with the family members, the representative is exempt from keeping written records, instead, the emphasis is placed on extensive communication and through this approach the Child Welfare Department is often already able to reach an agreement with the parents.

If the disputes between the parents cannot be resolved during the court hearings, the court stays the proceedings, and both parents are referred to the psychological

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<sup>10</sup> Decision No. I. ÚS 1074/13, of 28<sup>th</sup> July 2014 of the Constitutional Court of the Czech Republic.

counselling centre with the assistance of a child welfare worker to a psychologist, where they are again given an appointment for an interview within a maximum of fourteen days. Another court hearing must be held within six months at the latest, at which the parents are expected to present an agreement. If no agreement has been reached by that time, both parents continue attending the psychological counselling centre. Common reasons why parental conflict persists are disputes over property, and situations in which fathers fight for their paternal rights without fully considering the consequences for the child. The "desire" for revenge, aggression, or anxiety also plays a role (Matoušek et al., n. d., p. 19).

An alternative to attending a psychological counselling centre is the preparation of an expert report. The experts communicate with the parents and their attorneys during the preparation of the report. If an agreement can be reached before the expert report is completed, the obligation to submit it is lifted and the court approves the parents' agreement (Rudolph, 2010, pp. 25-28).

The child is at the centre of all cooperating professions. *"The best interests of the child are seen from the child's point of view, not from the point of view of adults who believe that they know what is best for the child from their position, age, and experience."* (Rogalewiczová, 2015, p. 10). The professionals involved aim to guide parents to set aside their partnership issues and to focus instead on the needs of their child from their perspective, with a successful solution being deemed to be a parental agreement (Rogalewiczová and Círbusová, 2015, p. 10). *"Cochem practice seeks to achieve that divorcing or separating parents are able to take back their joint responsibility for their child together. To behave like parents again, realising that although their life together is in the past, they will always remain parents of a child together. And that their child needs them both."* (Rogalewiczová and Círbusová, 2015, p. 10). By the end of the proceedings the parents should therefore be fully aware that they must treat each other with due respect and that they must continue to communicate with each other in a way that safeguards the welfare of their child. The child should still have both parents even after the judgement is given.

#### 4. COCHEM PRACTICE AND ITS APPLICATION IN THE CZECH REPUBLIC

The spread of Cochem practice in the Czech Republic can be linked to the establishment of the Cochem.cz association in 2015.<sup>11</sup> Since then, this group, joined by other Czech courts and judges, has been working to implement the Cochem practice in Czech judicial practice.

The reasons for promoting the practice of Cochem in the Czech Republic are not exactly identical as the initial impulses that led to its development in Germany. This is because the Czech legal system, unlike the German system at that time, grants parental responsibility to both parents.<sup>12</sup> By contrast, in Germany, as mentioned above, both parents exercised parental responsibility only if they were married. After a divorce, the court decided which parent would retain parental responsibility and which would lose it. If the child was a child whose parents were not married, only the mother had parental responsibility, albeit with certain exceptions (Rogalewiczová, 2019, pp. 236-237).

In the Czech environment it is irrelevant whether the parents live together or whether they are married. Parental responsibility cannot be relinquished unilaterally by either parent, but in cases provided for by law, if *"there are reasons to believe that it is*

<sup>11</sup> About us. Cochem.cz Available at: <https://www.cochem.cz/index.php/o-nas/> (accessed on 11.10. 2021).

<sup>12</sup> Section 865(1) of the Civil Code.



*necessary in the best interests of the child a court may decide that the exercise of parental responsibility of the parent be suspended".*<sup>13</sup>

The need to introduce the Cochem practice in the Czech Republic stems from the effort to change the way guardianship courts operate according to the principle that it is always preferable to lead parents toward an agreement so that they can continue to function as equal parents of their child rather than imposing a certain solution on them. "The essence of Cochem practice is the coordinated interdisciplinary cooperation of professionals who work with parents (through their influence on them) to resolve a conflictuous situation." (Macková-Jurásková and Nováková, 2019, p. 13).

The fact that it is important for proper upbringing to have parents who can communicate with each other has been confirmed by the Constitutional Court. In its judgement of 15 March 2016, the complainant, in this case the child's father, argued that the Regional Court's decision had restricted his contact with his daughter, who was in the custody of her mother. With regard to the father's conduct, the Constitutional Court stated the following: "[...] *the complainant, who apparently considers himself to be a better parent than the mother, should consider very carefully whether the confrontational way of conducting the proceedings before the general courts (and indeed before the Constitutional Court), involving personal attacks against the mother, is actually in the interests of his daughter. Experience has shown that the key prerequisite for the proper upbringing of a minor child is correct relations between the parents, or the ability to communicate with each other about the care of the child and issues of his upbringing, while such personal attacks can hardly contribute to the quality of the latter.*"<sup>14</sup>

If it is not evident that the parents have reached a joint agreement or engaged in any meaningful discussion about their future functioning in relation to the child, the judge may order a "other court proceedings".<sup>15</sup> During the other court proceedings, the judge may convene an informal conference outside the courtroom in his or her office to talk with the parents about their parental responsibilities. The judge inquires into their respective ideas about the future arrangement of parenting time and, in the process, seeks to eliminate any obstacles that are preventing them from reaching an agreement. Ultimately, responsibility for resolving the post-divorce situation rests mainly with the parents. *"If parents are unable to reach an agreement and rely solely on the court's decision to help them resolve the issue, they are deeply mistaken. Relying on the court and its decision is buck-passing because in order to resolve the broken relationship between the parents, it is necessary first of all to show their will to solve the problem."* (Rogalewiczová, 2015, p. 26).

#### 4.1 Attorneys

The manner in which parents enter the courtroom often indicates the spirit in which the hearing will unfold. If the parties are able to communicate without difficulty and appear before the court with a jointly proposed solution, this is generally a positive sign that they are acting with their child's welfare in mind. However, when the parents arrive the courthouse accompanied by a group of relatives who unequivocally support "their" family member as the better parent and are already at that point divided into two hostile parties, it becomes evident that neither parent is interested in any mutual agreement at

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<sup>13</sup> Section 869 et seq. of the Civil Code.

<sup>14</sup> Decision No. III. ÚS 2298/15, of 15<sup>th</sup> March 201 of the Constitutional Court of the Czech Republic.

