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Children and Their Debts: Current Situation in the Czech Republic

Part Two: Specific Aspects of Debts of Children Arising from Contracts for Transportation of Persons^{*2}

1. GENERAL COMMENTS

The current public discussion on “child debtors” reveals the issue of debt arising from rides made by children on public transport without a valid ticket as particularly pressing. This is why we have devoted more attention to these issues.

The best way to introduce the topic is to give an example of one of the many cases, more specifically the case of Michaela from Pilsen, whose story was described in detail by reporters from the Czech Television: “‘Father was not one of the best and Mum had to cope with all four kids on her own,’ she describes the family situation. The children commuted to school by bus, but they did not get money for the tickets. Michaela got her first fine for fare dodging when she was seven. ‘I came home and gave the ticket to my parents saying that I had been caught by an inspector, but my parents could not do anything about it, since they did not have money to pay the fine,’ says Michaela. Additionally, when she was ten her father made a contract in her name with a mobile operator for a flat rate which he used but did not pay for. ‘I was the one charged, because he was only listed as a legal representative. I was charged for everything,’ she explains. She ran up a debt in the library. The debt for fare dodging reached CZK 100,000³, another CZK 30,000 was added by the mobile operator and the library. Michaela has been trying to repay the CZK 130,000 debt she incurred at the beginning of adulthood,

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² See: O. Frinta, D. Frintová, D. Elischer, *Children and Their Debts: Current Situation in the Czech Republic. Part One: General Findings and Particular Types of Debts*, „Prawo w Działaniu” 2020, No. 42, pp. 111–135.

³ Authors’ note: i.e. at the exchange rate of approximately CZK 25/€ 1 the debt reached an equivalent of € 4,000, *nota bene* (!).

upon turning 16.”⁴ Given the circumstances described above it is not surprising that the society is more sensitive to the recurrence of the phenomenon (even if this time in a different context) and that politicians are trying to resolve the issue of “child debtors” in a comprehensive manner.

The above story, which could be called a “textbook case”, shows several important aspects of the issue that require a more detailed analysis. In terms of using public transport without a valid ticket it is first necessary to deal with the question of how a minor enters into a contract of transportation, the ticket inspection in relation to a minor child, and finally the fate of the debt arising from failure to comply with passenger obligations.

2. ENTRY INTO A CONTRACT OF TRANSPORTATION BY A MINOR PASSENGER

Contracts for the transportation of persons are regulated by Article 2550 et seq. of Act No. 89/2012 Sb., the Civil Code⁵. In such contracts, the carrier agrees to transport a passenger to a destination and the passenger agrees to pay the fare. However, the Civil Code regulates the transportation of persons only in a general manner, because the individual types of transportation of persons differ in many specific aspects (among others, relating to how a transportation contract is entered into), which are dealt with in detail in the specific implementing regulations. Article 2578 CC explicitly states that more detailed rules of the transportation of persons and cargo are provided in other legal instruments, in particular the regulations stipulating the rules of transportation, unless they are provided for in a directly applicable regulation of the European Communities. Therefore, it is not surprising that the Civil Code does not contain any provisions of *lex specialis* type related to the general provisions concerning entering into contracts (Article 1731 et seq. CC), taking into account the specific aspects of entering into contracts in individual types of transportation. The detailed conditions for the transportation of persons, baggage, objects, and live animals in public railway passenger transportation and in public road passenger transportation, including the conditions for compliance with the conditions of single multi-carrier transportation contracts, are governed by executive regulation of the Ministry of Transport and Communications No. 175/2000 Sb.⁶, to regulate the rules of transportation for public railway and road transport⁷. The time when the contract is formed in public railway passenger

⁴ Editorial (-kul-). V exekuci je tři a půl tisíce dětí, většine ještě nebylo ani 15 let [Three and a half thousand children face enforcement orders, the majority of them are below the age of 15], *Česká televize* [online], 1 April 2019, available at: <https://ct24.ceskatelevize.cz/domaci/2775392-v-exekuci-je-tri-a-pul-tisice-deti-vetsine-jeste-nebylo-ani-15-let> [accessed on: 23 June 2019].

⁵ Hereinafter also referred to as the “Civil Code” or the abbreviation “CC”.

⁶ Hereinafter also referred to as the “Rules of Transportation”.

⁷ In this context it is necessary to use the terminology precisely. The Rules of Transportation [*Přepavní řád*] is a generally binding legal regulation which has the force of subordinate legislation (it is issued to execute a statute in more detail) and in the Czech Republic it may take the form of a government decree or a regulation of a ministry (See: Articles 78 and 79 of the Constitutional Act No. 1/1993, the Constitution of the Czech Republic, and Article 2 of Act No. 222/2016 Sb., to regulate the Collection of Laws and Treaties). In general communication the Rules of Transportation are often confused with “transportation conditions” [*přepavní podmínky*], which from the legal perspective are not the same. The term “transportation conditions” is an abbreviation of the correct term “contractual transportation conditions” [*smluvní přepavní*]

transport and in public road passenger transport is regulated by s. 3 of the Rules of Transportation, however, this section applies only to passengers who have a valid ticket. In such a case, the contract of transportation is formed at the point when the passenger boards the vehicle (if he/she already has a transport document) or when the passenger boards the vehicle and pays the fare immediately after boarding (the passenger does not have a transport document before boarding).

However, the Rules of Transportation do not contain any provisions concerning contract formation in the case of carrying a passenger without a valid ticket (including a so-called fare-dodger), i.e. to use the wording of the Rules of Transportation, a passenger who, for reasons on his/her part, failed to submit a valid transport document (Article 7(6) of the Rules of Transportation)⁸. We must note that it is possible to infer from the general provisions of the Civil Code that also in this case a transportation contract is formed as an implied contract by the passenger's boarding of the vehicle⁹. If a transportation contract is made by a minor who does not have full legal capacity, it is necessary to apply to such juridical acts the perspective of Article 31 et seq. of the Civil Code, described above¹⁰.

The judgment of the Constitutional Court of the Czech Republic No. III. ÚS 1019/08, states that "the finding of the court¹¹, according to which the complainant¹² was competent not only to ride the municipal public transport on her own but also to be aware of the obligation to pay the fare where breach of the transportation contract is related to a fare surcharge, cannot be considered a legal finding deviating from the limits of constitutionality. The reasoning of the complainant that she is competent to conclude a valid transportation contract on her own, or to use a means of mass transport and pay the fare, but is not competent to commit a wrongful act, i.e. to breach the transportation contract through not paying the fare for the use of public transport, which gives rise to the duty to pay a surcharge, may be deemed inconsistent."¹³ In this judgment, the Constitutional Court of the Czech Republic

podmínky], a set of rules issued by individual carriers based on the authority given to them in statutes regulating individual types of transport. [See in particular: Article 18(1)(b) of Act No. 111/1994 Sb., to regulate road transport (hereinafter also referred to as the "Road Transport Act"), Article 36(1)(a) of Act No. 266/1994 Sb., to regulate railways (hereinafter also referred to as the "Railways Act") and Article 2 (g) of the Rules of Transportation]. Therefore, the contractual transportation conditions constitute a set of rules prepared in advance by carriers, which form part of individual transportation contracts and which apply to the relations between carriers and specific passengers, rather than a generally binding legal regulation. (Contractual) transportation conditions must comply with statutes as well as subordinate legislation.

⁸ In the following text we will use the shorter expression "passenger without a valid ticket". With respect to the fact that in a specific situation it may be a passenger who did buy the ticket in advance but, for example, forgot it at home, we will not use the generally used term "fare dodger", because it implies a passenger who intends to get a ride without ever intending to pay the fare.

⁹ For details see: in particular O. Frinta, *Smlouva o přepravě osoby v novém soukromém právu [Contract of Transportation of Persons in the New Private Law]*, 1st ed., Praha 2018, p. 156 et seq. For a similar opinion on the former regulation under the 1964 Civil Code, see: O. Frinta, *Komentář k § 760 [Commentary on Article 760]*, in: Eliáš, K. et al., *Občanský zákoník. Velký akademický komentář. 2. svazek. § 488–880 [Civil Code. Large Academic Commentary. Volume 2. Articles 488–880]*, 1st ed., Praha 2008, p. 2242 et seq. In terms of case law, see in particular the judgment of the Constitutional Court of the Czech Republic, No. Pl. ÚS 33/2000 or the judgment of the Supreme Administrative Court of the Czech Republic, No. 1 As 34/2010. The former available at: <http://nalus.usoud.cz/Search/GetText.aspx?sz=Pl-33-2000> [accessed on: 23 June 2019]; the latter available at: http://www.nssoud.cz/files/SOUDNI_VYKON/2010/0034_1As_1000073A_prevedeno.pdf [accessed on: 23 June 2019].

¹⁰ See: O. Frinta, D. Frintová, D. Elischer, *Children and Their Debts: Current Situation in the Czech Republic. Part One...*

¹¹ Authors' note: i.e. the finding of the court deciding the case on its merits in the first instance.

