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Parental responsibility - child custody and contact rights

Croatia

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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 means the responsibilities, duties and rights of parents designed to protect and promote the child's personal and property rights, as well as the child's best interests. Parents are required to provide parental care according to the child's developmental needs and capabilities. No parent is allowed to waive his/her right to parental care. Parents are required to discuss and agree the individual aspects of parental care with the child according to his/her age and maturity.

Parental care includes the right and duty to protect the child's personal rights to health, development, care and protection, upbringing and education, contact, to choose the place of residence, as well as the right and duty to manage the child's assets. Parental care also includes the right and duty to represent the child's personal and property rights and interests.

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

Parents have the right and duty to provide parental care equally, jointly, and by agreement. Where parents do not live together on a permanent basis, they are required to agree on parental care arrangements by drawing up a Shared Parental Care Plan. Shared parental care may also be regulated by a court of law, the court's ruling being based on the parents' arrangements regarding all relevant issues in the Shared Parental Care Plan. When providing shared parental care, parents must endeavour to resolve any issues by agreement.

Either parent may provide parental care on his/her own in full, in part, or to the extent required to decide on a particular important issue concerning the child. In the above situations, the other parent's right to provide parental care may be restricted only by a court ruling, taking into account the child's best interests. Where the parents provided shared parental care before the death of either parent, the surviving parent must provide parental care on his/her own without a court ruling if the other parent has died or been declared dead. Either parent may provide parental care on his/her own, subject to a court ruling to that effect, if the parents have failed to agree a Shared Parental Care Plan or an alternative arrangement during court proceedings. In such a case, the court is required to give preference to the parent that has shown willingness to cooperate and reach agreement on shared parental care.

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

Where a parent is a minor or a person deprived of legal capacity in a particular area of parental care, his/her parental care will be suspended because of legal obstacles. While the suspension is in force, the above parent may care for the child on a day-to-day basis on his/her own, together with the child's other parent, or together with a guardian appointed under the provisions of the Family Act (*Obiteljski zakon*) on the appointment of a guardian. The above parent is not allowed to represent the child and, where he/she has been deprived of legal capacity, he/she is not allowed to represent the child in the area for which he/she has been deprived of legal capacity. The child will be represented by the other parent or the guardian, the guardian being required to comply with the other parent's wishes.

Where the child's parents, or either parent and the guardian, disagree on representation regarding important decisions relating to the child, the court will, in response to a proposal made by the child, either parent, or the guardian, give an *ex parte* ruling on who shall represent the child in the relevant matter. In response to a proposal made by the child, either parent, or a social welfare centre, the court will give an *ex parte* ruling to suspend parental care (suspension of parental care because of real obstacles) if either parent is absent or resides at an unknown address, or if either parent is prevented, for objective reasons, from providing parental care for a lengthy period of time. The relevant parent is not allowed to provide parental care for the duration of the period during which his/her parental care is suspended for the above reasons. During such a period of suspension, parental care will be provided by the other parent on his/her own, or the child will be placed in custody under the provisions of the Family Act. In response to a proposal made by the child, a parent whose parental care has been suspended, or a child welfare centre, the court will give an *ex parte* ruling to terminate the parental care suspension due to real obstacles when there are no longer grounds on which the suspension was imposed.

Where the parents share parental care and one of them dies, the surviving parent will continue to provide parental care on his/her own. If the parent providing parental care on his/her own dies, the court will, in response to a proposal made by the child, the surviving parent, or a child welfare centre, give an *ex parte* ruling to entrust parental care to the surviving parent, if it considers that to be in the child's best interests. Where both parents die, a child welfare centre will place the child in custody. While he/she is still alive, the parent providing parental care may, by means of a will or notarial deed [referred to as “anticipirana naredba” (“advance decision/directive”) in Croatian], designate a person whom he/she considers would provide best care to the child in the event of his/her death. Where a guardian is appointed for the child in the event of a parent's death, the opinion of the child and the wishes of the surviving parent will be taken into account, unless it is believed that taking their opinion/wishes into account would not be in the child's best interests.

Under Article 224 of the Family Act, a child is to be placed in custody if his/her parents have died, disappeared, are unknown, or have resided at an unknown address for at least a month; if his/her parents have been deprived of the right to parental care; if his/her parents, deprived of legal capacity in an area which prevents them from providing parental care, have failed to entrust the child to a person meeting the criteria of guardianship, or if his/her parents have consented to the child being adopted. Under Article 225 of the Family Act, a child welfare centre is to make a decision to place the child in custody and appoint a guardian. A child welfare centre may place the child in the day-to-day care of a guardian, another person, foster family, a home for abandoned children, or in the care of a legal entity engaged in social welfare activities, unless otherwise prescribed by the Family Act.