<sup>15</sup> Type of proceedings in the Czech Republic, which means a less formal hearing, which can be held for example in the office of a judge.

that point. In such situations, the parties' attorneys are not helping an already rather escalated situation. Seeking to secure a "victory" for their client, they portray their client's qualities in the best possible light, thereby simultaneously undermining the qualities of the other party (Rogalewiczová, 2015, pp. 26–27). The counterpart then searches for "faults" in the other parent and attempts to use these faults to prevail in the dispute, but this does not automatically translate into a good relationship with the child (Macková-Jurásková and Nováková, 2019, p. 14). However, this rule does not always apply universally; there is also a group of attorneys who do not seek visibility through court proceedings, but on the contrary seek to ensure constructive communication.

For the purposes of this paper, Mgr. Miroslava Káňová, judge of the District Court in Nový Jičín, shared her experiences regarding the involvement or rather non-involvement of attorneys in Cochem practice. In general, she does not consider the involvement of lawyers in the process to be particularly beneficial. When another court year is ordered, it occasionally occurs that the parents are accompanied by their lawyers, and are told that their participation at this stage of the proceedings is not required at all, and indeed, is not even appropriate. The judges' task is to establish the relevant facts together with the parents, and the lawyer cannot meaningfully contribute in any way. Furthermore, the participation of attorneys in the negotiations often obstructs the achievement of an agreement and parents are less willing to compromise (Káňová, 2021).

At the District Court in Nový Jičín, the judges sought a solution for integrating attorneys into the system. The proposal was to allow the public to choose an attorney who would sign a statement in advance stating that he or she would not use confrontational strategies in family law proceedings. The declaration would read as follows: *"I have familiarised myself with the principles of the proceedings and decision-making of the District Court in Nový Jičín in matters of custody of minors, and I undertake not to use conflict strategies in these proceedings. I will limit myself to the necessary description of the facts when drafting the petition for the initiation of proceedings."* (Kutlík, 2018, pp. 21–22). A list of such attorneys would be published on the court's website. However, the Bar Association advised attorneys not to sign such a statement under the threat of disciplinary action. The court's proposal, it said, contravened section 16(1) and (2) of the Advocacy Act<sup>16</sup>, which states that an advocate is to promote the rights and protect the legitimate interests of his client, and to do so he is to use all legal means and, within those means, to apply everything he considers beneficial to his client (Kutlík, 2018, pp. 21–22).

#### 4.2 The Department of Child Welfare

An important and irreplaceable role in the proceedings is undoubtedly played by the Department of Child Welfare which acts as a representative, guardian of the child (Rogalewiczová and Círbusová, 2015, pp. 26–27). A minor child is, in principle, represented by his or her parents: the duty and right to represent the child is part of parental responsibility.<sup>17</sup> However, in proceedings concerning the court's care of a minor, a conflict of interest (or even the threat of such a conflict) may arise between the parents, as representatives of the child, and the child. In such cases, it is therefore necessary to appoint guardian ad litem for the child, which is usually the Department of Child Welfare<sup>18</sup> (Šínová et al., 2016, pp. 265–266). A social worker of the Department of Child Welfare also

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<sup>16</sup> Act No 85/1996 Coll., Advocacy Act.

<sup>17</sup> Section 892 of the Civil Code.

<sup>18</sup> Section 469(1) of the Act No 292/2019 Coll., on Special Judicial Proceedings.

meets with the parents prior to the court proceedings and may help them reach an agreement that the court subsequently approves (Rogalewiczová and Círbusová, 2015, p. 27). Within the Cochem practice, the Department of Child Welfare is expected to act as an independent third party, informing the parents before the court hearing about what to expect. Its role is to represent the child's interests by helping the parents see the whole situation from the child's point of view and by appealing to them not to cause one of them to disappear from the child's life by their separation and conflicts (Rogalewiczová and Círbusová, 2015, p. 20).

It is the loss of a parent that represents one of the greatest fears for a child in divorce proceedings, *"younger children fear that their parents may physically abandon them, older children may fear that they will not have parental love when they need it."* (Gradková, 2019, p. 44) Children therefore often find themselves in situations where they enter into imaginary coalitions with one parent, usually the parent who does not want the divorce, against the parent who is "leaving" the family. These are aspects that can aggravate parental cooperation. With the help and cooperation of professionals, parents may eventually be able to recognise when such behaviour is merely a "game" played by the child. This is why the role of the Department of Child Welfare worker is irreplaceable in the context of Cochem practice – Its worker helps parents understand the situation they are facing and works to stabilise the family environment. He or she also informs the child about the current circumstances and assists the parents in communicating with the child. The Department emphasises that the parent who is leaving or has already left the family household should also continue to maintain contact with the child, and it urges parents to refrain from making negative comments about each other in the child's presence (Gradková, 2019, pp. 44–45) This directly reflects the text of the law: *"When deciding on entrusting the child to the care of another person, a court must also consider the right of the child to be cared for by both parents and to maintain regular personal contact with them, and the right of the other parent to whose care the child will not be entrusted to get regular information about the child; the court shall also take into account the ability of a parent to agree on the child's upbringing with the other parent."*<sup>19</sup>

If the disagreements between the parents persist and they are unable to resolve issues related to the future care of the child without professional assistance, the Department of Child Welfare may require the parents to participate in professional counselling.<sup>20</sup>

### 4.3 Mediator

The court may also order the parties to seek assistance from an expert. Under the Act on Special Judicial Proceedings, the court is required to guide the parents of a minor child towards reconciliation, and it may order them to meet with a mediator, undergo family therapy or use the services of a specialist in the field of pedopsychology.<sup>21</sup> Mediation, however, can be financially burdensome for parents, as under the Mediation Act, the parties to the proceedings pay the mediator's fee equally.<sup>22</sup>

In mediation, we encounter an element that is consistent with the principles of Cochem practice: it is the parties to a given dispute who make all the decisions and, more importantly, who bear responsibility for them afterwards. However, one undoubtedly

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<sup>19</sup> Section 907 of the Civil Code.

<sup>20</sup> Section 12(1) (b) of the Act No 359/1999 Coll. On the Social and Legal Protection of Children.

<sup>21</sup> Section 474 of Act No 99/1963 Coll., Code of Civil Procedure.