¹² Authors' note: at the time of the ride the complainant was 12 years old.

¹³ Available at: <http://nalus.usoud.cz/Search/GetText.aspx?sz=3-1019-08> [accessed on: 23 June 2019].

rejected the idea of differentiation (or separation) of the capacity to enter into a transportation contract and the capacity to commit a wrongful act consisting in breach of a contract made in this way.

Another judgment, No. I. ÚS 1775/14¹⁴, shows a certain change in the above attitude when it points out that: “It is up to the general courts to assess in each specific case whether the minor has the capacity to conclude a transportation contract, including all its stipulations and consequences of the breach.”. At the same time the Constitutional Court of the Czech Republic progressed further in its thoughts (in comparison to the previous decision, No. II. ÚS 1019/08) stating that: “How the parents take care of the minor child and how they fulfil their parental responsibilities may, however, influence the finding of the court concerning a claim for payment of a contractual penalty¹⁵. If the courts found out that the fare dodging occurred as a result of the parents’ neglect of the maintenance duty, rather than due to the fault of the child, then it is correct – if the breach of the contract of transportation occurred before 1 January 2014 – that the courts apply Article 545(3) of the former Civil Code, according to which the debtor is not obliged to pay the contractual penalty if the breach was not his/her fault. [...] Nevertheless, even if dysfunctional family relations are not proven and hence the breach of the obligation to pay the fare could be attributable to the minor child, it is necessary to raise the question whether a twelve-year old child can be aware of the consequences of failure to pay the fare or whether the obligation to pay the surcharge on top of the fare or even to pay the cost of proceedings enforcing the payment of the amount, is commensurate with the child’s intellectual and volitional maturity. [...] The Constitutional Court is of the opinion that in the case at hand it was the task of the courts to take into account the extent to which the child (complainant) was bound by the individual provisions of the transportation contract and the extent of the child’s fault in the breach of this contract, and to protect the interest of the child so that the child did not enter adulthood burdened by obligations said child could not discharge.” The Constitutional Court of the Czech Republic therefore admitted that in the context of children’s capacity to make juridical acts it is necessary to consider separating various aspects of, on the one hand, entry into a contract and payment of a fare and, on the other hand, the consequences of failure to pay the fare. And the Constitutional Court went even further in its considerations when it stated: “This may even lead to the conclusion that the prevailing interest of the child will be best protected by applying joint liability of the parents for debts arising from fare dodging. If a minor child is not in fact capable of discharging his/her obligations arising from the transportation contract and, as a result of his/her insufficient mental maturity, is unable to consider the consequences of fare dodging, nothing in private law prevents the transfer of liability for payment to the child’s parents or another legal representative.”. Thus the Constitutional Court of the Czech Republic opened the possibility to infer the joint liability of parents for debts of a child in the given situation. We must add for

¹⁴ Available at: <http://nalus.usoud.cz/Search/GetText.aspx?sz=1-1775-14> [accessed on: 23 June 2019].

¹⁵ Authors’ note: i.e. a penalty (for breach of contract) imposed by law [*penále*], to which the provisions on contractual penalty also applied (Article 544(3) of Act No. 40/1964 Sb., the Civil Code, hereinafter also referred to as the “1964 Civil Code” or “CC 1964”).

the sake of completeness that the first indicated line of reasoning, i.e. identifying the degree of fault of the child, was possible only when the former Civil Code was effective, however it is not possible after the current Civil Code entered into force (i.e. as of 1 January 2014, as stated in the judgment). This is because the current Civil Code did not carry over the conception under which the obligation to pay a contractual penalty arose only if the breach of obligation was the fault of the contracting party (Article 545(3) CC 1964). In the current Civil Code, the duty to pay the agreed contractual penalty (and also a penalty imposed by law) is based on the principle of no-fault liability, and in particular absolute liability where no liberation may apply¹⁶. So the only remaining applicable consideration is separating the capacity of a child to enter into a transportation contract and said child's awareness of all possible consequences of failure to pay the fare.

Therefore, the need to assess every case individually, considering its particular circumstances, remains of key importance. This conclusion is pointed out again in the judgment No. II. ÚS 1864/16 (more on this judgment further in this paper) and additionally it states that “[w]ith respect to the need to assess individually the maturity of the minor and his/her capacity to enter into a transportation contract it is not possible to create an objective threshold that would enable the carriers¹⁷ (including the complainant) to determine who is liable for breach of transportation conditions, but it is always necessary to consider the specific circumstances of each individual case.”. This finding also mentions the above-quoted judgment and in the context of its conclusions it generally states: “[a] principled application of the above foundations [...] can effectively protect the interests of the minor without unreasonable interference in the fundamental rights and freedoms of the complainant. The above-stated method should have been applied also by the District Court of Pilsen City, which should not have dismissed the action for lack of capacity to be sued; it should have heard the case and considered the issue of the capacity of the minor to make juridical acts and her ability to assess the consequences of her acts, as well as the issue of potential joint liability of her legal representative, and that should have been the basis of its judgment.”¹⁸.

Finally, it is necessary to add that in the context of a minor making a contract of transportation, the question was raised as to whether it was possible that the contract of transportation was made by one person not only for himself/herself but also for another person or for the benefit of such other person. The District Court of Pilsen City in its judgment No. 36 C 52/2016 inferred that such a procedure is possible (with the good intention of making the parent – the legal representative of the child – who accompanied the child in the vehicle liable for fare dodging). However, in the above-quoted judgment No. II. ÚS 1864/16 (para. 19), the Constitutional Court of the Czech Republic rejected such a construction, although

¹⁶ See e.g.: S. Černá, *Komentář k § 2048 [Commentary on Article 2048]*, in: J. Švestka, J. Dvořák, J. Fiala et al., *Občanský zákoník. Komentář. Svazek V. § 1721 až 2520 [The Civil Code. Commentary. Volume V. Articles 1721 to 2520]*, 1st ed., Praha 2014, pp. 588–589.

¹⁷ Authors' note: In the Czech language the terms *dopravce* (carrier) and *přepravce* (shipper), the latter mistakenly used in the Czech original judgment, are often confused. However, they are not synonymous. While *dopravce* (carrier) transports passengers, *přepravce* (shipper) is defined in many legal regulations differently, in principle it is a term related to transportation of cargo rather than passengers.

¹⁸ Available at: <http://judikatury.cz/document/cz51kohn> [accessed on: 23 June 2019].

without giving any detailed explanation. Therefore, we consider it appropriate to state at least briefly why we consider such rejection correct. It is necessary to take into consideration the specific aspects of transportation contract formation in the case of public road passenger transport and public railway passenger transport. If the conduct giving rise to an implied contract consists in boarding the vehicle (see above), it is not possible to differentiate whether a specific passenger – with a single manifestation of will – in one case makes a contract for himself/herself and in another case makes a contract for himself/herself and another person. And most importantly: as the law currently states, the contract is formed by boarding the vehicle, therefore this implied conduct of the passenger cannot be classified in any other way than as an implied acceptance of the carrier's offer¹⁹. The content of the carrier's offer is strictly defined in advance and it does not differ for individual types of transportation. The authors of this paper are not aware of a carrier in the Czech Republic whose contractual transportation conditions would provide that in case the vehicle is boarded by a passenger with a child of X years of age, the carrier's offer includes not only the making of a transportation contract with the (adult) passenger but also with the child travelling with the adult. That would be the only case in which it would theoretically be possible to consider that such offer could be accepted in an implied manner.

The conclusions reached in the judgments mentioned herein concerning the conception of the legal regulation of the capacity of minors to make juridical acts are not surprising. Let us point out: in the opinion of the Constitutional Court of the Czech Republic stated in judgment No. I. ÚS 1775/14 and reiterated in judgment No. II. ÚS 1864/16, there is nothing in the current legal regulation of private law to stop general courts from transferring the liability for consequences of rides without a valid ticket to parents or legal representatives. If in this context the Constitutional Court had noticed any deficiency in the legal regulation of the capacity of minors to make juridical acts, it would definitely have stated this in its judgments.

It is necessary to add that entry into a transportation contract by a minor alone does not result in the situations dealt with in this paper. It is necessary to take into account also the (transportation) ticket inspection, which is the initial impulse for further development of a specific case, because as a well-known maxim suggests, *nemo iudex sine actore* (“no complaint, no redress”).

3. MINOR PASSENGERS' TICKET INSPECTION

Every passenger who has entered into a transportation contract (also one without a valid ticket) is obliged to comply with the Rules of Transportation, the contractual transportation conditions, and the tariff²⁰. Whether the passenger complies with his/her obligations may be checked by the drivers, conductors in vehicles, and persons (other than drivers and conductors) designated by the carrier and equipped with an inspector's badge and card. As the law is worded, all of the above persons are

¹⁹ For details see: O. Frinta, *Smlouva o přepravě osoby...*, p. 151 et seq. (in particular p. 153 et seq.).

