

## Home>Family matters & inheritance>Parental responsibility - child custody and contact rights

### Parental responsibility - child custody and contact rights

Greece

#### 1 What does the legal term “parental responsibility” mean in practical terms? What are the rights and obligations of a holder of parental responsibility?

Parental responsibility is a right and an obligation of parents. It covers caring for the minor child's person, managing the child's property and representing the child in any matter, transaction or litigation that concerns the child or the child's property. Parental responsibility therefore ensures the protection of the minor's personal and property rights.

#### 2 As a general rule, who has the parental responsibility over a child?

Parental responsibility is exercised jointly by the two parents. Any decision of the parents regarding the exercise of parental responsibility must be made bearing in mind the child's interests.

#### 3 If the parents are unable or unwilling to exercise parental responsibility over their children, can another person be appointed in their place?

If either of the parents is unable to exercise parental responsibility, for practical reasons (e.g. hospitalisation, imprisonment) or for legal reasons (legal incapacity), that parent remains a simple holder of the right while parental responsibility is exercised solely by the other parent.

If neither parent is able to exercise parental responsibility, a minor child is placed under guardianship; the parents retain parental responsibility, as simple holders of the right, while being unable to exercise it.

#### 4 If the parents divorce or split up, how is the question of parental responsibility determined for the future?

In the case of divorce or separation, and provided that both parents are alive, the question of parental responsibility is resolved by the court. Parental responsibility may be awarded to one of the parents or, if they both agree and simultaneously fix the place of residence of the child, to both parents jointly. The court may decide otherwise, and may in particular divide the exercise of parental responsibility between the parents or grant it to a third person.

#### 5 If the parents conclude an agreement on the question of parental responsibility, which formalities must be respected to make the agreement legally binding?

Where a court has to determine the exercise of parental responsibility, as in cases of divorce or separation, it will take account of any agreements between the parents, but such agreements are not binding on the court. Agreements of this kind are not subject to specific formalities, provided only that they are legally brought to the court's knowledge. The usual course is to submit a document drawn up by the interested parties which sets out the agreement between them. This is explicitly provided for by law in cases of divorce by mutual consent of parents with minor children, in which case a written agreement between the parents settling the custody of their children and contact therewith must be submitted to the court.

In all other respects, parents may informally agree on the exercise of parental responsibility, without complying with any formality or following any formal procedure, so as to divide responsibility between them in practice, with one aspect being exercised by one parent and another by the other parent: for example, one parent might have custody of the child and the other might manage the minor's property and represent his or her interests.

#### 6 If the parents cannot come to an agreement on the issue of parental responsibility, what are the alternative means for solving the conflict without going to court?

If parents cannot come to an agreement on the issue of parental responsibility, and it is in the child's best interests that a decision is reached, the matter will be decided by the court. Mediation is an alternative means of dispute resolution.

#### 7 If the parents go to court, what issues can the judge decide upon relating to the child?

Where parents disagree on a specific issue in the exercise of their parental responsibility, and bring the matter before a court, the court can decide only upon that issue. It may be any issue arising during the exercise of parental responsibility which causes disagreement between the parents, each maintaining his or her own opinion, so that resolution is in the best interests of the child. It may be objectively serious, e.g. selecting a first name, agreeing to surgery etc., or it may be a matter of no great objective importance which, however, the parents consider important enough to bring before the court.

#### 8 If the court decides that one parent shall have sole custody of a child, does this mean that he or she can decide on all matters relating to the child without first consulting the other parent?

Yes, in principle, in so far as the issue falls within the scope of the custody of the child awarded to one parent. The parents can always choose not to adopt the court's solution awarding sole custody to one parent: even after the court has delivered judgment, they may agree to apply a different arrangement giving the other parent a role in the care of the child, provided, of course, that this arrangement is in the best interests of the child.

#### 9 If the court decides that the parents shall have joint custody of a child, what does this mean in practice?

This means that decisions related to the care of the child must be made jointly by the parents.

#### 10 To which court or authority should I turn if I want to lodge an application on parental responsibility? Which formalities must be respected and which documents shall I attach to my application?

The competent court is always the single-member court of first instance (*μονομελές πρωτοδικείο*). Applications must be lodged with the court that has jurisdiction for the place, and must be served on the respondent; the documents serving as grounds for the application must also be submitted to the court.