<sup>22</sup> Section 10(3) of Act No. 202/2012 Coll., the Mediation Act.

crucial participant is often overlooked in mediation: the child. In 2015, only 20% of mediators involved children in the mediation process. In most cases, mediation is only managed from the parents' perspective, and the child's perspective is scarcely represented (Rogalewiczová and Cirbusová, 2015, pp. 20–22). The Mediation Act contains general reference about taking the child's interests into account: "*The mediator shall [...] (b) respect the views of the parties to the conflict and create conditions for their mutual communication and for finding a solution which takes into account the interests of both parties and which, where the subject of the conflict directly concerns the rights of a minor child, takes into account in particular the interests of the child.*"<sup>23</sup> Yet, the involvement of the child in the mediation process is undoubtedly beneficial. The mediator can act as the child's confidant in this process, just as the Department of Child Welfare does in the situations described above. It is often easier for a child to confide his/her feelings to a "stranger" than to his/her own parents, because he/she is not afraid of hurting his/her feelings. The mediator can also help shed light on a complex situation for the child, allowing the child to offer his/her own suggestions for dealing with the situation and interact with the parents to communicate their future functioning. "*Children want to be involved and are able to be involved if adults, including mediators, can adapt and, above all, if they can find the courage to ask and talk to them.*" (Rogalewiczová and Cirbusová, 2015, p. 26).

Mediator Míša Kopalová introduces a new initiative to her role as a mediator between the child and parent, which she refers to as a ritual. This occurs in situations where the parents have already developed a plan for their future functioning, but do not know how to communicate this arrangement to the child. As a mediator, she then explains to the child that it is entirely understandable if they do not fully understand the situation. She familiarises them with the parents' plan, for example, explaining who will take them to extracurricular activities and who will pick them up, and she is prepared to answer the children's questions.

During the mediation process, it is also advisable to involve a psychologist. He or she can work with the child individually, is able to better distinguish his or her needs and subsequently convey information about them to the parents. Parents can also benefit from psychological help. It is possible to interrupt the mediation for a period of time in order to allow one of the parents to undergo therapy, and then resume the mediation once the parent has become more at ease with the situation (Majetný and Kopalová, 2019, pp. 20–23).

#### 4.4 The Opinion of the Child

The child is often the most overlooked and at the same time the most vulnerable party in a divorce (as well as a separation) situation. It is therefore essential to prepare and communicate with the child for this emotionally demanding process. Both parents should explain to the child what is happening at that time, why it has occurred and what the future arrangements will look like. It is also crucial to reassure the child that the situation is not their fault. Children frequently feel compelled to take on adult burdens, becoming imaginary partners and advisers to their parents. However, it is essential that they remain in their role as children and spend their time as they have been used to. They should maintain regular contact with their friends, extended family, and meet them and other acquaintances in places where they are not burdened by the tensions associated with their parents' divorce (Macková-Jurásková and Nováková, 2019, p. 16).

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<sup>23</sup> Section 8 (1)(b) of the Mediation Act.

They should also be allowed to express their own views. The child's right to be heard is enshrined in the Convention on the Rights of the Child, specifically in Article 12: *"1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child. 2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law."* According to the UN Committee on the Rights of the Child, this right should not be limited by age. States Parties should not impose age limits.

If the court ascertains the child's opinion in the proceedings, *"[...] it must assess its relevance and give proper reasons for its conclusions in the decision."* (Šínová et al., 2016, p. 145). Approaches to "talking" with a child vary according to the child's age. In this respect, children can be divided into five age groups depending on their intellectual development. The first group consists of children from birth to the age of three: these children are unable to fully comprehend the events taking place around them, so it is necessary to maintain a relationship with both parents. Children aged three to six, i.e. pre-school children, are already capable of grasping the situation to a certain extent; therefore they need to be treated with increased sensitivity. At this age they are easily influenced, and they are also highly sensitive to changes in their environment, so they must be given sufficient space to understand and cope with these changes. As with the previous age group, the emphasis is on the relationship with both parents. In the third category, which includes children aged six to ten, children are already capable of expressing themselves fully. Their wishes should be taken into account and, to a certain extent, reflected in the judgement. It is also appropriate to communicate the judgment to the child in an age-appropriate manner after the proceedings have been concluded.

A significant shift occurs with children aged ten to fifteen, whose opinion is taken very seriously and should be duly reflected in the final judgment. Even though this is a period when the child is often very critical of their parents due to their development, their views should nonetheless be respected.

When the child reaches the age of fifteen, his or her opinion must be respected without reservation. As with the previous group, it is not appropriate to force contact with a parent; on the contrary, such pressure may be traumatic for the child and will certainly not strengthen relations (5th Family Law Symposium of the Judicial Academy on the Participation of Children in Guardianship Proceedings, held on 24 and 25 June 2021).

However, the child's wishes cannot be regarded as an absolute value in the assessment of a given case – although they carry significant weight, the judge must make a comprehensive assessment of the child's best interests together with them. *"[...] it is not possible for the child's wishes to be ascertained by inappropriate questions such as 'Who would you like to live with?'; the child's wishes must be ascertained comprehensively, i.e. in particular by indirect questions (especially for younger children), and ideally in an informal setting (i.e. not in the courtroom but, for example, in the judge's chambers or elsewhere). In this context, the Constitutional Court notes that the older the child is, the more weight his or her opinion carries."*<sup>24</sup>

According to Mgr. Káňová, talking to the child is a great benefit to the entire procedure. Allowing the child to express his or her opinion on the situation ensures that the child is not treated merely as an object of the proceedings and the parents' agreement

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<sup>24</sup> Decision No. I. ÚS 2482/13, of 26<sup>th</sup> May 2014 of the Constitutional Court of the Czech Republic,

is not formed without the child's knowledge, but the child is given the opportunity to become a full-fledged participant in the process.<sup>25</sup> In her experience, Mgr. Káňová states that children generally appreciate the opportunity to express their opinion on the situation. There are, however, cases where a child indicates that he or she does not wish to express an opinion, which must also be fully respected: as it is the child's right. It is advisable to make clear to the child that it may not always be possible for the court to decide entirely in line with his or her wishes, but that the court will seek to accommodate those wishes as far as possible. Children then feel that they themselves can meaningfully influence the situation and many value the opportunity to be informed of the contents of the judgment as soon as it is delivered. In most cases, the child's parents are informed of the outcome of the proceedings, but Mgr. Káňová encountered situations in which the child requested that the judge inform them of the decision by e-mail (Káňová, 2021).