²⁰ See: Article 18a(2)(a) of the Road Transport Act and similarly also Article 37 of the Railways Act.

referred to as “designated persons”²¹, and the last category is usually referred to as “ticket inspectors” or simply “inspectors”.

The obligation of the passenger to show a valid transport document²² is of key importance for this paper. This is the obligation of every passenger, i.e. every person who has entered into a transportation contract, irrespective of whether the person is a minor or not. It is also important to add that the during ticket inspection it is not ascertained whether the fare was paid, but only whether the passenger has a valid transport document. If the passenger, for whatever reasons on his/her part, cannot show a valid transport document²³, the ticket inspector may resolve the situation in several ways. The ticket inspector generally requests that the passenger pay the fare and a surcharge on top of the fare²⁴. If the passenger fails to pay the surcharge, the inspector may request the passenger to show an identity document and provide personal details²⁵; if the passenger fails to comply with this obligation he/she has a duty to follow the inspector to an appropriate public administration office in order for his/her identity to be ascertained or, upon the request of the inspector, wait at an appropriate place for a person authorized to ascertain his/her identity²⁶,²⁷. The inspector may remove from the vehicle a passenger who has failed to show a valid ticket and failed to comply with the obligation to pay the fare and the surcharge. In this context we must note that these are the powers, rather than duties, of the inspector²⁸. Therefore, the inspector does not have to impose the surcharge²⁹ (or remove the passenger from the vehicle) and instead he/she may resolve the situation using more lenient means, such as a reprimand or simply payment of the fare. If he/she identifies certain deficiencies on the part of the passenger, the inspector has a certain degree of discretion (i.e. leeway) in resolving the passenger’s breach of obligations³⁰. Therefore the inspector may adapt the solution to the specific circumstances of the case, and in particular may distinguish the cases where it is clear it is a minor (and mostly unintentional) breach, e.g. the passenger has a ticket of the right tariff value but a different type³¹.

It is important to point out that discretion in ticket inspection leaves room for inspectors (and carriers) to show a more considerate attitude towards passengers

²¹ See: Article 18a(1) of the Road Transport Act and by analogy also in Article 37(4) of the Railways Act.

²² See: Article 4 and Article 15(a) and (b) of the Rules of Transportation, Article 18a(2)(c) of the Road Transport Act and by analogy also in Article 37(5)(b) of the Railways Act.

²³ For example: the passenger did buy a ticket but forgot it at home; the passenger has a ticket on him but failed to validate it in the prescribed way (hence it is not a valid transport document for the given transportation); the passenger bought a ticket from the driver and paid for it but did not take it from the driver and at the moment of ticket inspection he/she does not have it, etc.

²⁴ See: Article 18a(1)(a) of the Road Transport Act and by analogy also in Article 37(4)(a) of the Railways Act.

²⁵ See: Article 18a(1)(c) of the Road Transport Act and by analogy also in Article 37(4)(d) of the Railways Act.

²⁶ See: Article 18a(2)(d) of the Road Transport Act and by analogy also Article 37(5)(d) of the Railways Act.

²⁷ If the inspector prevents the passenger from leaving such place without permission, the inspector is acting in self-defence, which excludes the unlawfulness of such restriction of the liberty of the passenger, for details See: judgment of the Supreme Administrative Court of the Czech Republic No. 1 As 34/2010, the quoted above.

²⁸ See: the wording of the law “the designated person is authorized” (rather than has a duty) in Article 18a(1) of the Road Transport Act and by analogy also Article 37(4) of the Railways Act.

²⁹ For the same approach see: R. Janda, *Převážní kontrola [Transportation Inspection]* *Epravo.cz* [online], 12 April 2018, available at: <https://www.epravo.cz/top/clanky/prepravni-kontrola-107364.html> [accessed on: 23 June 2019].

³⁰ Let us leave aside the possible existence of detailed internal ticket inspection guidelines of individual carriers.

³¹ E.g. in the integrated transportation system within Prague a passenger bought a ticket in the tariff value of CZK 12, but failed to notice that instead of a ticket for a trip to the first suburban zone (zone 1) he bought a ticket designed for transport within the municipal zones P, O and B with a discount of 50% of the price of the basic fare, which also has a tariff value of CZK 12.

whose intellectual and volitional maturity is clearly reduced due to their young (or, on the contrary, old) age or to a mental disorder, and it is clear that these persons did pay the fare. We believe that the surcharge should not be imposed in the case of a nine-year old child or a person with a sight impairment who shows a ticket of the correct tariff value which was clearly validated in the given vehicle (meaning it was not and will not be used again) and which they clearly bought having in mind that needed a ticket for CZK 12, without realizing that they bought a ticket for a different type of transportation (see the example described here involving a ticket for transportation within Prague and outside of Prague). On the other hand, it is impossible to impose excessive demands on the inspectors in the process of ticket inspection to ascertain the specific circumstances of the case or the degree of intellectual, volitional, or sensory capabilities or impairments of the passengers. Nevertheless, in cases like the one mentioned above when the circumstances are clear (and it is also evident that the person is not a fare dodger, who never intended to pay for the ride) such discretion should be used to “filter out” some cases at the very beginning, on the “frontline” so to speak. This conclusion applies not only to the imposing a surcharge on top of the fare but also to removing the passenger from the vehicle³².

In cases other than those mentioned above when it is completely clear from the circumstances that discretion can be used and a less lenient approach taken, the surcharge is imposed³³. If it is not paid there and then, the personal details of the passenger are ascertained either using “fast track” (the passenger provides the details voluntarily), or by means of a person authorized to ascertain the identity, i.e. the Police of the Czech Republic³⁴ or municipal police³⁵ (see above). For the sake of completeness we must add that the imposition of a surcharge is a unilateral juridical act by the inspector³⁶, meaning that the passenger on whom it is imposed is not required to approve it³⁷, accept it, he/she cannot even express his/her agreement or disagreement with the surcharge in a legally relevant way. If, during the

³² Let us consider for example a ten-year-old child travelling alone without an adult from school to the place of residence in a remote village where the transportation options are scarce and who forgot at home the long term pass entitling the child to recurring rides, and therefore does not have money to pay the fare nor the surcharge: it is necessary to consider whether the interest to interrupt the transportation of such passenger is in balance with the risk such a child may face if it is excluded from transportation at a remote crossroads in the middle of nowhere in 30° heat, let alone other risks such child may be exposed to in a remote location. Such exercise of right (exclusion from transportation under such circumstances) seems to be contradictory to good morals (see: Article 2(3) of the Civil Code stating that the interpretation and application of a legal regulation must not be contradictory to good morals and must not result in harshness or recklessness offending common human feelings).

³³ Let us add for the sake of completeness that the surcharge on top of fare is not a “fine” as it is not a penalty imposed by a public body, in other words it is not an administrative penalty imposed under s. 35 of Act No. 250/2016 Sb., to regulate the liability for administrative delicts and the related proceedings, and it is not a “contractual penalty” under Article 2048 et seq. of the Civil Code, as it is not an agreement between the contracting parties (the carrier and the passenger) for the case of breach of a contractual obligation. It is a sanction for breach of a contractual obligation which is stipulated by a legal regulation. Such a sanction under Article 2052 of the Civil Code is called “*penále*” in Czech, which is equivalent to “penalty imposed by law”.

³⁴ See: Article 63(2)(k) of Act No. 273/2008 Sb., to regulate the Police of the Czech Republic.

³⁵ See: Article 12(2)(e) and (4) of Act No. 553/1991 Sb., to regulate municipal police.

³⁶ See: Article 18a(1)(c) of the Road Transport Act and by analogy also Article 37(4)(d) of the Railways Act.

³⁷ For an identical approach, see: R. Janda, *Přepavní kontrola* [Ticket Inspection], *Epravo.cz* [online], 12 April 2018, available at: <https://www.epravo.cz/top/clanky/prepravni-kontrola-107364.html> [accessed on: 24 June 2019].

ticket inspection, the passenger receives a report of the ticket inspection³⁸, whether the passenger signs it or not has no legal impact on the duty to pay the surcharge.

In this context it is necessary to raise the question as to whether there are any specific aspects that apply to ascertaining the identity of a minor as opposed to that of an adult. One such specific aspect consists in the fact that minor children sometimes travel on their own without an adult and in other cases they do have an adult travelling with them. Whether in a specific case a child travels alone or accompanied by an adult depends on many factors, such as the age and overall maturity of the child, the parent's decision, the availability of an adult to accompany the child, etc. Whatever the circumstances of a specific case, these are always factors beyond the carrier's control.

If a child travels alone there are no changes to the general procedure outlined above. Either the child is able and willing to disclose his/her identity to the inspector, or the identity is ascertained officially. However, it is still the identity of the child being ascertained, rather than that of the child's legal representatives. Under the current legislation, the carrier has no way of ascertaining the particulars of the legal representatives.