Measures to protect the child's personal rights and best interests will be taken based on an expert assessment if it is found that the child's rights and best interests have been violated, or that the child's rights, best interests and development have been jeopardised. The child's rights will be considered to have been jeopardised if care is inadequate, if the child experiences psychosocial difficulties (as manifested through his/her behaviour, emotional problems, problems at school or other problems regarding his/her growing up), or if it is probable that the above circumstances will arise. To protect the child's rights and best interests, a social welfare centre may: 1. take an emergency measure to separate the child and provide accommodation for him/her outside the family home; 2. issue a warning following a mistake or omission in the provision of parental care; 3. arrange for the parents to receive professional help and support regarding parental care; and 4. arrange for the parents to receive intensive professional support and for the parental care they provide to be supervised. To protect the child's personal rights and best interests, a court may: 1. temporarily place the child in the care of another person, foster family or a social welfare institution; 2. issue a restraining order; 3. strip the parents of their right to live in a shared home with the child and place the child in the day-to-day care of another person, foster family or a social welfare institution; 4. provide support for the upbringing of the child, if he/she has behavioural problems, by placing him/her with a foster family or a social welfare institution; or 5. deprive the parents of their right to provide parental care. As part of the measures designed to protect the child's rights and best interests, the Family Act contains provisions to regulate the provision of temporary accommodation for the child or the temporary placement of the child in another person's care, to deprive the parents of their right to live in a shared home with the child, etc.

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

Parental responsibility issues may be resolved by drawing up a Shared Parental Care Plan or by a court ruling.

The Shared Parental Care Plan is a written agreement between the parents setting out ways to provide shared parental care where the child's parents do not live as a family on a permanent basis. The Shared Parental Care Plan must specify the following: 1. the place and the address at which the child resides, 2. the time to be spent by the child with each parent, 3. the ways of exchanging information on the consent required when making important decisions for the child and of exchanging important information in relation to the child, 4. the level of the maintenance obligation for the parent with whom the child does not reside; and 5. the ways future issues will be resolved. The parents may draw up the Shared Parental Care Plan on their own or as part of the mandatory counselling process or the family mediation process.

If the parents fail to agree on the Shared Parental Care Plan or if it is rejected by the court, either parent or the child may bring an action in order to resolve any issues concerning the parent with whom the child will reside, the ways of providing parental care, the child's contact with the other parent, or the child's maintenance. In proceedings intended to determine which parent the child will reside with, the provision of parental care or the child's contact with the other parent, the court will not be bound by any request from the parties. The court may give a ruling on the parent with whom the child will reside, on the ways in which the child will maintain contact with the other parent, and on the provision of parental care based on an agreement between the parents, if it considers the agreement to be in the child's best interests.

The court will rule *ex officio* to determine which parent the child will reside with, the ways of providing parental care, the child's contact with the other parent, and the child's maintenance, by a decision establishing the irretrievable breakdown of the marriage or its annulment or granting a divorce and in other cases where the parents live apart, or by a decision in a case where maternity or paternity has been disputed, if the giving of such ruling is possible and required with respect to the outcome of the legal proceedings and the facts of the case.

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

To be enforceable, the Shared Parental Care Plan may be submitted to the court as part of *ex parte* proceedings, which will allow the court to check its content and approve or reject the Plan under the provisions of the Family Act. The Shared Parental Care Plan may be amended depending on the child's age and maturity or where amendments are warranted by significant changes in circumstances. If amended, the Plan should be submitted to the court as part of *ex parte* proceedings, to allow the court to check its content, and approve or reject the amendments.

The court may give a ruling concerning which parent the child will reside with, on the ways in which the child will maintain contact with the other parent, and on the provision of parental care based on an agreement between the parents, if it considers the agreement to be in the child's best interests. If the parents decide to provide shared parental care, the agreement must regulate all important matters raised in the Shared Parental Care Plan. Regarding legal remedies or amendment of the court's ruling, the court's ruling based on the parents' agreement on the provision of shared parental care will have the same legal effect as the Shared Parental Care Plan, as approved by the court. No explanatory notes need to be included in the ruling relating to parental care or the child's contact with the other parent if the ruling is based on the parents' above agreement on the provision of shared parental care.