#### 4.5 Parents

When a relationship or marriage involving children breaks down, it is essential to minimise the impact of partner conflicts on the child. Parents should avoid involving the child in issues arising from their partnership, should not use the child as a mediator to resolve disputes, blame the child for maintaining affection for both parents equally, or impose their own views on the child. Instead, they should allow the child to develop a positive relationship with both parents, allow the child to form his or her own opinions about his parents, and support them as much as possible. At the same time, they should refrain from attempting to convince the representatives of the professions involved in the proceedings, which are conducted on the basis of the principles of Cochem practice, as to which of them is the "better" parent.

Seeking professional help at an early stage can help preserve relationships as well as maintain constructive communication. Parents should strive to find a future family arrangement in which the child does not lose either parent and thus does not lose contact with the wider family network.

After the petition is filed with the court, the parents are invited to meet with the Department of Child Welfare. During this meeting, they receive initial guidance and recommendations on how to proceed. One of the purposes of the Cochem practice is to shift the responsibility for deciding the child's future back to the parents themselves: they are presumed to know better than the court what arrangement is best for their child. The Department of Child Welfare may refer parents to additional professional support, such as mediation or family therapy. It is entirely left to the parents to decide whether or not to use such services, but if the conflict persists and communication deteriorates, the Department of Child Welfare has the authority to require the parents to seek professional counselling: to attend an initial meeting with a registered mediator or family therapy under the threat of a fine of up to CZK 20 000<sup>26</sup> (Brzobohatý, Círbusová and Rogalewiczová et al., 2015, pp. 85-89).

In the context of cooperation between various professionals, the court, and the parents, it is essential to emphasise that parental conflict primarily harms the child. Parents often present the child's interests through their own subjective perspective, so it is the professionals' task to ascertain how the child genuinely perceives the situation and to communicate this perspective back to the parents. The participating professions aim to guide the parents toward resolving the situation amicably by reaching an agreement.

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<sup>25</sup> Section 100(3) of the Code of Civil Procedure.

<sup>26</sup> Section 59d (1) (a) of Act No. 359/1999 Coll., on the Social and Legal Protection of Children.

They inform them about the ways in which this can be achieved and to whom parents can turn if they need help. Working with parents is a long-term and challenging process for the good of their child (Brzobohatý, Círbusová and Rogalewiczová et al., 2015, pp. 4-5).

#### 4.6 Parental Plan

A parental plan is a form of help for parents to establish a system for the future functioning of their parenting. It may be presented to them at the meeting with the Department of Child Welfare, specifically in a situation when they have already agreed on the future arrangement of their relationship. The court may also refer to the parental plan at the conclusion of the proceedings.

Within the parental plan, parents can set out the details for how they will handle individual situations that arise in the upbringing of their child. It can be viewed as a notional agreement outlining their parental responsibilities: for example, addressing issues such as education, housing, upbringing, medical care, financial support, and much more. When drawing up a parental plan, parents should bear in mind that parental responsibility is shared equally between them, regardless of which parent currently has custody of the child. Parents should contribute equally and remain united in the upbringing of the child.

Parents may draw up the plan together if their communication is functioning well. If communication has already broken down, each parent may first prepare their own version. They can then present their versions to each other and jointly discuss the parts that are contentious. If they cannot resolve their disagreements, they can seek assistance from a professional (for example, a psychologist or the Department of Child Welfare) who can help them facilitate the creation of a parental plan.

If the parents already have an older child who is capable of understanding the situation at least to some extent, it is advisable to introduce the parental plan to them. They can also incorporate the child's wishes and complete the parental plan accordingly (MSK, n. d.).

#### 4.7 Cochem Practice at the District Court in Nový Jičín

In 2019, the Cochem practice in the Czech Republic has already expanded to approximately thirty courts. Interdisciplinary teams were established within these courts and began to cooperate systematically. The first court to introduce the Cochem practice into its activities was the District Court in Nový Jičín in 2016. Experts from this region (including judges, Department of Child Welfare, mediators, staff of professional family counselling centres, and staff of the Moravian-Silesian Regional Office) met once a month to develop a suitable procedure for resolving parental disputes (MSK, n. d.). The participants of the meeting agreed that it was necessary to abandon the long-standing notion that legal relations concerning children in family law should be decided authoritatively by the courts, and that it should be the parents themselves who bear responsibility for the future of their child and for the decisions affecting them (Kutlík, 2018, p. 9). *"In the course of the cooperation, we managed to implement a project co-financed by the European Union called "Interdisciplinary cooperation (the courts themselves often prefer the term interdisciplinary cooperation rather than cochem practice, which is why this term appears in many publications and professional articles) in the judicial region of Nový Jičín", which enabled the realisation of activities that further supported and deepened the mutual cooperation of the professionals involved."* (MSK, n. d.). Activities aimed at educating parents were created, and the region was able to

introduce the services of key professionals, without whom Cochem practice could not be implemented, such as mediators or family therapists. In addition, brochures for both parents and children were developed, as well as the parental plan mentioned above. The cooperation established in Nový Jičín under the leadership of Mgr. Vladimír Polák, became an inspiration for many other courts, which gradually followed its example (Polák, 2021). The following section is based on my experience at the Nový Jičín court.

For the system of interdisciplinary cooperation to function effectively, the participating institutions must act in a coordinated manner and follow four principles: "[the principle of] 1) *cross-section of the competencies of the individual institutions*, [further implemented by] 2) *comprehensive, goal-oriented and cooperative intervention by the participating institutions*, [whereby] 3) *the quality of the individual contributions of the participating institutions is considered equal*, [and using] 4) *preventive intervention in conflicts*." (Kutlík, 2018, p. 14). The judicial process within this model is conceptually divided into two parts: an informal and a formal stage. In the informal stage, the interconnected institutions seek to "*eliminate the parents' ignorance and reluctance in relation to the adjustment of the minor child's circumstances [...]. At this stage, the parents are approached informally on a partnership basis, with power elements being used only when necessary*." (Kutlík, 2018, p.13). Once the first hearing is formally initiated, the next stage begins, in which the judge and the Department of Child Welfare assume an authoritative role, and with it comes the power approach. In most cases, after the first hearing, a judgment is handed down, with the optimal outcome being the approval of the parents' agreement.

