



MASARYK UNIVERSITY
FACULTY OF LAW

CZECH FAMILY LAW

Substitute care

„a child is a part of his/her
natural family“
a rule after 1998 thanks to
the Conventions



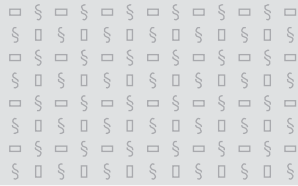
SUBSTITUTE FAMILY CARE

WITH A CHANGE OF STATUS

- ADOPTION - § 63 AF
 - ALWAYS „FULL“
 - ADOPTIONE NATURA IMITATUR

WITHOUT A CHANGE OF STATUS

- FOSTER CARE - § 45a- 45d AF
 - INDIVIDUAL OR S.O.S. VILLAGES
 - always PAID BY THE STATE
- CHILD´S CUSTODY - § 45 AF
 - INDIVIDUAL - relatives
 - NOT PAID BY THE STATE



SUBSTITUTE INSTITUTE CARE

§ 46 AF

- INSTITUTIONAL CARE
- INSTITUTIONAL CARE FOR CHILDREN REQUIRING AN IMMEDIATE ASSISTANCE

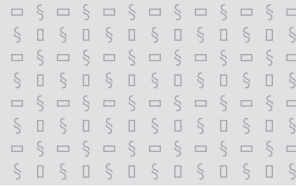
Act no. 218/2003 coll. On
Juvenil Justice

- INSTITUTIONAL PROTECTIVE CARE



MASARYK UNIVERSITY FACULTY OF LAW

ADOPTION



SOURCES

- AF, Children Act, Civil Procedure Code
- CONVENTIONS
 - *Convention for the Protection of Human Rights and Fundamental Freedoms (Council of Europe)*
 - *Convention on the Right of the Child (UN)*
 - *European Convention on Adoption of Children (Council of Europe, revised!)*
 - *Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption (the Hague)*



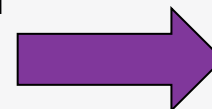
EUROPEAN COURT OF HUMAN RIGHTS

■ Keegan v. Ireland

- *the child was born out of marriage,
but there was informal long lasting relationship!*
- *mother left the father and gave the child for
adoption*

*violation of Art. 8 Convention for the Protection of Human
Rights and Fundamental Freedoms*

*influence on Czech law:
see § 70a AF
see § 54/1 AF*





■ Fretté v. France

a single homosexual man

- „difficulties with practical consequences - child's arrival“
- x the best interest of the child - balance - the principle of proportionality

no violation of Art. 14 in conjunction with Art. 8

■ E. B. v. France

a woman living in de facto same-sex partnership with a woman, who did not want to adopt jointly

- the role of mother and father
- but personal qualities and aptitude for bringing up the children
- best interest of the child

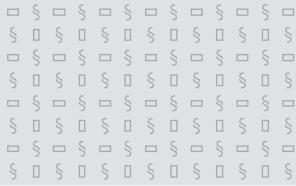
violation of Art. 14 in conjunction with Art. 8

no effect on Czech AF or other acts



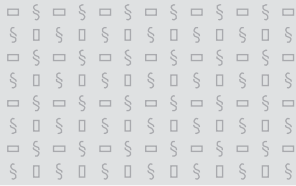
TYOLOGY OF ADOPTION

- ONLY FULL ADOPTION (§ 63 AF)
- ONLY FOR MINORS (§ 65/2 AF)
- SIMPLE (REVOCABLE) AND IRREVOCABLE (§ 74 AF)
- SO-CALLED DIRECT AND ORGANISED BY THE STATE
- LOCAL, INTERCOUNTRY
- INDIVIDUAL AND COMMON BY SPOUSES (§ 66 AF)



CONDITIONS

- A) NON EXISTING OR NON FUNCIONING NATURAL FAMILY
- B) ADOPTABLE CHILD
- C) CONSENT BY PARENTS OR THEIR NON-INTEREST
- D) CONSENT BY CHILD
- E) THE BEST INTEREST OF THE CHILD
- F) THE EXISTENCE OF PROSPECTIVE ADOPTERS
- G) MATCHING BY THE STATE
- H) PRE-ADOPTION CARE
- CH) THE MOTION AND THE COURT DECISION