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 the parents fail to agree on the Shared Parental Care Plan, a social welfare centre will encourage them to endeavour to reach an agreement as part of the family mediation process, unless the case in question is not subject to statutory mediation requirements. If parents intending to get a divorce fail to agree on the Shared Parental Care Plan, a social welfare centre will advise them that, as part of the divorce proceedings initiated by an action from either spouse, the court will, *ex officio*: 1. give a ruling to determine which parent the child will reside with, parental care arrangements, the child's contact with the other parent, and the child's maintenance; 2. allow the child to express his/her opinion under the Family Act; and 3. appoint a special guardian for the child in accordance with the provisions of the Family Act.

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

Under Article 413 of the Family Act, the court will rule *ex officio* to determine which parent the child will reside with, the ways of providing parental care, the child's contact with the other parent, and the child's maintenance, by a decision establishing the irretrievable breakdown of the marriage or its annulment or granting a divorce and in other cases where the parents live apart, or by a decision in a case where maternity or paternity has been disputed, if the giving of such ruling is possible and required with respect to the outcome of the legal proceedings and the facts of the case. The court may 1. restrict or ban the child's contact with the other parent; 2. rule to the effect that contact is to be supervised by an expert; 3. determine a measure to protect the child's rights and best interests as required by the circumstances of the case; or 4. rule on contact arrangements with the stepmother or stepfather if they lived with and cared for the child when their marriage was dissolved.

Under Article 417 of the Family Act, in proceedings to decide on the child's contact with the other parent, the court is required to advise the parents that such contact is of special importance for the child's wellbeing, to encourage the parents to reach an agreement and participate in the family mediation process in cases other than those relating to domestic violence, and, if the parents fail to reach agreement, to ensure that the location at which the child is to maintain contact with the other parent is suitable for the child, taking into account the other parent's geographic and time constraints. The court's ruling must contain details relating to the ways in which, the time when, and the location at which the other parent can collect and return the child, and, if necessary, details relating to the costs of contact. In the explanatory notes to the ruling, the court will include a written warning detailing the legal consequences of any failure to comply with the duty to facilitate the child's contact with the other parent (including a fine, imprisonment or a decision to modify the ruling determining which parent the child will reside with).

Under Article 418 of the Family Act, the court may, in proceedings to determine the child's contact with the other parent, stipulate one or more measures to ensure enforcement if it suspects that the parent with whom the child resides is unlikely to comply with the contact ruling, specifically: 1. to appoint a person to assist with the enforcement of the ruling or the arrangements allowing the child to contact the other parent; and 2. to order that the parent with whom the child resides deposit a cash guarantee. When stipulating such measures, the court will, in particular, take account of how the parent with whom the child resides has behaved in the past.

Under Article 419 of the Family Act, the court may, in proceedings to determine the child's contact with the other parent, stipulate one or more measures to ensure the child's return or prevent the contact parent from abducting the child (for example, by ordering the contact parent to surrender his/her passport during contact time to the court that stipulated the measure, by ordering the contact parent to deposit a cash guarantee, by prohibiting any alienation of or encumbrance upon the contact parent's property rights – details of such a prohibition being entered in public registers, by requiring the contact parent to regularly attend an authorised body, such as a social welfare centre, along with the child and in the location at which contact takes place, by determining the location at which contact is to take place, by prohibiting the child from leaving the country where contact is to take place, and by entering the details of such a prohibition in a national or transnational information system). When stipulating the above measures, the court must, in particular, take into account how the contact parent has behaved in the past.

Under Article 421 of the Family Act, no explanatory notes are required to be included in the ruling determining parental care or the child's contact arrangements if the ruling is based on an agreement between the parents, reached in accordance with the provisions of the Family Act, or if the ruling was pronounced orally in the presence of all the parties and all the parties have undertaken not to resort to legal remedies.

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?

Under Article 99 of the Family Act, either parent must represent the child on his/her own in the areas of parental care in which the other parent has been restricted under the provisions of the Family Act or by a court ruling.

Article 105 of the Family Act states that either parent may provide parental care on his/her own in full, in part, or to the extent required to decide on a particular important issue concerning the child. In the above situations, the other parent's right to provide parental care may be restricted only by a court ruling, taking into account the child's best interests. Where the parents provided shared parental care before the death of either parent, the surviving parent must provide parental care on his/her own without a court ruling if the other parent has died or been declared dead. When ruling on sole parental care, the court will decide whether the parent awarded parental care should represent the child in matters relating to the child's essential personal rights on his/her own or do so subject to the other parent's consent, as specified by Article 100 of the Family Act (representing the child in matters relating to his/her essential personal rights means representation in case of any change in the child's name or permanent or temporary home address, or his/her freedom to choose or change his/her religious affiliation).