If a child travels accompanied by an adult, various situations may occur:

- (1) If the person travelling with the child is not willing to cooperate, he/she may easily pretend not to be there (i.e. pretend that he/she has no relationship to the child and instruct the child to do the same). From the perspective of the inspector this situation does not differ from the child travelling unaccompanied.
- (2) The person travelling with the child indicates to the inspector that he/she is accompanying the child, but is uncooperative. If such person shows a valid transport document, the inspector cannot ascertain his/her identity. Neither can he/she ascertain the identity on the grounds that the person admitted that he/she is travelling with the child. The inspector has no other or additional powers enabling him to ascertain the identity of the person. The inspector can ascertain the identity in the way described above only if such person is unable to show a valid transport document and immediately pay the fare and the surcharge. This, however, does not say anything about this person's relationship to the child: he/she may or may not be the legal representative of the child (for example in the case of an identical surname when it could be assumed that there is a close relationship – the person does not necessarily have to be a parent or the person may be a parent who was deprived of parental responsibility³⁹ and therefore is not a legal representative of the child).
- (3) The person travelling with the child indicates to the inspector that he/she is accompanying the child and is willing to cooperate. If the person

³⁸ Which – incidentally – is explicitly required neither by the Road Transport Act nor by the Railways Act, however, it may be considered more than desirable because the carrier should set up a certain system of audit of the work of inspectors including mechanisms preventing the inspectors from filling in fictitious fines (e.g. to gain higher remuneration).

³⁹ See: Article 871 of the Civil Code, under which the court deprives a parent of parental responsibility if such parent misuses the parental responsibility or the discharge of it or seriously neglects the parental responsibility or the discharge of the responsibility.

pays the fare and the surcharge for the child, the matter is resolved without ascertaining the child's personal details. If, however, the accompanying person wants to cooperate only to that effect that he/she is willing to contribute to ascertaining the identity of the child, the situation is more complex. If the person is a legal representative of the child he/she is authorized to act on behalf of the child in juridical acts for which the child has no capacity (Article 892 of the Civil Code). In such a case the accompanying legal representative provides the personal details of the child on behalf of the child, but they are still only the personal details of the child and not the details of the legal representative, which in this case too cannot be ascertained by the inspector as he/she has no legal grounds therefor (unless the legal representative is also travelling without a valid ticket). Even if the legal representative wanted to provide his/her personal details to the inspector voluntarily, the inspector has no legal grounds for accepting and recording (processing) the personal details. This case too is rather a theoretical construct because if the child has the legal capacity to enter into a transportation contract, the child will usually have the capacity to disclose his/her own identity, so the possibility of representation under Article 892 of the Civil Code (concerning only representation in matters where the child does not have capacity) cannot be applied. If the legal representative discloses to the inspector the identity of the child under these circumstances voluntarily and the child does not object, it has to be classified as acting on behalf of the child *ad hoc* based on an informal and implied agreement between the child and the accompanying person. The same applies when the child is accompanied by another adult (e.g. an older sibling). The theoretical application of Article 892 of the Civil Code cannot be considered here, because it is not a person having parental responsibility. Finally, we may mention the situation when the accompanying person wants to disclose the identity of the child to the inspector, but the child strongly objects to it. From the inspector's point of view, he/she will have no other choice than to ascertain the personal details of the child from a person authorized to do so.

We have analysed these situations in detail for a purpose: the analysis clearly shows that in the course of ticket inspection the inspector has no legal means to ascertain whether the child is accompanied by anybody and even if he/she does, there are no legal grounds for recording and subsequently processing the personal details of such a person for the needs of the carrier. Even if the inspector receives the personal details of such a person because the person was unable to show a valid ticket and failed to pay the fare and the surcharge immediately, the inspector has no legal grounds to verify this person's relationship to the child. Therefore, we agree with the opinion of the Constitutional Court of the Czech Republic stated in the already-quoted judgment No. II. ÚS 1864/16: "When the District Court in Pilsen city dismissed the action filed by the municipal transportation company against the minor due to lack of her capacity

to be sued⁴⁰, it created a duty for the carrier⁴¹ (the claimant) that the carrier cannot comply with in the course of ticket inspection: to ascertain the identity of the person accompanying the minor and the person's relationship to the minor. If such a person has bought a transport document, the carrier has no right to require the person to disclose such personal details. As a result, the carrier has no possibility to enforce in court the liability for failure to comply with the rules of transportation and thus is deprived of the right to own property, guaranteed in the Constitution".

It is clear that if an inspector (or the carrier) wanted to obtain the personal details of the legal representative at the point when the breach of obligations arising from the transportation contract is identified during ticket inspection, the inspector has no legal means to do that.

4. VOLUNTARY PAYMENT OF THE FARE AND SURCHARGE SHORTLY AFTER TICKET INSPECTION

In the above sections we moved along an imaginary time axis through the key moments, including the making of a transportation contract and ticket inspection. We will now deal with the situation when a transportation contract was formed, a minor failed to show a valid ticket during ticket inspection due to reasons on his/her part, failed to pay the fare and the surcharge on top of the fare immediately, and therefore his/her personal details were ascertained and the inspector handed over the details for processing to the carrier.

Usually, and under the given circumstances, ideally, the child later gives his/her parents the report of the ticket inspection or at least tells them that the inspector imposed a duty to pay the fare and the surcharge, which the child did not comply with there and then. It is obvious to the parents that the child owes a debt which must either be paid or – if they believe that the debt should not have been imposed – challenged. In such a case they administer the assets and liabilities of the child with due managerial care (this is, of course, conditional upon the child informing the parents of the debt). Parents who duly discharge their parental responsibilities, and, among other things, motivate the child to fulfil his/her obligations and to comply with the *pacta sunt servanda* ("agreements must be kept") principle, will definitely agree with the child on the best course of action. This will differ depending on the circumstances: a different course will be taken by parents who, for example, forgot to upload the coupon on the long-term pass of a younger child, and or by those who find out that a sixteen-year old child used the money they gave to him/her for the ticket for other purposes.

We may add for the sake of completeness that many carriers, adopting a more friendly attitude to passengers, stipulate in their contractual transportation conditions various discounts which should motivate the debtors to pay the owed fare and surcharge voluntarily without the need for additional requests for payment, let alone enforcement proceedings in court⁴².

⁴⁰ Authors' note: The District Court mentioned instead inferred the capability of the mother being sued on the grounds that the mother herself should have entered into a transportation contract also on behalf of the child – see: above for the reasons why this opinion is incorrect.

⁴¹ Authors' note: for the meaning of "carrier" see above.

⁴² See for example the possibility of reducing the surcharge from the base rate of CZK 1,500 to CZK 800 (i.e., from approx. 60 € to 32 € at the EUR/CZK exchange rate of 25), providing that the surcharge is paid

After the lapse of a certain period of time, the transportation companies send the debtors a formal request for payment, sometimes even several such requests. At this time, parents in a normally-functioning family should notice that there is a problem and take the steps indicated above to resolve it.

One way or another, in this case the fare and the surcharge is paid voluntarily, even if later, and usually before the point in time when the transportation company begins charging late payment interest on top of the principal and especially before the claim of the transportation company is enforced in court.

5. ACCUMULATION OF DEBT FOR FARE AND SURCHARGE OVER TIME AND ITS FUTURE

Obviously the “ideal scenario” does not always occur. As indicated above (in a representative case reported by the Czech Television), dysfunctional relationships between parents and children are often coupled with the family being in a difficult financial situation, which may be considered a characteristic feature of such cases. We should point out that this is where we are get to the real cause which begins the sequence of events resulting in a “child debtor” burdened by a debt from the past which has grown considerably over time.

The first part of the paper provided the available data on the number of “child debtors” against whom enforcement proceedings are conducted. If we are to deal with the debts for rides without a valid ticket and their fate, we must also at this point mention for illustration purposes at least some data, which we were able to obtain through quick research within the time allocated to this paper. According to the data⁴³ of the Association of Transportation Companies⁴⁴ the members of this association carried in 2017 a total of 2,403,812,000 (!) persons. For the period from 2014 to 2016 the total debt of fare dodgers amounted to CZK 1.7 billion. For the period from 2014 to 2016 a total of 1,801,426⁴⁵ surcharges were imposed for rides without a ticket. Disregarding the surcharges paid to the inspectors immediately during the ticket inspections, in 2014, 30% of imposed surcharges were recovered, in 2015 the percentage dropped to 29% and in 2016 to 28%. Whereas in the period from 2014 to 2016 there was a slight increase in the number of passengers riding without a valid ticket, there are currently reports of a falling share of fare dodgers on a year-on-year basis, which may be also due to the positive motivation (see the examples from Prague, mentioned above)⁴⁶. The statistical data provided

within 15 days of the date of ticket inspection or the possibility of reducing it by half if at the same time a yearly coupon is bought from Dopravní podnik hl. m. Prahy (Prague Transportation Company); a brief description is available at: <http://www.dpp.cz/vyse-prirazky/> [accessed on: 24 June 2019] and at: <http://www.dpp.cz/diky-novemu-opatreni-se-z-nekterych-cernych-pasazeru-stanou-platici-cestujici/> [accessed on: 24 June 2019].