ADOPTABLE CHILD

■ REAL ORPHAN

FROM BABY- BOX, DEAD PARENTS, NO FAMILY AT ALL

■ SOCIAL ORPHAN

MAINLY NON-INTEREST OF PARENTS OR CONSENT OF PARENTS



THE INFORMED CONSENT OF THE PARENT

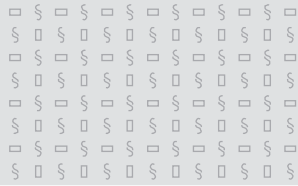
■ DIRECT- § 67 AF

„Adoption requires the consent of the child's legal representative.“

- A RULE
- parent with parental responsibility
- at court
- personally
- parent „meets“ future adopters

■ WITHOUT ANY RELATION - § 68a AF

„Furthermore, neither is the consent of the parents who are the legal REPRESENTATIVES of the adopted child required if the parents have previously agreed to place the child for adoption to unknown adopters. This prior agreement must be provided in writing by the parent in person before the court or a competent Authority for the Social-Law Protection of Children. The parent may not give this consent before **six weeks after the birth of the child.** The consent may only be withdrawn before the child is placed in the care of its future adoptive parents.“



NON INTEREST

■ PROPER

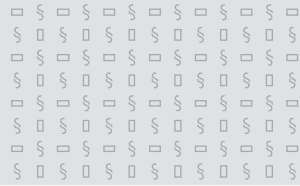
(§ 68/1 a/ AF)

- 6 months
- whenever
- past,
presens,
future

■ TOTAL

(§ 68/1 b/ AF)

- 2 months
- after delivery
- past



SPECIAL COURT PROCEEDING ON ADOPTABILITY

§ 68/3 AF:

DECIDING BY THE COURT ON THE PETITION

- a) state authority
- b) parents

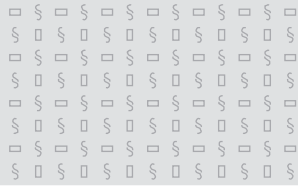
§ 180a - 180b CIVIL PROCEDURE CODE:

„Proceedings, whether there will be the consent of the parents necessary“

Effects:

a) the child is adoptable

b) the matching and adoption process may start



THE RIGHTS OF PUTATIVE FATHER

■ § 54/1 AF

„If paternity could not be determined pursuant to the provisions above, the child, the mother and **the man claiming to be the father** may request that the court determine paternity.“

■ § 70a AF

„The child cannot be adopted until the court's ruling on the paternity suit filed by **a man who claims to be the father** of the adopted child takes effect.“



THE INFORMED CONTENT OF THE CHILD

■ TO BE ADOPTED

§ 67/1 AF:

„If the child is able to assess the consequences of the adoption, his/her consent is also required, except where this would frustrate the purpose of the adoption.“

x

art. 12 Convention on the

Rights of the Child:

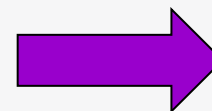
„the right to participate“

§ 31/3 AF

■ TO GIVE HIS/HER CHILD FOR ADOPTION

§ 67/2 AF

- „Adoption of a child is subject to the consent of a parent, even if he/she is a minor.“