Under Article 110 of the Family Act, regardless of whether parental care is sole or shared, the parents are entitled to make day-to-day decisions concerning the child on their own at times when the child is staying with either of them. In emergencies, i.e. when there is an immediate threat to the child, either parent is entitled to decide to take any action necessary in view of the child's best interests without seeking the consent of the other parent. He/she must inform the other parent of this as soon as possible.

Regardless of whether parental care is sole or shared, the parents are required to exchange information on the child's health, the consistency of his/her upbringing, as well as information on the child's curricular and extracurricular activities. Any exchange of such information must be swift, transparent, and be focused solely on the child.

Neither parent may misuse his/her duty to cooperate in order to control the other parent.

In addition to the above, under Article 112 of the Family Act, the parent who has been restricted in a particular area of parental care is entitled to maintain contact with the child, make day-to-day decisions relating to the child, take urgent action in case of an immediate threat to the child, and to receive information on important circumstances relating to the child's personal rights. These rights may only be restricted or withdrawn by a court ruling if restriction or withdrawal is necessary to protect the child's best interests. The parent not providing parental care to the child is entitled to request information on important circumstances relating to the child's personal rights from the other parent if he/she has a legitimate interest in doing so and to the extent to which such action does not conflict with the child's best interests. In case of a dispute, the court will, in *ex parte* proceedings and in response to a proposal made by the child or either parent, give a ruling to ensure the protection of the child's best interests.

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

Under Article 108 of the Family Act, where the parents have joint custody, they are required to make any important decisions relating to the child and provide any consent by agreement. Important decisions for the child relate to representation of the child in matters regarding his/her essential personal rights and representation in matters regarding the child's valuable assets and property rights. Important decisions for the child may also take the form of other decisions that could significantly affect the child's life, such as those concerning the child's contact with persons close to him/her, extraordinary medical procedures or treatment, and the child's freedom to choose a school. All such decisions will be valid provided the other parent consents thereto. In exceptional cases, e.g. an urgent medical procedure, the provisions of special regulations governing the protection of patients' rights will apply. Article 100 of the Family Act contains provisions on the representation of the child in matters relating to his/her essential personal rights (in case of any change in the child's name or permanent or temporary home address, or his/her freedom to choose or change his/her religious affiliation). Representation in matters relating to the child's essential personal rights is considered valid if the parent representing the child has obtained written consent from the other parent entitled to represent the child. In cases prescribed by law no such consent is required if the parent with whom the child resides has obtained the consent of a social welfare centre. If the parent representing the child cannot obtain written consent, the court will, in *ex parte* proceedings and in response to a proposal made by the child or either parent, decide which parent will represent the child in the given matter to protect his/her best interests.

Article 101 of the Family Act contains provisions on representation in matters relating to the child's valuable assets or his/her property rights.

Under Article 109 of the Family Act, where the parents entitled to represent the child fail to agree on important decisions for the child, the court will decide, in *ex parte* proceedings and in response to a proposal made by the child or either parent, which parent will represent the child in the given matter. If important decisions relate to the child's personal rights, the parents are required to participate in the mandatory counselling process before an *ex parte* action is brought.

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?

Proposals should be submitted to and actions brought before the municipal court exercising local jurisdiction.

Under Article 34 of the Civil Procedure Act (*Zakon o parničnom postupku*), municipal courts always rule in the first instance in the following disputes: on whether the marriage has irretrievably broken down, or whether the marriage should be annulled and the spouses granted a divorce; disputes relating to the determination or disputation of paternity or maternity; those to determine the parent with whom the child will reside; and those relating to parental care, where a concurrent action is in progress to establish whether the marriage has irretrievably broken down, to annul the marriage, or to grant a divorce.