⁴³ The data come from the Annual Report of the Association of Transportation Companies for 2017 and a press release of this association. The documents are available at: <http://www.sdp-cr.cz/o-nas/vyrocní-zpravy/> [accessed on: 24 June 2019] and at: <https://www.parlamentnilisty.cz/zpravy/tiskovezpravy/SDP-Pohledavky-za-cernými-pasazery-490428> [accessed on: 24 June 2019].

⁴⁴ In 2017, a total of 18 transportation companies across the Czech Republic were members of the association. We must therefore note that the figures relate primarily to municipal public transport, i.e. transport within individual towns and cities rather than inter-city coach transport.

⁴⁵ In 2014 588,372 surcharges were imposed, in 2015 60,075 surcharges and in 2016 607,979 surcharges.

⁴⁶ R. Duchoň, J. Lutišánová, *Počet černých pasažérů klesl v Praze meziročně o více než 14 procent* [The number

above clearly show that the issue of “child debtors” is not a large-scale issue (the contrary is true); this is also confirmed by the data on the total number of surcharges imposed. However, this is not to mean the issue is not serious.

Next, we will show how the debt “lives its undisturbed life” and grows over time if it is not paid by the debtor (i.e. the child or his/her legal representatives). Let us use a hypothetical case unrelated to a specific carrier. It involves a ten-year old child riding public transport without a valid ticket on 1 April 2019. During the ticket inspection, the child could not show a valid ticket of e.g. CZK 12 (hypothetical discounted fare) and a maximum surcharge of CZK 1,500 was imposed on the child⁴⁷. As it is a debt which is seldom paid voluntarily (because the debtor either does not know about it or does not intend to pay it), the debtor did not use the possibility of a reduced surcharge within a certain period of time after the ticket inspection. Let us say that within approximately a month and a half the carrier sends a formal request for payment. The carrier requests the payment of the fare (CZK 12), the maximum amount of surcharge (CZK 1,500), and costs related to sending the formal request for payment⁴⁸ (let us say, CZK 200), which means that the carrier requests a total of CZK 1,712, and points out that if the debt is not paid within one month of receipt of the formal request for payment, the carrier will also start charging late payment interest⁴⁹. Let us assume that as of 1 July 2019 the carrier will start charging late payment interest on CZK 1,512⁵⁰. As the debt arose in the first half of 2019, when the repo rate of the Czech National Bank amounted to 1.75%, the late payment interest will be increased by 8 percentage points⁵¹ (over the full period of default or the entire period in which the carrier charges the interest), so the interest rate will be 9.75% per annum, i.e. approximately CZK 148. Let us assume that the debtor still remains inactive.

Some transportation companies, after a certain period, assign the claims for fares and surcharges owed to various debt recovery companies or law firms. This does not change anything from the perspective of the debtor, he/she still owes the fare, surcharge, costs of the request for payment, and the late payment interest keeps accruing. The only difference is that from the point in time when the debtor is notified of the assignment or when the assignee proves to the debtor that the assignment occurred (see Article 1882 CC), the debtor must negotiate the possible repayment, perhaps even through a repayment schedule, with the new creditor. However, such a new creditor may not be so generous as the carrier would have

of fare dodgers in Prague fell year-on-year by more than 14%, Regina DAB Praha [online], 19 January 2019, available at: <https://regina.rozhlas.cz/pocet-cernych-pasazeru-klesl-v-praze-mezirocne-o-vice-nez-14-procent-7729296> [accessed on: 24 June 2019].

⁴⁷ See: Article 18a(3) of the Road Transport Act and by analogy also Article 37(6) of the Railways Act.

⁴⁸ The amount was stated in advance in the contractual transportation conditions.

⁴⁹ The amount of late payment interest is defined in Government Decree No. 351/2013 Sb., to regulate the amount of late payment interest and costs related to asserting the claim, to define the fee of the liquidator, liquidation administrator, and member of a body of juridical person appointed by court, and to regulate certain issues of the Commercial Journal, public registers of juridical and natural persons and register of trusts and register of details of actual owners. Under s. 2 of this Decree the late payment interest rate per annum is based on the repo rate set by the Czech National Bank for the first day of the half of the calendar year when the default arose increased by 8 percentage points.

⁵⁰ For the sake of simplicity, we do not consider late payment interest on the amount of costs of sending the formal request for payment.

⁵¹ Authors' note: not by 8%.

been (the carriers usually allow repayment schedules to positively motivate fare dodgers), as the creditor paid a certain amount for the claims and the business is based on principled debt recovery. This is precisely the reason why the assignment of claims to external companies has been repeatedly criticized – if the carrier wanted to resolve the issue of “child debtors” in a lenient way later on, such a possibility is lost for good when the claim is assigned as the carrier ceases to be the creditor⁵².

Another important milestone consists in the lapse of the limitation period. The carrier too is obliged to manage its assets with due managerial care (briefly put, the carrier is funded from public resources) and therefore will not want to allow for the limitation period to expire (just like the new creditor, if any). As the general three-year limitation period applies here (see Article 629 CC), the carrier may be assumed to dispatch a letter before action (see below) for payment of the debt within approximately 2,5 years of the time when the debt arose (i.e. approximately on 1 October 2021). He will request the payment of the fare, surcharge, late payment interest, costs of two requests for payment, and the costs of the letter preceding legal action (let us estimate it at CZK 500), that is, approximately CZK 2,745 (12 + 1,500 + approx. 333 + 200 + 200 + 500) in total.

If the debt is not paid voluntarily after letter preceding legal action, the carrier will file an action in court. This will increase the amount owed by the court fee of CZK 1,000 (or possibly only by CZK 400 if the creditor proposed the issuing of an electronic compulsory payment order)⁵³. If the carrier hires an attorney at law to represent it in court, the costs of filing the claim will grow further. As we are considering a claim which arose at the beginning of 2019, the calculation of the costs of the proceedings will be based on the attorney’s tariff⁵⁴ effective as of 1 July 2014⁵⁵, when the attorney’s fees were substantially reduced for the so-called claim form used to commence civil proceedings⁵⁶.

At this point we must deviate from our hypothetical case and note that before this change in the attorney’s tariff, the total costs could reach up to approximately CZK 8,500⁵⁷. We must also mention a period in the past when the fee for rep-

⁵² See for example: J. Nedvěd, *Plzeň chce ukončit dětské exekuce. Žádá dopravní podniky o smazání dluhů [Plzeň Wants to Terminate Enforcement Proceedings against Children. The City Requests Transportation Companies to Wipe off Debts]*, iDNES.cz [online], 15 May 2019, available at: https://www.idnes.cz/plzen/zpravy/exekuce-dite-jizda-mhd-na-fero-dopravni-podniky-pmdp-pohledavka-radnice.A190514_475706_plzen-zpravy_vb [accessed on: 25 June 2019].

⁵³ See: Act No. 549/1991 Sb., to Regulate Court Fees, Rate Schedule, appendix, items 1 and 2.

⁵⁴ Regulation of the Ministry of Justice No. 177/1996 Sb., to regulate attorney’s fees and compensations for provision of legal services (Attorney’s Tariff).

⁵⁵ That is, after amendment by the Regulation No. 120/2014 Sb., to change the Regulation of the Ministry of Justice to regulate attorney’s fees and compensations for provision of legal services (Attorney’s Tariff), as amended.

⁵⁶ In the wording of the newly inserted section 14b it is a civil proceeding commenced using an application filed on a standard form which has been used repeatedly by the same claimant in factually and legally similar cases, where the subject of the proceedings is monetary performance and the tariff value does not exceed CZK 50,000 and where the claimant was adjudicated compensation for the costs of the proceedings. In such a case, for the purposes of ascertaining the compensation for the costs of the proceedings, CZK 200 is charged for every act of legal service taken before and including the filing of the application for the commencement of proceedings out of the tariff value of up to CZK 10,000. A flat rate as a compensation for local postage, local telephone and transportation costs for the purposes of ascertaining the compensation for costs of proceedings in such a case amounts to CZK 100. Additionally, a limitation on the total amount of fee for the purposes of ascertaining the compensation of costs is applied: the maximum amount is the amount of tariff value.