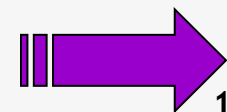




THE EXISTENCE OF RIGHT PROSPECTIVE ADOPTERS

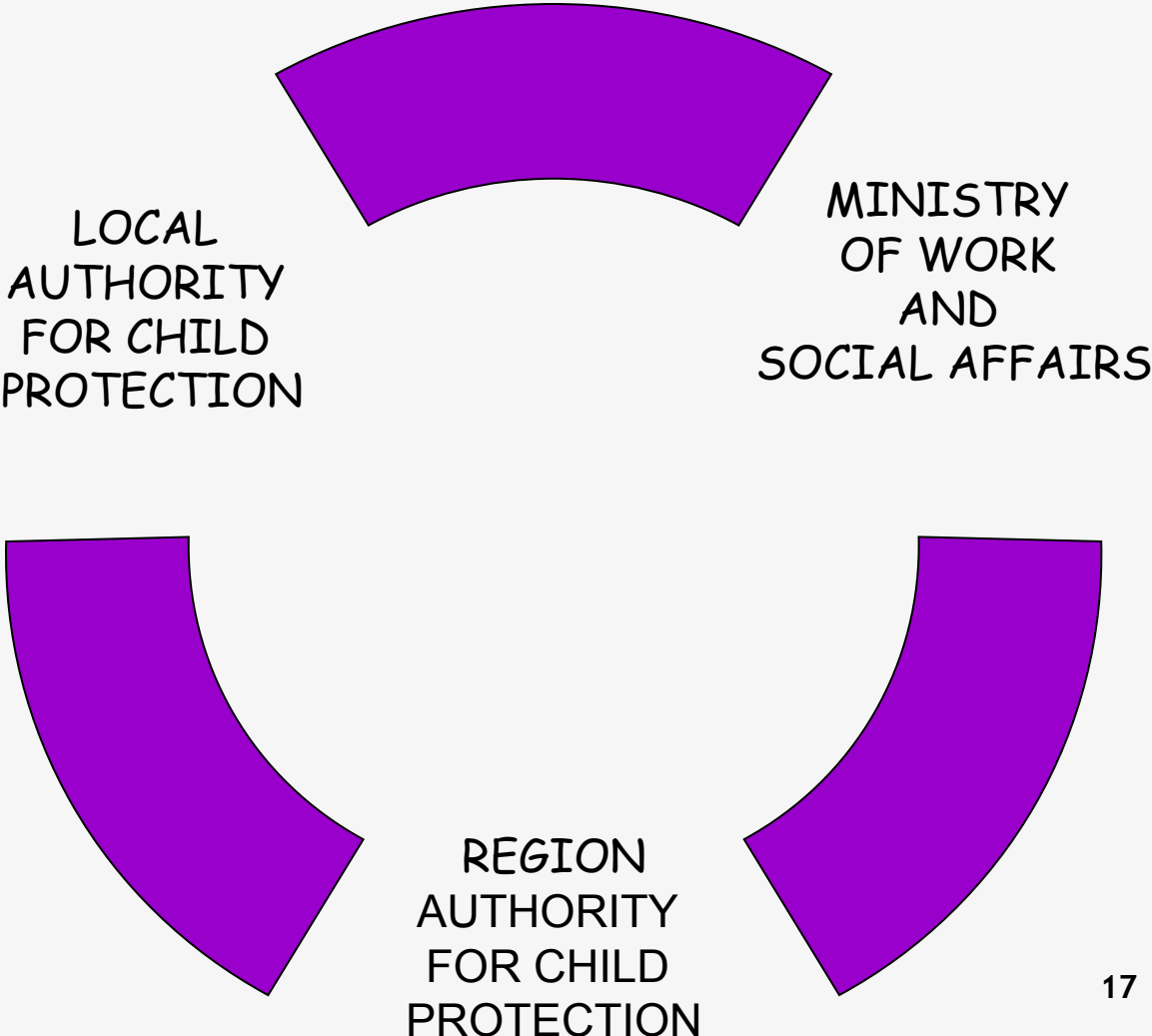
AF:

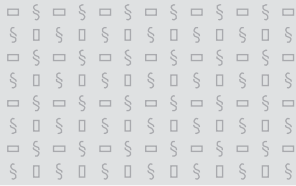
- § 64/1 AF: high moral quality
- § 64/2 AF: full capacity to legal acts
- § 66 AF: if couple, only husband and wife
spouse of adopter, one of spouses, one person
- § 65/1 AF: adequate age difference
- non close relatives
- § 70 AF: good health conditions
- Children Act: motivations and preparation





MATCHING PROCESS BY THE STATE





PRE-ADOPTION CARE

§ 69 AF

- AIM: making the family ties
- OBLIGATORY
- AT LEAST 3 MONTHS
- ON THE OWN COSTS OF FUTURE ADOPTERS
- DECISION: STATE AUTHORITY OR THE COURT
PARENTS - de facto, duty to „announce“



THE COURT PROCEEDINGS

- ON THE MOTION OF FUTURE ADOPTERS (§ 63 AF)
- PROCEEDING: § 181 - 185 CIVIL PROCEDURE CODE

- PARTIES:
 - parents, who give consent
 - (exceptions)
 - (§ 31 AF, § 44/ 3,4 AF)
 - (§ 68 AF)
 - (§ 68a AF)
 - the child
 - adoptive parents, one of couple and his/her spouse

- personal presens - hearing
- constitutive decision



EFFECTS OF ADOPTION

AF: mainly §§ 72, 63

- ties to natural family cease to exist
- the rise of new ties towards family of adopter

- *ex lege* the change of child's surname
- vital register
 new documents

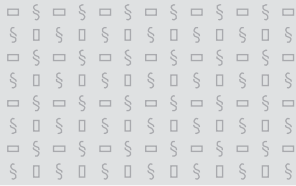
- status change - important for everybody

act no. 40/1992 coll. (on state citizenship)