The entire project implementation at the Nový Jičín District Court began with the application of the Cochem practice in several pending cases. Since 2017, the entire guardianship department has been involved in this approach. The results of the streamlining of the guardianship department became evident the following year, when it was possible to conclude that: "*1) the principles and processes of the Cochem practice can be implemented in Czech courts without the need for legislative changes, 2) the joint, coordinated and prompt action of the participating institutions, which is primarily aimed at eliminating the parents' ignorance and reluctance regarding the possibilities of arranging the relations with their minor child, 3) the joint meeting of the parents at the Department of Child Welfare prior to the first court hearing has proved to be successful*." (Kutlík, 2018, p. 23).

#### 4.8 Explicit Experience with the Cochem Practice: An Interview with Mgr. Vladimír Polák

For the purposes of this article, an interview was conducted with Mgr. Vladimír Polák, Vice President of the Regional Court in Ústí nad Labem, who shared his experiences from his time as a judge in Nový Jičín District Court.

Mgr. Polák began considering the implementation of Cochem practice when he became the vice president responsible for the guardianship department in Nový Jičín, with the aim of improving its efficiency. As he explains, "*While drafting procedural maps, I thought about what could be done to make the system function better—if court processes are to be managed effectively, each case must be addressed efficiently*." (Polák, 2021). This means that court proceedings should not be unnecessarily prolonged; for instance, it should not be necessary to schedule five hearings for a single case. It was also essential to improve the quality of information and reports received by the court—specifically from child welfare authorities (Department of Child Welfare) and psychologists from counselling centres. Enhancing the efficiency of the guardianship department would not



have been possible without simultaneously improving cooperation with Department of Child Welfare and providers of specialised assistance.

The Department of Child Welfare has made significant progress in its approach toward parents. It has moved away from the practice of drafting proposals on behalf of only one parent and instead now engages with both parents simultaneously, rather than individually. It has also begun to make greater use of counselling and preventive measures, including parental education. The Department of Child Welfare now acts as an guardian ad litem in cases of conflict, better fulfils children's participatory rights, and has significantly reduced its interventions in family life (particularly home investigations).

Awareness of the Cochem practice has also been successfully disseminated among parents living within the court's jurisdiction. As a result, they are often aware before proceedings begin that cooperation with associated institutions will be expected of them. Some parents have developed sufficient trust in professional assistance that they voluntarily seek such services again when facing later complex life situations.

Experience with parental plans in Nový Jičín has likewise been very positive. Only a small percentage of parents who are willing and able to create a parental plan subsequently file new petitions in the future.

The Cochem practice cannot be universally applied to all cases. This method of working with families is appropriate only when dealing with fully competent and capable parents – those who, due to a lack of information or their ongoing conflict, are unable or unwilling to reach an agreement. The goal is to address this lack of awareness and unwillingness to cooperate. Naturally, the Cochem practice is not fully applicable in cases involving at-risk children, as such situations require intervention (e.g., cases of domestic violence).

Criticism of the Cochem practice generally revolves around insufficient participation of children, with concerns that it reduces the child to a mere object of the parental agreement, as well as on the risk of exerting excessive pressure on parents to reach an agreement. It is unquestionably unacceptable to compel parents into an agreement simply because a judge considers a particular solution to be desirable. However, it is beneficial to apply pressure that encourages parents to learn how to reach agreements on their own. A shortcoming of the Cochem practice in the Czech Republic is the failure to systematically involve attorneys (see above for details).

In summary, the Cochem practice represents a trend that originated in Nový Jičín, later expanded to Most, and today is being pursued by at least one judge in nearly half of the district courts. This progress has been significantly supported by the initiative Cochem.cz, which successfully brought the concept to the attention of Members of Parliament and Senators, and continues to promote the practice further.

#### *4.9 An Insight into the Functioning of the Cochem Practice: Analysis of Court Proceedings*

This section presents how court proceedings are conducted under the Cochem practice and analyses their procedural structure of these proceedings as implemented by the District Court in Nový Jičín. The explanation is supplemented by a specific case, referred to as Case XY for the purposes of this article.

In Case XY, which serves as the basis for this analysis, the matter involved parental divorce. The father filed a petition requesting an adjustment of custody arrangements for the minor child following the divorce. He proposed that the child, in this case a son, be placed in the mother's custody, with him paying child support set at 4,000 CZK.

As a general rule, proceedings commence on the day the petition is delivered to the court.<sup>27</sup> Within three days of receipt, the court must contact the Department of Child Welfare and notify it of its appointment as the child's guardian ad litem. The court then schedules either an additional court session or the first hearing, if a parental agreement has already been proposed, typically within three weeks to one month from the initiation of the proceedings. A senior court official notifies the other parent of the initiation of proceedings and subsequently informs both parents of the date of the court session, as well as the documents they are required to prepare. Parents are further instructed to promptly contact the Department of Child Welfare and arrange a meeting with its representative (MSK, n. d.). Importantly, the responsibility for scheduling the meeting lies with the parents themselves, rather than with the court facilitating it. This serves as an initial step in engaging parents in the process. At this stage, parents begin to take initiative in communicating with one another and start assuming responsibility for their overall approach to the case. An identical approach was followed in Case XY.

For the first meeting with Department of Child Welfare, the parents are required to bring their minor child. Prior to the visit, the parents are tasked with explaining the family situation to the child and informing them that they will participate in the meeting together. During the meeting, the Department of Child Welfare representative informs the child of their participatory rights. The meeting is always scheduled to take place before any subsequent court session or hearing. During the meeting, the entire process that lies ahead is explained to both parents and the child and the roles of the various institutions involved are clarified. The purpose is to present the situation to the child in a manner that fosters a sense of security while also ensuring that the child has an opportunity to express their perspective. The guardian ad litem then asks the child how they prefer to be informed about the outcome of the proceedings (the possible methods of communication were outlined above) and provides them with informational brochures.

The next step involves a discussion with the parents, during which they are informed about their rights and obligations. Together with the Department of Child Welfare representative, they establish an interim arrangement governing child custody and the amount of maintenance. The parents are introduced to the concept of a parental plan and provided with an informational leaflet. A record of the entire meeting is prepared and subsequently sent to the court (MSK, n. d.).

In Case XY, the joint meeting with the parents took place with the understanding that they had already agreed the child would remain in the mother's custody; however, they were unable to agree on the amount of maintenance.