⁵⁷ See: A. Vlachová, M. Snížek, *Typické dluhy nezletilých [Typical Debts of Minors]*, Soukromé právo [Private Law], 2018, No. 10, p. 3.

resentation of a party by an attorney was determined as a flat rate according to the so-called award-based regulation⁵⁸, where the amount of the attorney's fee could range from CZK 6,000 to CZK 9,000 depending on the amount of claim⁵⁹. The constitutionality of this regulation was considered in judgment of the Constitutional Court of the Czech Republic No. Pl. ÚS 25/12, from which we quote in particular: "The challenged regulation motivates parties to civil relations – the creditors – to sue even in cases where the subject of the litigation is of negligible value. This is done with the prospect of profit, because the claimant expects that the amount of compensation for costs of proceedings will be awarded in accordance with Regulation No. 484/2000 Sb., that is, the amount of awarded compensation for the costs of the proceedings will be higher than the actual costs and this difference will represent business profit for the prevailing party. [...] In the real societal environment a new type of business emerged consisting in trading in primarily small claims. Claims are assigned and bought up by companies specializing in debt recovery, claims are traded. [...] A peculiar system of debt recovery emerged, intentionally producing disproportionately high costs of proceedings. This system is detrimental or destructive for the debtors who lose the litigation, and produces a considerable benefit for the persons who are involved in asserting and recovery of primarily small claims and recovery of the related costs of the proceedings. A particularly undesirable situation arises in the field of public services funded from public budgets (health-care, public transport⁶⁰, education, etc.). Claims are recovered by public persons (the state, municipalities, municipal districts, regions) which often hire attorneys for this purpose. The consequences of a lost litigation for the debtors are then considerably harsher than in the case when the claim is recovered directly by the state or municipality using their employees, because the costs of the proceedings are increased by the attorney's fee. [...] The awarded costs are regularly grossly disproportionate to the value claimed in litigation. In this way the losing party is sanctioned, where the amount of awarded costs is inconsistent with the principle of proportionality of sanctions. In fact, a sanction is being imposed without the law. The award-based regulation is therefore inconsistent Article 4(1) of the Charter, which stipulates that duties may be imposed only by law and within its limits, providing the fundamental rights and freedoms are preserved."⁶¹. On these grounds the Constitutional Court of the Czech Republic repealed the award-based regulation (it was repealed as of 7 May 2013).

Returning to our hypothetical claim, we can conclude that the total amount will be increased by the costs of representation by the attorney of up to CZK 500 (the specific amount depends on the number of acts and the course of the proceedings in court, however in these cases we usually expect a decision issued without

⁵⁸ Regulation of the Ministry of Justice No. 484/2000 Sb., to regulate the flat rates of the amount of fee for representation of a party by attorney or a notary in deciding on the compensation of costs of civil proceedings and to change Regulation of the Ministry of Justice No. 177/1996 Sb., to regulate the attorney's fees and attorney's compensations for provision of legal services (Attorney's Tariff), as amended.

⁵⁹ For details see for example: L. Zbytovská, T. Kaplan, *Vývoj náhrady nákladů řízení [Development of Compensation of Costs of Proceedings]*, *epravo.cz* [online], 27 March 2015, available at: <https://www.epravo.cz/top/clanky/vyvoj-nahrady-nakladu-rizeni-97095.html> [accessed on: 25 June 2019].

⁶⁰ Authors' note: *nota bene* (!).

⁶¹ Available at: https://www.usoud.cz/fileadmin/user_upload/ustavni_soud_www/Aktualne_prilohy/p-25-12.pdf [accessed on: 25 June 2019].

a hearing). Based on the information from the practice it seems that this change resulted in suppressing the “claims business”: “[i]n practice, this change had such effect that the transportation companies are no longer represented by an attorney either in the trial proceedings or when they file an application for enforcement and, surprisingly enough, they are able to cope with it, despite the fact that the passage of the above amendment of the attorney’s tariff provoked very strong resistance from some attorneys justified by claiming that the change will result in law being less enforceable for the creditors”⁶².

Based on the above we may disregard the costs of representation by an attorney in our hypothetical claim and add only CZK 1,000 for court fees to the claim of CZK 2,745 (the amount of claim filed in court), bringing the total to CZK 3,745. If the amount is not paid voluntarily after the court issues the judgment, enforcement follows. If the debt is collected by an enforcement agent (the usual practice in such cases) the enforcement of the judgment is governed by Act No. 120/2001 Sb., to provide for enforcement agents and enforcement activities⁶³ and to change other acts (Article 87 et seq. govern the costs of enforcement and costs of the entitled person and Article 90 et seq. govern the fee of the enforcement agent). The Code is related to Regulation of the Ministry of Justice No. 330/2001 Sb., to provide for the fees and compensations of enforcement agents, the fees and reimbursement of cash expenses of a business administrator, and for the conditions of liability insurance against damage caused by enforcement agent, which governs the details of calculation. In our hypothetical case the fee of the enforcement agent will amount to 15% of the base, i.e. approximately CZK 562, which is, however, below the minimum rate of CZK 2,000⁶⁴ (see Article 5 of the cited regulation). Additionally, reimbursement of cash expenses in a flat amount of CZK 3,500 must be included (see Article 13 of the cited regulation) and the value added tax at a rate of 21% of the fee (see Article 90 of the Enforcement Code and Article 47 of the Value Added Tax Act No. 588/1992 Sb.), i.e. the amount of CZK 420. In total the minimum amount is CZK 9,665⁶⁵ (for the sake of simplicity we did not take into account the late payment interest accruing at approximately CZK 150 per year).

We must add for the sake of completeness that if the debtor responds at least during the enforcement proceedings, it is possible to reduce the enforcement agent’s fee by 50% (i.e. to CZK 1,000 in our case). To do this the debtor must pay the debt within 30 days of delivery of the notice under Article 46 of the Enforcement Code (the related details are stipulated in Article 11 of the cited regulation).

Considering the original debt, including the amount of the fare and the full amount of the surcharge, we may conclude that currently a debt amounting to CZK 1,512 grows over time if the debtor does not respond at any of the indicated points to a sum ranging from approx. CZK 8,500 (in the case of a reduced fee

⁶² A. Vlachová, M. Snížek, *Typické dluby...*, p. 3.

⁶³ Hereinafter referred to as “Enforcement Code”.

⁶⁴ We must mention for the sake of completeness that the amount of CZK 2,000 was set as the minimum as of 1 April 2017 when Regulation No. 441/2016 Sb. amending the cited regulation became effective. Before this amendment, the minimum amount of the enforcement agent fee was CZK 3,000.

⁶⁵ As indicated above, higher amounts could be added to the debts which originated in the past, so the total amounts could exceed CZK 20,000. For a consistent opinion, see also: A. Vlachová, M. Snížek, *Typické dluby...*, p. 3.

of the enforcement agent) to approx. CZK 10,000 (in the case of a longer duration of the proceedings the amount may be even higher due to the accruing late payment interest), depending on the circumstances. The final amount therefore is 6.6 times higher than the original one. If we compare it to the original amount of debt required if the passenger duly discharges his/her obligations arising from the transportation contract (i.e. CZK 12), the final amount is 833 times the fare amount.

Therefore, we may conclude that despite efforts to alleviate the negative impact of costs added to the claim, mainly when it is asserted in court, the debt for a ride without a valid ticket still grows considerably over time, when the debt enters subsequent phases of its “lifecycle”. At the same time, we must note that this is an extreme variant assuming that the debtor remains inactive until the last phase of enforcement of the judgment via an enforcement agent. A legal representative who knows about such debt of the minor and allows it to reach this phase cannot be said to be managing the assets and liabilities of the child with due managerial care. The whole situation seems unfair mainly when the legal representative does not know about the debt of the child and is informed at the last enforcement phase (the child does not say anything about it, the family moves, etc.) and also when the legal representative ignores the debt and the child finds out again in this final phase when he/she reaches the age of majority and has own income which will be affected by enforcement.

6. PROCEDURAL CONTEXT

Judgments of the Constitutional Court of the Czech Republic enable a more detailed look at the course of the trial proceedings dealing with this type of debts of minors. And we have to say in advance that the picture we get is far from flattering.

The above-quoted judgment No. I. ÚS 1775/14 further provides the following information (in addition to what has already been quoted): “[t]he Constitutional Court found out from the files submitted upon request that over the entire period of proceedings there were no direct dealings with the complainant, who was at the time a minor, all dealings were only with her mother as her legal representative, and the documents were served upon her mother too. The Constitutional Court has no reason to distrust the assertion of the complainant that she found out about the existence of the challenged judgments only in connection with the enforcement proceedings, which was on 14 April 2014⁶⁶, when she was allowed to inspect the relevant files.”