In accordance with the Family Act, mandatory counselling must take place before a petition is lodged for a divorce between spouses providing shared care to a minor child of their own or before other legal proceedings relating to parental care and contact are initiated. The provisions of the Family Act relating to mandatory counselling before a petition is brought for a divorce between spouses providing shared care to a minor child of their own apply *mutatis mutandis* to mandatory counselling undertaken before an action is brought to determine parental care and the child's contact with the other parent, where the marriage /partnership of his/her parents has irretrievably broken down. The law stipulates cases where no resort is made to mandatory counselling. The mandatory counselling process starts once a party makes a request to that effect. The request is addressed to a social welfare centre, in writing or verbally (by making a statement to be entered in a register). The mandatory counselling service is provided by an expert team of the social welfare centre competent for the place in which the child has a permanent or temporary home address, or for the location at which the spouses or common-law partners last had their shared home address, whether permanent or temporary. Mandatory counselling is a process that involves the personal participation of the family members (no representatives are allowed). Once the mandatory counselling process is over, the social welfare centre will prepare a report, which will remain valid for six months from the date of the end of the counselling.

Attendance at the first family mediation meeting is required before the petitioner can lodge a petition for divorce.

Depending on the type of action being brought (a marital dispute; a dispute to establish or dispute maternity or paternity; a parental care dispute, a dispute concerning contact, an action for divorce by mutual consent, or to request approval for a Shared Parental Care Plan), the petitioner needs to submit, among other documents, the mandatory counselling report/evidence of participation in the first family mediation meeting/the Shared Parental Care Plan. The documents required depend on the action being brought.

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

In all actions concerning child-related matters of family law, competent bodies must take urgent action while protecting the child's best interests at the same time.

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

Yes. Free legal aid is regulated by the Free Legal Aid Act (*Zakon o besplatnoj pravnoj pomoći*) (*Narodne novine* (NN; Official Gazette of the Republic of Croatia) No 143/2013).

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

Yes. Parties may lodge an appeal against a first-instance ruling within fifteen days of the date of service of a copy of the ruling, unless a different time limit has been provided for by the Civil Procedure Act. Unless otherwise prescribed by the law, appeals may be lodged against a first-instance ruling resulting from special *ex parte* actions regulated by the Family Act. Appeals must be lodged within fifteen days of the date of service of the ruling.

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?

The court to contact is the municipal court exercising local jurisdiction. Any enforcement proceedings will be carried out under the provisions of the Enforcement Act (*Ovršni zakon*), but the Family Act contains special provisions regarding enforcement intended to ensure the child is handed over and regarding enforcement intended to ensure contact with the child can be maintained (Articles 509-525 of the Family Act).

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?

You need to bring an action for a ruling given by a foreign court to be recognised in accordance with the Act on the Resolution of Conflicts between Croatian Laws and the Regulations of Other Countries relating to Certain Relationships (*Zakon o rješavanju sukoba zakona s propisima drugih zemalja u određenim odnosima*) (NN No 53/91, 8/01).

As of 1 July 2013, Croatia has been implementing Council Regulation No 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000. Chapter III of said Regulation applies *mutatis mutandis* to the recognition and validation of enforceability of judgments regarding parental responsibility.

An application for recognition or non-recognition, an application for the validation of enforceability, and an enforcement proposal are to be lodged with the municipal court exercising local jurisdiction.

Proposals should be submitted to and actions brought before the municipal court exercising local jurisdiction.

The provisions of Council Regulation No 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000, apply to procedures for the recognition and enforcement of rulings given by foreign courts.

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?

Appeals should be lodged with a municipal court. A county court will decide the appeal.

Appeal proceedings are subject to the provisions of Council Regulation No 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000, and to the provisions of the Civil Procedure Act.

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?

Under Article 40 of the Act on the Resolution of Conflicts between Croatian Laws and the Regulations of Other Countries relating to Certain Relationships, the law applicable to parent-child relationships is the law of the country of which the parents and children are nationals. If the parents and children are nationals of different countries, the law that applies is that of the country in which all of them have a permanent home address. If the parents and children are nationals of different countries, and if they do not have a permanent home address in the same country, Croatian law will apply if the child or either parent is a Croatian national. Parent-child relationships not covered by the above provisions are subject to the law of the country of which the child is a national.

As of 1 January 2010, Croatia has been implementing the 1996 Hague Convention on jurisdiction, applicable law, recognition, enforcement and cooperation in respect of parental responsibility and measures for the protection of children.

For more information, please refer to:

The Family Act (NN No 103/15 and 98/19)

The Enforcement Act (NN Nos 112/12, 25/13, 93/14)

The Act on the Resolution of Conflicts between Croatian Laws and the Regulations of Other Countries relating to Certain Relationships (NN Nos 53/91, 88/01)

The Free Legal Aid Act (NN No 143/2013)

The Act on the Implementation of Council Regulation No 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000 (NN No 127/2013)

Council Regulation No 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000.

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