Parental responsibility - child custody and contact rights

Portogallo

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 responsibilities are powers and duties assigned to parents in relation to their children. Children are subject to parental responsibilities until they reach the age of majority or emancipation (Article 1877 of the Civil Code). The age of majority is 18 years. Minors who have reached the age of 16 may become emancipated by marriage (Article 132 of the Civil Code).

Parental responsibilities include the following powers and duties of parents in relation to their children (Articles 1877 to 1920-C of the Civil Code):

Educating the children by providing them with general and vocational training, particularly for children with physical and mental impairments;

Within the parents' means, promoting the children's physical and mental development;

Providing for the children's support and covering expenditure related to their safety, health and education;

Representing the children;

Acting as administrator of the children's assets with the same care with which they administer their own;

Having custody of the children and determining the children's residence;

Securing the children's return, with recourse to a public authority if necessary, if they leave the parental home or are removed from it;

Deciding on the religious education of children under the age of 16;

Depending on the maturity of the children, taking into account their opinion concerning important family matters and recognising their autonomy in organising their own lives.

On the other hand:

Children have a duty of obedience towards their parents;

Children may not leave the paternal home, or the home the parents have intended for them, nor be removed from it;

Parents are not obliged to provide for their children's support or cover the costs of their safety, health and education to the extent that the children are able to cover such costs themselves from the proceeds of their work or other income;

Parents may use income from their child's assets to cover expenditure on their child's support, safety, health and education, as well as, within reasonable limits, other needs of family life;

Parents are not obliged to stand surety as administrators of their child's assets, except where this covers securities, and the court, considering the value of the assets, deems this necessary.

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

As a rule, parental responsibility for the child lies with the parents (Article 1901 of the Civil Code).

Parents exercise parental responsibilities by mutual agreement. If there is no agreement on matters of particular importance, either parent may bring the matter before the court, which will attempt conciliation. If conciliation is not possible, the court hears the child before deciding, except where serious circumstances advise against this.

Where parenthood is established only in relation to one of the parents, parental responsibilities may be assigned by court decision to the spouse or civil partner of the parent, who exercise them jointly. The joint exercise of parental responsibilities in this case depends on application by the parent and of their spouse or civil partner; The court must, wherever possible, take account of the wishes of the child (Article 1904-A of the Civil Code).

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

Yes, under the following conditions:

Prevention of one or both parents (Article 1903 of the Civil Code):

When one of the parents is unable to exercise parental responsibilities due to absence, incapacity or other impediment decreed by a court, the other parent must exercise the responsibilities. If the other parent is prevented from doing so by judicial decision, the responsibilities must be exercised by the following persons in order of preference (Article 1903 of the Civil Code):

the spouse or civil partner of either parent;

someone in the family of either parent.

These rules are also applicable, *mutatis mutandis*, where parenthood is established only in regard to one of the parents.

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

The exercise of parental responsibility in the event of divorce, legal separation, declaration of nullity or annulment of marriage is governed according to the following principles (Article 1906 of the Civil Code):

Parental responsibilities on issues of particular importance to the life of the child shall be exercised jointly by both parents in accordance with the terms of the marriage, except in cases of manifest urgency, where either parent may act alone and shall provide information to the other parent as soon as possible;

Where the joint exercise of parental responsibilities on issues of particular importance to the life of the child is found to be contrary to the interests of the child, the court shall, by reasoned decision, determine that those responsibilities be exercised by one of the parents.

The exercise of parental responsibilities relating to the child's everyday activities falls to the parent with whom they habitually reside, or the parent with whom they are temporarily staying; however, the latter, in exercising their responsibilities, should not act contrary to the most relevant educational guidelines, as defined by the parent with whom the child habitually resides;

The parent who is responsible for the exercise of parental responsibilities relating to everyday activities may exercise these themselves or delegate their exercise.

The court will determine the child's residence and visitation rights according to the child's interests, taking into account all relevant circumstances, namely any agreement of the parents and the willingness expressed by each of them to promote the child's normal relationships with the other parent;

The parent who does not exercise parental responsibility, whether in full or in part, has the right to be informed about how such responsibility is exercised, particularly regarding the education and living conditions of the child.

The court will always decide in accordance with the child's interests, including maintaining a close relationship with both parents, promoting and accepting agreements, or taking decisions that favour ample opportunities for contact with both parents and sharing responsibilities between them.

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

In order for the agreement on parental responsibilities to be legally binding, it must be approved by the court or civil registrar, in one of the forms indicated in the answers to questions 6 and 10.

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?

The parties may use alternative means of resolving the conflict, either before requesting the court's intervention, or in the course of legal action.

Mediation prior to court intervention

Before bringing a case to court, parents may use **public or private family mediation** to reach an agreement on parental responsibility.

In Portugal mediation is voluntary. Parties to a family conflict relating to their children may, by agreement, use public or private family mediation before initiating legal action. Once action has been brought, the court may also refer the parties for mediation, but cannot impose this if the parties do not agree or object to it.

Mandatory ratification of the agreement

Once the agreement has been obtained as a result of the mediation, in order for it to be binding and enforceable, the parties must apply for its ratification by the court or the civil registry registrar, as the case may be.

Cases relating to family matters falling within the competence of the civil registry registrar require the prior agreement of the parties. Otherwise they fall within the jurisdiction of the courts (Article 12 of Decree-Law No 272/2001 of 13 October 2001 — Procedures within the jurisdiction of the Prosecutor's Office and the Civil Registry Offices).