- the child becomes a citizen of the Czech Republic

act no. 301/2000 coll. (on registers, name and surname)

- the adopters may choose or add new name to the child



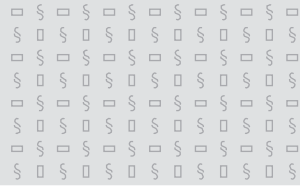
REVOCAATION OF ADOPTION

§ 72 AF

- IMPORTANT REASONS
- MOTION OF THE CHILD OR THE ADOPTIVE PARENTS
- THE COURT DECISION

EFFECTS:

- „COMEBACK“ TO NATURAL FAMILY
- CHANGE OF SURNAME



IRREVOCABLE ADOPTION

- ONLY FOR CHILD OLDER THAN 1 YEAR
- ADOPTION IS NOT POSSIBLE TO CANCEL
- READOPTION AVAILABLE (§ 76 AF)



Anonymity of adoption?

- mythology?
- act no. 301/2000 coll., on registers, name and surname (§ 8/7):
 - child after maturity and adopters may see the vital register - the book and the collection of documents



MASARYK UNIVERSITY FACULTY OF LAW

FOSTER CARE



SOURCES

- AF (§§ 45a - 45d), Children Act, Civil Procedure Code
- CONVENTIONS
 - *Convention for the Protection of Human Rights and Fundamental Freedoms (Council of Europe)*
 - *Convention on the Right of the Child (UN)*
 - Council of Europe Committee of Ministers: *Recommendation No. R (87)6*



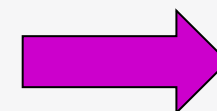
EUROPEAN COURT OF HUMAN RIGHTS

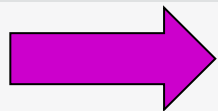
Art. 8 *Convention for the Protection of Human Rights and Fundamental Freedoms*

Case Kutzner versus Germany - violation of Art. 8

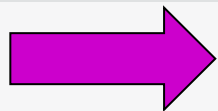
background to the case:

- 2 children attended special schools for children with special needs
- parents had learning difficulties and attended special schools and „low intellectual capacity to bring up their children properly“
- social worker wrote a very negative report on them
- the court a) withdrew parental rights (*Sorgerecht*)
 - b) placed the children with separate, unidentified professional foster parents (*professionelle Inkognito Pflege*)
 - c) deprived *de facto* parental visiting rights - 6 months!
 - d) restricted parental visiting rights - 1 hour a month with the presence of 8 representatives from social services

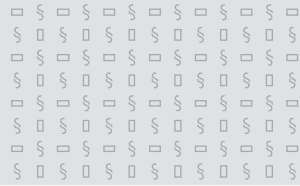




61. “Although the essential object of Article 8 is to protect the individual against arbitrary action by the public authorities, there may in addition be positive obligations inherent in an effective “respect” for family life. Thus, where the existence of a family tie has been established, the State must in principle act in a manner calculated to enable that tie to be developed and take measures that will enable parent and child to be reunited (see, among other authorities: *Eriksson*, cited above, pp. 26-27, § 71; *Margareta and Roger Andersson*, cited above, p. 30, § 91; *Olsson v. Sweden (no. 2)*, judgment of 27 November 1992, Series A no. 250, pp. 35-36, § 90; *Ignaccolo-Zenide*, cited above, § 94; and *Gnahoré*, cited above, § 51).“

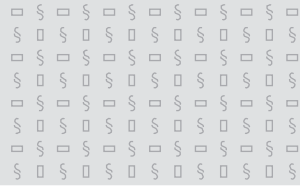


76. “The Court further reiterates that a care order should in principle be regarded as a temporary measure, to be discontinued as soon as circumstances permit, and that any measures implementing temporary care should be consistent with the ultimate aim of reuniting the natural parents and the child (*Olsson (no. 1)*, cited above, pp. 36-37, § 81). The positive duty to take measures to facilitate family reunification as soon as reasonably feasible will begin to weigh on the responsible authorities with progressively increasing force as from the commencement of the period of care, subject always to its being balanced against the duty to consider the best interests of the child (*K. and T. v. Finland*, cited above, § 178).