At this point, it is relevant to mention the so-called fundamental questions posed to both parents, as these guide the entire process. These questions are asked by the Department of Child Welfare, the judge during other court proceedings, or a psychologist from a counselling centre. The purpose is to assess the progress the parents have made at each stage. The questions are as follows: *"Why are you here, and what problem are you addressing? What is your vision for resolving the family's breakdown? What role does the other parent play in your vision of the solution? What role, in general, should the other parent have in your child's life? Have you informed your child about the situation? What is their response, and what are their wishes?"* (MSK, n. d.).

The process then continues with the other court proceedings, typically held within three weeks of initiating the case. This session constitutes the informal part of the judicial process. The judge does not wear robes and may meet with the parents outside the courtroom, often in their office, and the judge's role is closer to that of a mediator.

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<sup>27</sup> Section 82 (1) of the Civil Procedure Code.

The judge explains the principles and rules of the court process and assesses how the parents are currently managing their relationship with the child. The guardian ad litem provides the court with a report from the Department of Child Welfare, including the outcomes of their discussion with the child. The judge then outlines potential solutions, emphasising that the case may be resolved either by an agreement between the parents or by a judicial decision is possible, with the preferred outcome being an agreement: "*I trust that this will be your agreement.*" (Kutlík, 2018, p. 17). The eventual outcome depends on several factors, as illustrated in Case XY. Parents are questioned about how they have engaged in resolving the situation, their understanding of the child's wishes, and the child's perspective on the matter. Emphasis is placed on educating the parents about the potential consequences of their marital breakdown on the child's well-being, as stress of the situation may manifest in children through symptoms such as disrupted sleep, eczema, or bedwetting. The session also revisits the earlier-mentioned questions to evaluate whether the parents, through ongoing education, are beginning to approach the situation from the child's perspective. Efforts are made to reach a provisional agreement, with input from the guardian ad litem, before concluding the other court proceedings. As noted in the previous chapter, lawyer involvement is not necessary at this stage (Kutlík, 2018, pp. 29–30). In many cases, parents reach an agreement by the end of the other court proceedings, and if the court has all the necessary documents, it may schedule a formal hearing on the matter for the same day (Káňová, 2021).

In Case XY, the parents were unable to reach an agreement due to their disagreement on the amount of maintenance. Their relationship was also strained, resulting in ineffective communication. Consequently, they were advised to visit a psychological counselling centre for intervention to address and resolve these interpersonal difficulties. This approach is commonly applied in cases where parents struggle with communication. In similar situations, it is often possible to establish a so-called provisional agreement regarding at least the undisputed aspects of the case.

When parents are unable to reach an agreement, the judge schedules a hearing within approximately three weeks and, in the interim, advises the parents on what they should focus on before the next session, typically directing them to professional counselling. In most cases, parents attend three counselling sessions, during which they engage with a psychologist or social worker. During the first session, the professional assesses the current family situation and identifies the parents' visions for resolving the dispute. During the second and third sessions, the parents work with the professional to address contentious issues and are guided to find mutually acceptable solutions. Parents are also educated about their child's needs, including: "*[...] parental responsibility, the role of both parents in the child's life, the impact of family dissolution on children, explaining the "null hypothesis" principle, judicial decision-making practices and the principles of determining maintenance [...]*" (MSK, n. d.). The counsellors further support the parents in drafting an agreement and completing a parental plan.

If the parents succeed in reaching an agreement or drafting a parental plan, they submit the relevant documents to the court. If no agreement is reached, the provider of professional assistance sends a report to the court detailing the counselling process and recommending further professional support. If there is a reasonable prospect that the parents could reach an agreement within a certain timeframe, the court may postpone the hearing for up to three months (MSK, n. d.).

In Case XY, the parents attended four sessions at the psychological counselling centre – two joint and two individual ones. These sessions focused primarily on de-escalating the parental conflict. In cooperation with the professional from the psychological centre, a temporary custody arrangement of 2–2–3 days was established,

under which the child alternated between the parents' homes. This arrangement had already been in place within the family and was satisfactory to all parties. However, from a long-term perspective, it was unsustainable. The child was due to start kindergarten in the coming months, and the arrangement would become even more challenging once the child started school. Throughout this period, the father continued to pay maintenance only in the amount he had proposed in his initial court filing.

As mentioned earlier, the first hearing typically takes place approximately three weeks after the proceedings begin. If the parents appear at the hearing without having reached an agreement—despite receiving comprehensive support from the Department of Child Welfare and counselling—the court shifts its approach. From that point onward, it is the court, rather than the parents, that determines what is in the child's best interests. On what basis does the court decide?

Expert reports are excluded at this stage because, despite the parents' inability to reach an agreement, they are still presumed to be fully competent in their parental role. An expert report would only be appropriate if the parents were deemed incompetent. Instead, the court primarily evaluates the parents' conduct during the proceedings. It focuses on which parent is able to distinguish the parental role from the partner conflict, who is capable of attuning to the child's emotional needs, who respects the other parent as a co-parent, who adheres to the interim agreement, and who demonstrates a cooperative attitude with professionals. Particular attention is also paid to how each parent presents themselves before the court, the Department of Child Welfare and professional service providers. In its decisions, the court also prioritises the best interests of the child while ensuring the fulfilment of the child's participatory rights.

In case of XY, the parents were informed that their proposed custody arrangement was unsustainable in the long term. The need to consider the child's upcoming enrolment in an educational institution is supported by the Constitutional Court's decision of 30 May 2014, which states that, when determining shared custody, it is crucial to take into account the child's impending school enrolment. The ruling emphasises maintaining stability in the child's upbringing and such stability should not be disrupted with each new stage of the child's life.<sup>28</sup> In case XY, the father expressed his willingness to adjust the custody arrangement to a weekly alternating schedule and was prepared to modify his work commitments accordingly. However, the mother attended the hearing accompanied by her lawyer, and from that point onward, refused to make any compromises.

There were no allegations questioning either parent's ability to care for the child, and both expressed mutual trust each other in this regard. Nonetheless, their communication issues persisted and could not be resolved even with the assistance of professionals. Consequently, the court was compelled to make an authoritative decision, which in this case meant shared custody in a weekly alternation arrangement with the aim to stabilise the child's environment and reduce the number of transitions between households, given that the parents lived approximately 25 minutes apart. The court further recommended that the child, in the future, attend only one school, located within a reasonable commuting distance from both residences. Despite the intensive involvement of the institutions in the case, the parents could not be guided toward an amicable resolution. According to the court, the turning point occurred when the mother brought her lawyer to the proceedings.