#### 11 Which procedure applies in these cases? Is an emergency procedure available?

The single-member court of first instance decides in line with a special procedure laid down in Articles 681(B) and (C) of the Code of Civil Procedure. This is modelled on the procedure for labour disputes, in order to expedite the hearing of cases. Owing to the primarily personal character of parental responsibility disputes, it also applies certain provisions from the procedure in matrimonial cases, and rules from the procedures for noncontentious jurisdiction regarding the investigating authority and the taking of evidence of the court's own motion. However, when disputes relating to the exercise of parental responsibility are linked to any of the marital disputes referred to in Article 592(1) of the Code of Civil Procedure (e.g. divorce and marriage annulment) or the disputes referred to in Article 614(1) of the Code (e.g. determination of paternity), the court must apply the procedure set out in Articles 598612 and 616622 of the Code.

Urgent matters can be dealt with by interim measures (*ασφαλιστικά μέτρα*) and emergencies by temporary injunction (*προσωρινή διαταγή*).

#### 12 Can I obtain legal aid to cover the costs of the procedure?

Yes, under the general conditions applicable to legal aid.

#### 13 Is it possible to appeal against a decision on parental responsibility?

A court judgment on parental responsibility can be revoked or varied if there has been a change in the circumstances that led the court to rule as it did.

Otherwise a judgment on parental responsibility may be challenged by any of the ordinary judicial remedies (appeal on points of fact and law (*έφεση*), appeal

on points of law only (cassation, *αναίρεση*), application to set aside (*ανακοπή ερημοδικίας*), review (*αναψηλάφηση*)), in accordance with the usual requirements.

**14 In certain cases, it may be necessary to apply to a court to have a decision on parental responsibility enforced. Which court should I use in such cases and which procedure applies?**

A judgment relating to parental responsibility is enforceable under Article 950 of the Code of Civil Procedure if it also imposes obligations, that is to say that it does not only resolve the issue of parental responsibility or custody of a minor child, or contact with the child, but also orders the delivery or return of the child, or determines the arrangements for contact, or prohibits the parties from taking any contrary action. In particular, (a) a judgment ordering the delivery or return of a child requires the parent who has the child to act as decided by the court, and in case of failure to comply with the court's judgment the same judgment may provide for the automatic imposition of a financial penalty of up to €50 000 to be paid to the applicant requesting the delivery or restitution of the child, or a temporary detention of up to one year, or both penalties together (indirect enforcement (*έμμεση εκτέλεση*)); and (b) in the event that the right of personal contact of a parent with the child is obstructed, the judgment on contact may threaten the person obstructing such contact with a financial penalty and detention (complementary enforcement (*αναπληρωματική εκτέλεση*)).

**15 What should I do to have a decision on parental responsibility that is issued by a court in another Member State recognised and enforced in this Member State?**

Court judgments on parental responsibility issued in other Member States are automatically recognised without further formality by Greek administrative authorities. Greek courts have jurisdiction to decide on the validity of a foreign judgment, or on a request for recognition of a foreign judgment, without a prior examination of the jurisdiction of the Member State of origin. When recognition is sought in Greece, Greek courts may refuse the recognition of a judgment on parental responsibility when: (a) it is contrary to domestic public policy, always taking into account the child's best interests; or (b) it is irreconcilable with a later judgment relating to parental responsibility given in the Greek courts. In addition, where they have jurisdiction under Council Regulation (EC) No 2201 /2003 on the basis of the place of residence of the child, the Greek courts, as courts of the Member State in which recognition is sought, may settle the issue of parental responsibility for the child differently, by delivering their own later decision in the case, without a prior examination of the jurisdiction of the Member State of origin and the binding nature of its judgment (whether for example it is open to appeal).

**16 To which court in this Member State should I turn to oppose the recognition of a decision on parental responsibility issued by a court in another Member State? Which procedure applies in these cases?**

In the cases described the court with jurisdiction is the single-member court of first instance, which hears the case on the basis of the procedure relevant to the type of dispute.

**17 Which law does the court apply in a proceeding on parental responsibility where the child or the parties do not live in this Member State or are of different nationalities?**

Relations between parents and a child are regulated by the following, in order of precedence: (1) the law of their last joint nationality; (2) the law of their last joint habitual residence; (3) the law of the nationality of the child.

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