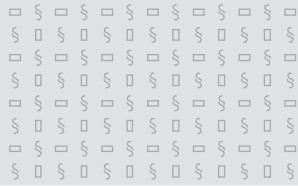
CONDITIONS FOR FOSTER CARE

- A) NON FUNCIONING NATURAL FAMILY
- B) CONSENT BY PARENTS - not required by law (!?)
- C) CONSENT BY THE CHILD
- E) THE BEST INTEREST OF THE CHILD
- F) THE EXISTENCE OF PROSPECTIVE FOSTER PARENTS
- G) MATCHING BY THE STATE
- H) PRE-FOSTER CARE - not obligatory
- CH) (THE MOTION AND) THE COURT DECISION



TYOLOGY OF FOSTER CARE

- § 45a- 45d AF
 - INDIVIDUAL
 - COMMON ONLY BY SPOUSES
 - S.O.S. VILLAGES
 - „PROFESSIONAL“ - for very short period



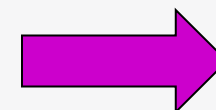
PARENTS

- they cannot or do not want to live with the child because of reasons:
 - objective or subjective
 - temporary, short or longlasting



THE CHILD

- is not adoptable
- the court proceedings on adoptability is „on“
- is adoptable, but not „attractive for adoption“
 - older or has a lot of siblings
- there is „a change“ to come-back to family of origin