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<sup>28</sup> Decision No. I. ÚS 1506/13, of 30<sup>th</sup> May 2014 of the Constitutional Court of the Czech Republic.

#### 4.10 Comparison: Cochem Practice in the Písek District

As previously noted, approximately thirty courts in the Czech Republic currently apply the Cochem practice. It is therefore appropriate to compare the practice with another region.

In the Písek district, the Cochem practice was implemented in 2019 as part of the project *Interdisciplinary Cooperation in the Implementation of Cochem Practice in the Písek and Milevsko Regions* (Matoušek et al., n. d., p. 13). The first cooperating entities included the District Court in Písek, the Department of Child Welfare, and the counselling centre Arkáda. The objective was to introduce the Cochem practice in this region, drawing inspiration, among others, from the District Court in Nový Jičín. while adapting the practice to local conditions and available staffing capacities. *"The result of the two-year collaboration is close working relationships between the involved entities, clearly defined communication channels, a developed methodological framework, a customised Parental Plan, and, most importantly, an educated and coordinated team of professionals."* (Matoušek et al., n. d., p. 13).

The Cochem practice was initially "tested" on cases in which parental arrangements for a child were being decided for the first time. Generally, cases involving parents who return to court at a later stage are considerably more challenging, as these parents failed to adopt the principle of mutual agreement from the outset, making it significantly more difficult to guide them toward cooperation later on. The aim was to determine in which situations the Cochem practice could be effectively applied and in which it should be excluded entirely. It was ultimately concluded that the Cochem practice is not applicable in the following cases: *"proposals to reduce or increase maintenance; families where domestic violence is demonstrably occurring; cases where one parent faces significant obstacles to exercising parental responsibility, such as serious mental illness or disorders, or addictions to alcohol or other substances, etc."* (Matoušek et al., n. d., p. 15).

As in Nový Jičín, the Department of Child Welfare in the Písek district placed strong emphasis on educating parents. Meetings were conducted with both parents present, ensuring that neither parent felt disadvantaged by individual consultations. Parents were also tasked to draft a parental plan, which proved challenging in most cases: parents frequently returned to the Department of Child Welfare with an uncompleted parental plan. When parental plans were completed, they were typically submitted in two separate versions, each parent having independently completed their own, leading to significant discrepancies in the key areas of the plans. In light of these negative experiences, the requirement to complete a formal parental plan was eventually abandoned in the Písek district. Instead, parents are now provided with the plan only in the form of an informational leaflet. This leaflet outlines situations that parents are likely to encounter in the future and will need to address in a certain manner.

The process of determining the child's opinion differs from the practice in Nový Jičín. It has been agreed that the opinions of children under six years of age will not be determined at all, as local institutions consider it unlikely that children of such a young age are capable of forming an independent perspective. The opinions of children over six years are elicited solely by a Department of Child Welfare worker, either in a special playroom located in the municipal office building or within the premises of the school attended by the child. The court itself determines the child's opinion only in cases where a deep parental conflict persists and cannot be resolved over an extended period (Matoušek et al., n. d., p. 17). In contrast, the District Court in Nový Jičín does not impose age limits on the determination of the child's opinion. Judges at this court affirm that the

child's opinion contributes significantly to resolving cases, and report that children often appreciate the opportunity to express themselves (See the statement of Mgr. Káňová, judge of the Nový Jičín District Court). I had the opportunity to review an anonymised interview with a four-year-old girl. In that case, the mother prevented the father from seeing their daughter, claiming the visits caused the child distress. The interview with the child was conducted with considerable sensitivity it revealed that the girl enjoyed spending time with her father and her older stepbrother, and that she liked staying at her father's home. She also mentioned feeling a little sad at night because she missed her mother, which is entirely age-appropriate. Additionally, the girl stated that her mother discouraged her from visiting her father, describing him as "bad" and saying that "he found a new lady." The girl provided a substantial amount of valuable information about the family dynamics. Given that young children generally speak openly ("what they do not know, they do not invent"), the child's testimony offered insight into the family environment. Her testimony undoubtedly played a meaningful role in the court's decision-making process and proved genuinely beneficial to the case (this information stems from the knowledge gained during my practice at the District Court in Nový Jičín in 2019). Age limitations, therefore, do not appear to be the most appropriate approach, as children's maturity levels differ, and some preschool-aged children can provide constructive perspectives on their family situations.

The results of implementing the Cochem practice in the Písek district have been unequivocally positive. The number of cases in which parents reach mutual agreements has increased, thereby reducing the need for courts to make authoritative decisions in many instances. There has also been a rise in interest in joint custody arrangements, which had previously been ordered only exceptionally in the region (Matoušek et al., n. d., p. 20).

## 5. SLOVAK EXCURSE

Interdisciplinary cooperation has already expanded in various forms to other European countries. For example, the *Dutch Civil Code* recognises two legal concepts of dissolving a marriage: divorce and legal separation. If spouses or registered partners who have children under eighteen from their relationship divorce or terminate their registered partnership, they are legally required to draw up a parental plan.<sup>29</sup> This obligation applies not only to married and registered partners, but also to cohabiting partners with minor children. The plan includes an agreement regarding the child's care, how the care will be divided between the parents, and if parental responsibility lies with only one parent, the agreement must include visitation arrangements. The parent without parental responsibility does not participate in the child's upbringing but retains the right to maintain contact with the child. In Norway, divorce is governed by the *Marriage Act* which establishes that a parental agreement is desirable. Divorcing spouses who have a child under the age of sixteen are required to participate in mediation before the divorce proceedings may be initiated.<sup>30</sup> The details of the mediation process are regulated by the *Children Act*. If it is established that the agreement serves the best interests of the child, the court will approve it. If the parents fail to reach an agreement, "the court has the authority to make decisions regarding parental responsibility, contact arrangements, and the child's permanent residence." (Šmíd and Šínová et al., 2013, p. 279). Another country worth mentioning is Poland. The main principle of Polish law – just like the Czech one –

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<sup>29</sup> Section 1:247a of the Dutch Civil Code.