An even more intriguing picture emerges from judgment No. II. ÚS 3814/17: “[...], the District Court failed to deliver through restricted delivery the compulsory payment order issued against the then minor complainant to her mother as her legal representative, so the Court cancelled the payment order and ordered a hearing (Article 172(3), Article 173(1) and (2) of the Civil Procedure Code). In the summons the court used a clause under Article 101 (4) of the Civil Procedure Code, which is a call to express an opinion with the effect that if the party (or the

⁶⁶ Authors’ note: this case involved a complainant who travelled without a valid ticket at the age of twelve in 2007. She found out about the debt after around seven years, that is, when she was nineteen.

representative) fails to express an opinion within the given time limit, the party is deemed to accept the judgment without a hearing. If the document was then served on the mother only by depositing it, from this perspective alone the District Court proceeded extremely insensitively if it issued a judgment based on Article 115a of the Civil Procedure Code – without actual knowledge of anybody on the part of the defendant – taking into account that in addition to the sanction for a ride without a valid ticket the award included the costs of the proceedings and the attorney’s fee under the then effective Regulation 484/2000 Sb. (the so-called award-based regulation)⁶⁷ [...]. Moreover, other related circumstances prove clear negligence of the first instance court. The proceedings concerned took place at a time when curatorship proceedings concerning the complainant were under way at the same court, of which the court should have been aware *ex officio* [...]. And moreover, the same court issued, [...] a preliminary ruling granting custody of the complainant to her grandmother due to the fact that her mother – the legal representative in the dispute – was then serving a prison sentence. This however did not prevent the District Court from continuously sending documents to this person to the place of her residence (sic!). After the judgment was issued and the court needed to get the clause of legal force and order for enforcement (30 May and 3 June 2011) the Court suddenly ‘woke up’ and obtained the signature of the mother by restricted delivery of the judgment to the mother in the prison. All the stated facts and procedural mistakes confirm the conclusion of the Constitutional Court about a violation of the complainant’s right to proper protection in court proceedings arising from Article 38(2) of the Charter. The general principles guaranteed by the state by adoption of the UN Convention on the Rights of the Child were also violated, specifically Article 3. The fact that enforcement proceedings were instituted against the complainant when she was a minor due to continuously growing debt of a considerable amount for her, the existence of which she could not have been aware of, also amounts to a violation of Article 11(1) of the Charter protecting property rights.”⁶⁸.

It is clear from the above that in none of the aforementioned cases was the child duly represented for the purposes of making sure that his/her procedural rights were properly protected. In the first case, the mother/legal representative was to some extent active (according to the quoted judgment she paid one of the instalments of the agreed repayment schedule), this was however insufficient, as the debt reached the phase of enforcement by an enforcement agent. In the second case, the mother /legal representative failed to act up to the point when she signed the delivery of the judgment in the prison (as it is not clear from the quoted judgment when the mother started to serve the sentence and when various documents from the court were served, it is impossible to conclude whether the mother’s failure to act was caused entirely or only partly by her serving the sentence).

What is illustrated by two specific examples is confirmed by general findings from practice: “ [w]e have never encountered a case when the trial court (or the

⁶⁷ On the repeal of the regulation by the Constitutional Court of the CR see above.

⁶⁸ Available at: https://www.usoud.cz/fileadmin/user_upload/Vedouci_OVVP/Agenda_de_Portavoz/2-3814-17.pdf [accessed on: 26 June 2019].

enforcement agent in enforcement proceedings) would appoint a procedural curator for a minor (which is the court's duty in the case of a possible conflict of interests between the minor and his/her legal representatives), from among the attorneys at law (as shown for example in judgment of the Constitutional Court No. I. ÚS 3304/13). The court always dealt with only one of the parents of the minor defendant as a legal representative, that is, with the very persons who, by neglecting their maintenance duties, in fact caused the situation in which the child was sued for repayment of debt and costs of proceedings. The courts have never been surprised that the parents usually did not take over the delivered documents and did not react to them.⁶⁹

This shows that the core issue lies in procedural law rather than substantive law (e.g. in the regulation of minors' capacity to make juridical acts). If the child had been represented in the proceedings by a representative properly protecting the rights of that child, based on the findings indicated in the above judgments, the courts could have examined the circumstances of the specific cases, including the possible defective discharge of parental responsibility or possible neglect of maintenance duty, and could have reached the conclusion that it was the legal representatives who were liable for the given debt rather than the child.

7. BROADER CONTEXT: DISCOUNTED FARE IN THE CZECH REPUBLIC FROM 1 SEPTEMBER 2018 AND CURRENT DEVELOPMENTS

As the issue of "child debtors" analysed here starts with failure to pay the transport fare, we consider it appropriate to mention the issue of discounted fares, because as of 1 September 2018 major changes were introduced into the system of discounts granted to children and students (and senior citizens) in the Czech Republic.

In Resolution of 27 March 2018 No. 206⁷⁰ the Government of the Czech Republic approved the introduction of new discounted fares for trains and buses for senior citizens, children, pupils, and students, which resulted in further benefits compared to the system of national discounts (imposed by the state) that existed until then⁷¹. As of 1 September 2018 a discount of 75% is applied to the standard (basic) fare for children from 6 to 15 years, "junior" citizens aged 15 to 18, students aged 18 to 26 (and senior citizens older than 65 years). Children up to six years continue to travel free of charge. The discount for juniors and students is provided for all rides (i.e. not only for the ride from the place of residence to school) and throughout the year (i.e. it is not limited to the school year). This new system applies to rides on regular public passenger national road transport and on railway

⁶⁹ A. Vlachová, M. Snížek, *Typické dluhy...*, p. 3.

⁷⁰ The documents are available at: <https://apps.odok.cz/attachment/-/down/RCIAAXKAR554> [accessed on: 26 June 2019].

⁷¹ Before 1 September 2018 children up to 6 years travelled free of charge, children between 6 and 15 years had a discount of 50%, pupils aged 6 to 15 had a discount of 62.5%, and students aged 15 to 26 had a discount of 25%. No nationwide discount for senior citizens aged 65 or more was imposed. The discount for pupils and students was restricted only to the route between the place of residence of the pupil or student and the school and it was not provided during the summer holiday. For details See: the assessment of the Ministry of Finance of the Czech Republic No. 01/2018, available at: <https://www.mfcr.cz/cs/legislativa/cenovy-vestnik/2017/cenovy-vestnik-11-2017-30026> [accessed on: 26 June 2019].

passenger national transport, including transport within integrated public services⁷² (so-called integrated transport systems) and transport outside of such systems. Put more simply (even though not in precise terms)⁷³ we can say that the discount is granted on national railway transport and on national long-distance and suburban bus transport, i.e. transport that takes place outside of cities (or vice versa: not in municipal public transport taking place within the cities). The details are provided in the assessment of the Ministry of Finance of the Czech Republic No. 02/2018⁷⁴.

These changes give rise to the question to whether the introduction of such a system of discounts could contribute to reducing the number of minor passengers who travel without a valid ticket either due to a difficult financial situation⁷⁵ in the family or due to parents' neglect in their duty duly manage the affairs of their children. The answer will depend on the type of transport. In the Czech Republic the access of passengers to railway platforms is not restricted (like e.g. in the UK), so from the point of view of compliance with the tariff obligations the boarding of passengers into the vehicles is not restricted either (in principle⁷⁶). In other words, in railway transport it is not possible to prevent passengers who do not have a valid ticket (fare dodgers) from boarding. In this case the reduction of the price of the fare may motivate a certain share of fare dodgers to buy tickets (for a single ride or for a time period), and enjoy a quiet ride without having to monitor the movements of the conductor. In bus/coach transport the discount applies only to transport outside cities: in such cases the vehicle is mostly boarded only through the first door, i.e. the boarding is controlled by the driver so the number of fare dodgers is negligible. Therefore, from the point of view of the issue examined here the impact of the new discount on the number of fare dodgers in this type of transport will be rather limited (although it may attract passengers who have not used public transport before).

We must add that some cities reacted to the introduction of a nationwide discount (via their transportation companies or carriers who provide the transportation services to them) and also changed the system of discounts in municipal public transport for the same categories of persons, reducing the fare quite considerably. For example, in Prague not only children up to 6 years of age, but also children up to 15, travel for free⁷⁷, junior citizens (15–18 years) and students (up to 26 years) are entitled to long-term passes with discounts ranging from approximately 65% to 76% of the base price⁷⁸. In Brno children up to 10 (rather than 6) years of age can travel free of charge,

⁷² See: Article 6 of Act No. 194/2010 Sb., to regulate public services in transportation of passengers and to change other laws.

⁷³ These concepts are precisely defined in the introductory provisions of the Rules of Transportation and the Road Transport Act and the Railways Act; a precise explanation of the concepts would however require another paper, which is why we resorted to explanations using the general language.

⁷⁴ Available at: <https://www.mfcr.cz/cs/legislativa/cenovy-vestnik/2018/cenovy-vestnik-05-2018-31854> [accessed on: 26 June 2019].

⁷⁵ But we must note that the use of public transport is a right rather than a duty, which right is exercised in combination with the obligation to accept the transportation conditions, including provisions on the payment of fares. Let us mention by way of illustration that, for example, in Central Bohemia integrated transport the fare for one ride within one zone after a discount of 75% is CZK 3 (or CZK 2.50 if paid by chip card), the annual pass for the first zone costs CZK 782 See: https://www.arriva.cz/file/edee/asc/ceniky/pribram/sid_cenik_180901.pdf [accessed on: 26 June 2019].

⁷⁶ With the exception of some carriers, in particular those in long-distance transport.

⁷⁷ The only condition is getting a card with unlimited validity, which costs CZK 20 (paper form) or CZK 120 (electronic).