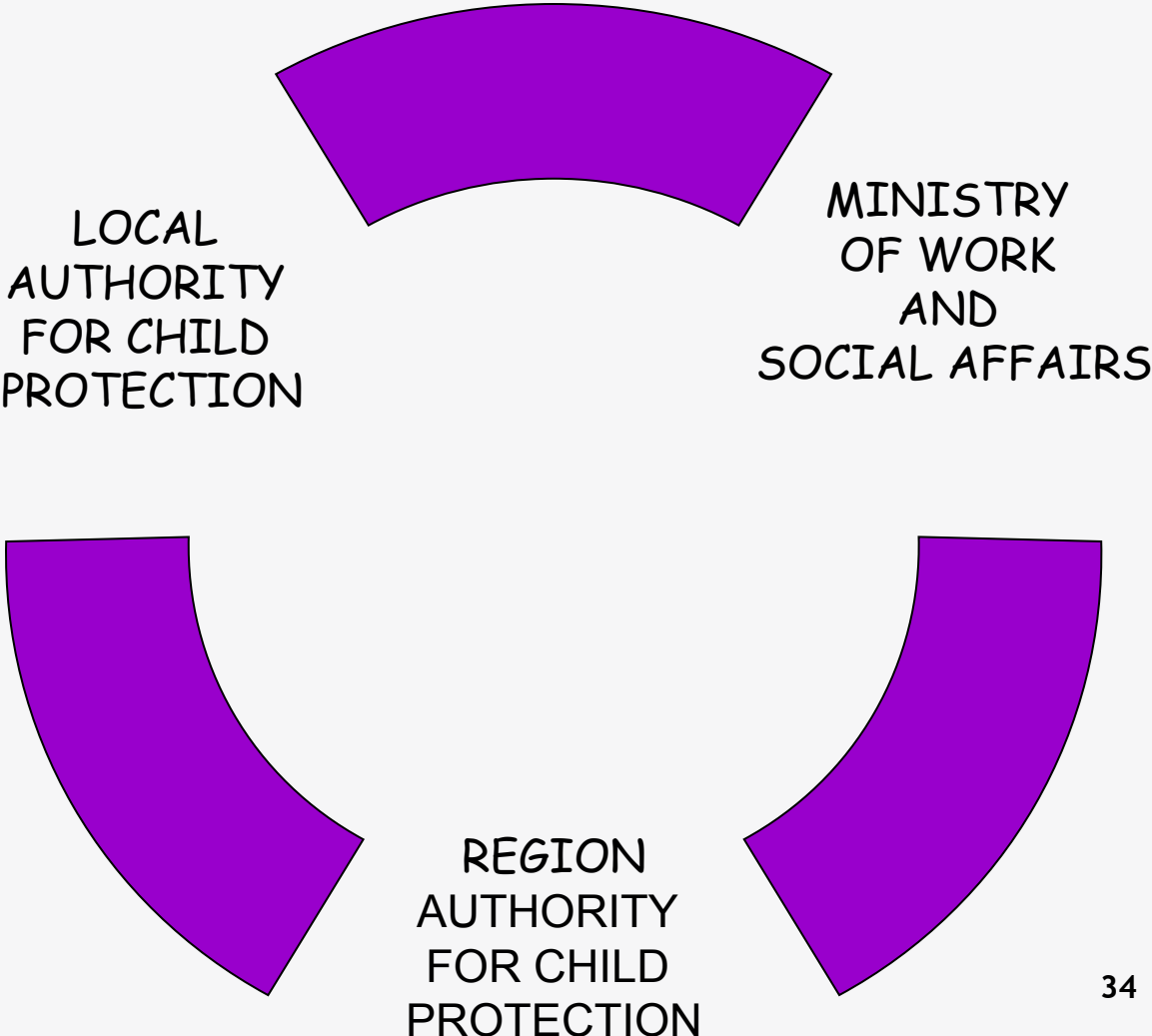
FUTURE FOSTER PARENTS

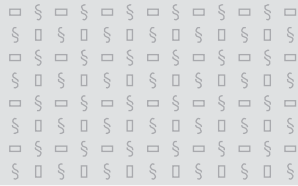
AF: 45a

- high moral quality
- full capacity to legal acts
- if couple, only husband and wife
spouse of foster parent, one of spouses, one person
- close relatives - possible
- good health conditions
- Children Act: motivations and preparation



MATCHING PROCESS BY THE STATE

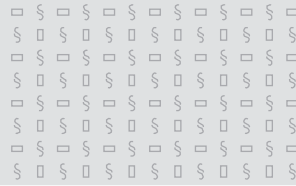




PRE-FOSTER CARE

§ 45b AF

- AIM: contact/family ties?
- facultative
- not longer then 3 months (§ 45b/2 in fine)
- is paid - see Act No. 117/1995 Coll., On state social support
- decision: state authority or court or parents (de facto)



COURT PROCEEDINGS

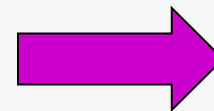
- EX OFFO OR ON THE MOTION OF PROSPECTIVE FOSTER PARENTS
- see § 176 ff Civil procedure code
- parties:
 - parents
 - child
 - future foster parents, or one of a couple and his/her spouse
- personal presence and hearing
- **the consent by parents is not required by law!**
- court decision: constitutive

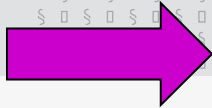


CONSEQUENCES OF FOSTER CARE

§ 45c AF

- STATUS TIES TO FAMILY OF ORIGIN ARE NOT LIMITED, VISITING RIGHTS, MAINTENANCE, HEREDITARY LAW etc.
- ONLY PERSONAL CARE OF THE CHILD IS UP TO FOSTER PARENTS





RELATIONSHIP PARENTS AND CHILD

- status parent and child is not changed
- ties to family of origin are not changed either
- parent has parental responsibility
 - parent is legal representative
 - parent manages child's property
 - parent brings up the child (mainly decision making in important matters) - no personal care
 - parent has visitin rights
- parent pays maintenace duty to the state



RELATIONSHIP FOSTER PARENTS AND CHILD

■ § 45c AF

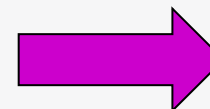
(1) The foster parent must care of the child personally. If the child was put into fostering of only one of spouses, the provision of § 33 shall apply analogously.

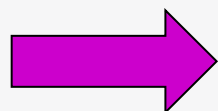
(2) In the course of care of the child, the foster father exercises adequately rights and duties of parents. The foster father has not maintenance duty vis-à-vis the child and may represent the child and manage his or her affairs only in usual cases. If the foster father is of the opinion that a decision of the child's legal representative is not in accordance with the child's interests, the foster father may demand that the court decide.



FINANCING BY THE STATE

- Act No. 117/1995 Coll., On state social support
 - allowance for coverage of needs of the child
 - revard (fee) for foster parents
 - contribution for bying a car (more then 4 children)
 - contribution at „child’s arrival“





maintenance duty of parents:

■ § 45d

(1) The claim to maintenance determined by a court's decision for a child entitled to a contribution for coverage of needs according to a special act^{7a)} shall pass to the state. If the maintenance exceeds the amount of the contribution mentioned in the first sentence, the child is entitled to the difference between the maintenance and the contribution; this difference shall be paid to the foster father.

(2) The court shall order that parents, eventually other individuals bound to provide the child with maintenance should pay this maintenance to the relevant authority that pays the foster father or the major child contribution for coverage of needs of the child according to a special act.



Cancelling and extinction

- 45a/3 AF: The fostering may be canceled by a decision of the court. The court may cancel the fostering care only for important reasons; the court shall always cancel the fostering if the foster father asks for it.
- MATURITY OF THE CHILD