<sup>30</sup> Section 26 of the Marriage Act.

is the best interest of the child. Since 2005, Polish courts have been authorised to recommend mediation in cases of parental divorce, however, participation remains voluntary. (Kordasiewicz et al., 2017, p. 34). However, Poland lacks regulation regarding any form of interdisciplinary cooperation and systemic support, which leads to prolonged legal disputes, affecting the child's needs and interests, and failing to contribute to improved parental relationships. Efforts to at least minimally improve the system exist in the form of alternative methods. Independent organisations, often described as educational institutions (*placówki oświatowe*), are dedicated to this cause. These organisations, however, operate independently of state institutions. It is therefore at the parents' discretion to use their brochures or consult with their workers (*Komitet ochrony praw dziecka*, 2019, pp. 3-9). Each country thus adopts a different model of interdisciplinary cooperation. For example, in the Netherlands, a parental plan is promoted, while in Norway, emphasis is placed on meetings with a mediator. The Cochem practice, which closely resembles the Czech model, is most commonly encountered in Slovakia.

Family law in Slovakia is regulated by Act No. 36/2005 Coll., the Family Act, as amended. Similar to the Czech Republic, Slovak courts are required to assess and prioritise the best interests of the child. According to the judgment of the Regional Court in Nitra from 9 April 2014, an authoritative court decision on the modification of parental rights and duties should be made only after parents have failed to reach an agreement. Courts should primarily consider the child's emotional bond with both parents, as well as with extended family, friends, and the broader upbringing environment. Additional factors include the stability of the upbringing environment and the child's developmental needs, such as health, leisure activities, and age. Courts are also urged to reflect the child's opinion on the post-divorce family arrangement (Fabiánová and Frištková, 2017, p. n/a). Efforts to promote the Cochem practice are also evident in Slovakia, and it has been gradually implemented in several courts. The transformation of family courts began in Slovakia in 2018, when several pilot courts were selected to start applying the Cochem practice (Introduction of Cochem practice in Slovakia, online). The reason for introducing the Cochem practice into Slovak judicial practice was primarily the need to streamline guardianship proceedings. As in the Czech Republic, emphasis is primarily placed on the best interests of the child (particularly the effective realisation of the child's participatory rights and the prompt resolution of guardianship cases), as well as encouraging parents to find their own best solution for post-separation/divorce arrangements. Similarly, children are often viewed merely as subjects of a dispute, insufficiently informed about court proceedings, and not provided with the opportunity to express themselves. In particular, the opinions of younger children are completely disregarded. Moreover, children frequently lack adequate support within both the family and the system, which may lead to feelings of isolation. The implementation of the Cochem practice in Slovak courts therefore aims to ensure that children are not seen merely as subjects of a legal dispute, but as participants in the proceedings. The fulfilment of children's participatory rights is a central objective and is ensured primarily by providing them with information from the court. Subsequently, parents are presented with the child's perspective on their dispute, as well as the impact of the conflict on the child. The Cochem practice further focuses on restoring communication between parents in a manner that does not negatively affect the child (Kutlík, 2018, pp. 9–12). The principles of the Cochem practice are promoted by the website [Cochemskaprax.eu](http://Cochemskaprax.eu), which details the transformation that cooperating institutions must undergo to enhance the system's efficiency. These institutions include courts, couple counselling, family mediation, attorneys, the Department of Child Welfare, and court experts. As in the Czech Republic, the role of

experts in the Slovak version of the Cochem practice is intended to be minimised. Expert involvement is reserved primarily for cases involving a suspicion of physical abuse or sexual exploitation.

In contrast, there is a deliberate effort to involve lawyers in cooperation with other professionals (Introduction of Cochem practice in Slovakia, online), whereas such interdisciplinary involvement of lawyers remains somewhat challenging in the Czech Republic. The effectiveness of the Cochem practice in our neighbouring country is illustrated in the District Court in Košice I.<sup>31</sup> Out of 104 cases in which the Cochem practice was applied, 61 parental agreements were reached, while one case resulted in an authoritative decision. Furthermore, parents withdrew their petitions in two cases, and in the remaining cases, the proceedings had not yet been concluded (as of 26 April 2020) (Rak, 2020).

## 6. CONCLUSION

It is acknowledged that the Cochem practice is not the only model of interdisciplinary cooperation in guardianship proceedings. As demonstrated above, some European countries use different methods of interdisciplinary cooperation, many of which can likewise be considered beneficial. The aim of this article was to introduce the Cochem practice and its functioning (not only) in Czech courts. When reflecting on the historical background and origins of the Cochem practice, it is important to emphasise that the legal situation in Germany in the 1990s differed significantly from that of the present-day Czech Republic. At that time parental responsibility was often entrusted to only one parent. In the case of divorce, it was commonly recommended that the child maintain a relationship primarily with the parent with whom they resided, while significantly reducing ties with the other parent. These factors, along with intense parental conflict—which was undoubtedly exacerbated by the limited opportunities of one parent to maintain and further develop a relationship with the child—led to the creation of the Cochem practice. The fundamental objective and core principle of the entire system is to preserve the involvement of both parents in the child's life even after the dissolution of the marriage and to restore mutual communication between the parents.

A challenge of the Cochem practice lies in the fact that it is not anchored in the law. Under its current principles, formal codification would not even be possible, as the entire system relies on the voluntary cooperation of individual institutions. It is difficult to envisage a legal regulation that could effectively govern and enforce such interdisciplinary cooperation. Furthermore, not all relevant institutions have been successfully integrated into the system, and their involvement does not seem realistic (see the aforementioned statement from the Bar Association). The entire system should be flexible, as it must be adapted to individual situations. Moreover, judicial practice of individual courts shows that individual courts have adopted the practice in different ways (compare Nový Jičín with Písek).

The Cochem practice is often criticised for allegedly "pressuring" the parties into an agreement (Rogalewiczová, 2019, p. 244). This criticism may be contested. First, it should be the parents who are best positioned to determine which post-divorce arrangement will serve the child's best interests as they know their child best. While it is difficult to find common ground in the context of a partnership conflict, parents who are genuinely concerned about their child's well-being should be willing to seek professional assistance and make an effort, even though it is undoubtedly difficult, to find a mutually

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<sup>31</sup> Data collection took place from April 2019 to January 2020.



acceptable solution. Second, if the parents refuse to reach a common agreement and reject any form of communication, none of the experts or the mentioned institutions can compel them to do so. This article aims to contribute to the ongoing debate about the Cochem practice.

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