⁷⁸ For details see: <http://www.dpp.cz/jizdne-na-uzemi-prahy/> [accessed on: 26 June 2019].

children from 10 to 15 years enjoy a discount of approximately 75%⁷⁹; in Carlsbad not only children up to 6 years of age, but also students up to 26 years of age, travel for free⁸⁰; in Pilsen children up to 15 years travel for free⁸¹, etc. It is possible to say concerning the means of municipal public transport that, at least in the larger cities, passengers board the vehicles through all doors, i.e. the driver does not control it, which makes fare evasion easier. Together with the efforts of the carriers to positively motivate passengers (see above), discounting this type of fare, even if to a different extent in various cities, may contribute to reducing the number of fare dodgers, including minor passengers, which constitutes a potential source of future child debts.

It is necessary to point out that such extensive discounts on fares were not introduced primarily to resolve the situation of “child debtors”⁸², even though it is clear that in many cases in the future these discounts may contribute considerably to resolving the issue. This is true in particular of fare evasion in the means of transport without controlled boarding of the vehicle, that is, railway transport and municipal public transport (providing that the specific cities introduced fare discounts). If a child up to 15 years of age can travel in Prague free of charge, only for a one-off fee for the issuing of the relevant card, and nonetheless the parents fail to get such a card for their child, there is no other option than to perceive such parents as dysfunctional and therefore in need of appropriate assistance.

Finally, we need to discuss the **current developments relating to these types of claims**. For example, on 20 May 2019 the Board of the City of Pilsen adopted Resolution No. 542⁸³, in which the Board called on the Board of Directors of Plzeňské městské dopravní podniky, a. s. (Pilsen Municipal Transportation Company) to “take steps that will lead to the discontinuation of the recovery of all claims including accessories (hereinafter ‘debt’) from minor debtors, or debtors whose debt arose at the time of their minority and to take such measures that will prevent the recovery of such debts in the future”. Prague found out based on the Resolution of the Council of the Capital City of Prague No. 6/5 of 25 April 2019⁸⁴ that within the city a total of 164 enforcement proceedings against children up to 15 years of age are pending and in all cases due to using transport without a valid ticket. On 9 September 2019, the Board of the Capital City of Prague adopted Resolution No. 1881⁸⁵, in which as a sole shareholder the Board it issued a business management instruction [under Article 51(2) of Act No. 90/2012 Sb., to regulate companies and cooperatives to Dopravní podnik hl. m. Prahy, a. s. (the Transportation Company of the Capital City of Prague)⁸⁶ to do the following: “(i) DPP must file applications

⁷⁹ For details see: <https://www.dpmb.cz/cs/pruvodce-jizdnym> [accessed on: 26 June 2019].

⁸⁰ For details see: http://www.dpkv.cz/assets/cms/Postup_ziskani_jizdneho_zdarma.pdf [accessed on: 26 June 2019].

⁸¹ For details see: <http://www.pmdp.cz/jizdne/slevy-z-jizdneho/> [accessed on: 26 June 2019].

⁸² This was one of the promises made during the 2018 election campaign.

⁸³ Available at: https://usneseni.plzen.eu/index.php?organ_usneseni=100&rok_zacatek=2019&rok_konec=2019&obsahuje_text=&cislo_od=0542&cislo_do=&datumod=20.5.2019&datum_do=20.5.2019&send=Vyhledat&strana=1&radku=50&order=Rok%2CU.projednani%2CU.cislo&smr=dolu&str_rucne=&katastr=&parcela= [accessed on: 1 October 2019].

⁸⁴ Available at: <http://zastupitelstvo.praha.eu/ina/tedusndetail.aspx?par=168206009017012229219206027017012229216206024017012229217206021017012229217&id=565257> [accessed on: 1 October 2019].

⁸⁵ Available at: <http://zastupitelstvo.praha.eu/ina/tedusndetail.aspx?par=145183242250245206196183004250245206193183001250245206193183254250245206193&id=577852> [accessed on: 1 October 2019].

⁸⁶ Hereinafter referred to as the “DPP”.

to discontinue pending enforcement proceedings to recover the debts resulting from fares and surcharges which arose at the time when the debtor was below the age of 15; (ii) DPP must not file applications to commence enforcement proceedings to recover debts resulting from fares and surcharges which arose at the time when the debtor was below the age of 15; (iii) DPP must withdraw the motions to commence civil proceedings to recover debts resulting from fares and surcharges which arose at the time when the debtor was below the age of 15; (iv) DPP must not file motions to commence civil proceedings to recover debts resulting from fares and surcharges which arose at the time when the debtor was below the age of 15". Based on that since 16 September 2019 a total of 124 enforcement proceedings against children were discontinued and the discontinuation of the remaining 40 is expected shortly⁸⁷. Both cities used the same mechanism which can be reused in other cities/towns (and their transportation companies). It shows that the core of the issue can be resolved through a "soft approach", based on the political will of local authorities without the need for interventions in the current legal regulations.

8. BY WAY OF CONCLUSION

It is possible to draw the following conclusions based on the detailed mapping of the "lifecycle" of the debt arising for a minor child who used public transport without a valid ticket. Primarily, the current legal regulation of the capacity of minors to make juridical acts based on a reflection of their gradual attainment of intellectual and volitional maturity with increasing age is not the primary cause of the negative phenomenon briefly referred to as "child debtors". For that matter, the above-quoted judgments of the Constitutional Court of the Czech Republic do not contain the slightest indication of a criticism of this conception. Furthermore, it is necessary to state that in the course of ticket inspection the inspector has a certain degree of discretion as to resolving the specific case of a ride without a valid ticket. However, it is not possible to hold it against the carriers that in the course of the ticket inspection they cannot find out whether the child is accompanied by a legal representative or another adult person in the vehicle. Finally, it is necessary to point out that in cases where the child becomes aware of the existence of the debt after a longer period of time, once the amount has grown as described in detail above, i.e. usually no earlier than at the time when enforcement proceedings against the child are commenced (i.e. usually after reaching the age of majority when the debtor starts working and has his/her own income), this happens because of inadequate protection of the rights of the child during the trial. It is up to the courts, if and when they admit representation of a minor child by his legal representative, to consider carefully the issue of a possible conflict of interests: the child's ride without a valid ticket is usually a consequence of the legal representative's failure to fulfil his/her duties towards the child. **The above-quoted judgments of the Constitutional Court of the Czech Republic clearly conclude that it is possible to transfer liability for the debt of a child arising from using public transport to his/her legal representatives**

⁸⁷ See: MET (editorial): Dětských exekucí zbývá jen 40 [Only 40 Child Enforcement Proceedings Left], METRO, 16 September 2019, p. 3.

under the current legal regulation, although it is necessary to consider the specific circumstances of the case.

The above may be perceived as the starting point for possible considerations *de lege ferenda* (on this topic see: O. Frinta, D. Frintová, D. Elischer: *Children and Their Debts: Current Situation in the Czech Republic. Part Three: Practical, Ethical, Procedural, Comparative Perspective, and Current Proposals for Legislative Solution.*).

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Abstract

Ondřej Frinta, Dita Frintová, *Children and Their Debts: Current Situation in the Czech Republic. Part Two: Specific Aspects of Debts of Children Arising from Contracts for Transportation of Persons*

The paper deals with the issue of debts incurred by minors due to using public transport without a valid ticket. The authors subsequently analyse the particular legally significant facts, namely the conclusion of the contract, the ticket inspection, the imposition of the surcharge on top of the fare, the possibility of voluntary payment of the debt, and if not paid, its further increase related to filing a claim in court. Attention is also paid to the procedural aspects of these cases, where the authors point out the unsatisfactory representation of the minor in the proceedings, which in the end appears to be the main cause of the issue. The authors also draw attention to recent changes in the fare system for people aged under 26, which may also – albeit to a limited extent – contribute to reducing the frequency of this problem.

Keywords: child, minor, debt, transportation contract

Streszczenie

Ondřej Frinta, Dita Frintová, *Dzieci i ich długi – obecna sytuacja w Republice Czeskiej. Część II: Konkretny aspekty długów dzieci wynikających z umów przewozu osób*

W niniejszym artykule omówiono kwestię długów zaciągniętych przez osoby niepełnoletnie w wyniku korzystania z transportu publicznego bez ważnego biletu. Następnie autorzy analizują poszczególne fakty mające znaczenie prawne, tj. zawarcie umowy, kontrolę biletów, nałożenie kary i opłaty za przewóz, możliwość dobrowolnej spłaty długu, a w razie braku spłaty – dalszy wzrost kwoty długu wskutek złożenia pozwu w sądzie. Zwraca się ponadto uwagę na aspekty proceduralne tych spraw, przy czym autorzy wskazują na niezadowolającą reprezentację osób niepełnoletnich w postępowaniu, co ostatecznie okazuje się być główną przyczyną problemu. Autorzy zwracają także uwagę na ostatnie zmiany w taryfie przewozowej dla osób poniżej 26. roku życia, które również – choć w ograniczonym zakresie – mogą przyczynić się do zmniejszenia częstotliwości występowania tego problemu.

Słowa kluczowe: dziecko, osoba niepełnoletnia, dług, umowa przewozu

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