Civil registry offices are competent to ratify the agreement with respect to parental responsibilities only when it is annexed to an agreement on divorce or legal separation by mutual consent. Prior to ratification by the registrar, the prosecution office issues an opinion on the agreement in so far as it concerns parental responsibilities relating to minor children.

Where family mediation takes place before the action is proposed and is intended solely to settle parental responsibilities relating to minor children (without the agreement being annexed to a divorce or legal separation agreement), the ratification of that agreement must be requested by the parties from the competent court.

Private mediation

If the parties access private mediation, they will have to pay the fees of the mediator. This amount, the rules and the mediation schedule are set in the mediation protocol signed by the parties and by the mediator at the start of mediation. The Ministry of Justice draws up a list of mediators that the parties may consult in order to choose a private mediator. You can find this list here.

Public mediation

To use public mediation, the parties should contact the alternative dispute resolution office of the Directorate-General for Justice Policy (Direcão Geral da Política de Justiça) and request the scheduling of a pre-mediation session. This can be done by telephone, by email or via an online form available at http://smf.mj.pt/. In the public pre-mediation session, a mediation protocol is signed between the parties and the mediator. A time period will be set, sessions will be scheduled and the procedural rules explained. The cost of public family mediation is 50 euros for each of the parties, independently of the number of sessions scheduled. This fee of 50 euros is paid by each of the parties at the outset of the public mediation. The fees of mediators working through the public system are not paid by the parties. They are paid by the Directorate-General for Justice Policy, according to a legal schedule.

Public mediation sessions can take place at the premises of the Directorate-General for Justice Policy, or at premises made available in the municipality where the parties reside.

In public mediation, the parties can choose a mediator from a list of selected public mediators. The list of public mediators can be found on the website referred to above.

List of Mediators of the Family Mediation System

If the parties do not choose a mediator, the alternative dispute resolution office of the Directorate-General for Justice Policy indicates one of the mediators from the list of public mediators, in sequential order and taking into account proximity to the parties' area of residence. As a rule, this appointment is made electronically.

Note: The activity of the Family Mediation System (SMF) is governed by Ministerial Implementing Order No 13/2018 of 22 October 2018.

Legal aid (Law No 34/2004 of 29 July 2004 — Access to Law and to the Courts)

If the parties are entitled to legal aid, this may cover the cost of mediation.

Mediation and specialist technical hearings in the course of legal proceedings

(Law No 141/2015 of 8 September 2015 — Legal Framework for the Civil Guardianship Procedure, as amended by Law No 24/2017 of 24 May 2017)

If the parties refer the matter to court, civil proceedings regulating the exercise of parental responsibility will be initiated, in which the judge begins by setting up a parent meeting. (Article 35 of the Legal Framework for the Civil Guardianship Procedure)

If the parents cannot reach an agreement at the meeting, the judge will suspend it for a maximum period of two to three months, depending on the case, and refer the parents for mediation (if they agree to use this method), or for specialist technical hearing (which may be imposed on parents as mandatory) (Article 38 of the Legal Framework for the Civil Guardianship Procedure).

At the end of that period, the judge is informed of the outcome of the mediation or specialist technical hearing and will set a date for continuation of the meeting in order to secure and/or ratify the agreement. (Article 39 of the Legal Framework for the Civil Guardianship Procedure)

If at the end of this phase the parents cannot reach an agreement, then the litigation phase of the proceedings follows – the parents are notified to file their pleadings and to produce evidence, followed by the investigation and judgment.

Information on mediation is available here.

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

As a preliminary point, it is important to emphasise that in Portugal, in the event of divorce, separation, annulment of marriage, and in cases where there is no marriage or co-habitation of the parents, a decision on the exercise of parental responsibility must always be taken in respect of three fundamental aspects:

custody of the child;

visiting arrangements;

maintenance due to the child.

In other words, the obligation to provide maintenance to a minor child is considered to be one of the parental responsibilities, and in principle it is regulated together with the other parental responsibilities, although in certain cases an action may be brought only to set and amend the maintenance due to a child.
The court may rule on the following matters (Articles 6 and 7 of the Legal Framework for the Civil Guardianship Procedure):
establish guardianship and the administration of assets;
appoint a person who conducts business on behalf of the minor and, in addition, appoint a trustee who represents the child subject to parental responsibilities out of court;
govern the exercise of parental responsibility and hear issues that relate to it;
establish the maintenance due to the minor and to children over 18 or emancipated, who are continuing their academic or vocational education;
prepare and judge enforcements for maintenance;
order the judicial surrender of a child;
authorise the legal representative of minors to perform certain acts, to confirm those acts that have been performed without authorisation, and make arrangements for the acceptance of gifts;
decide on the security that the parents must provide in favour of their minor children;
decree full or partial barring and establish limits on the exercise of parental responsibilities;
verify maternity and paternity of its own motion;
decide, in the event of disagreement between the parents, on the first name and surnames of the minor;
establish a relationship of civil custody (apadrinhamento civil) and revoke such decisions;
regulate the child's interactions with siblings and ascendants;
if there is guardianship or administration of assets, determine the remuneration of the guardian or administrator, take cognizance of the dispensation, exoneration or removal of the guardian, administrator or member of the family council, demand and judge accounts, authorise the replacement of the legal mortgage and determine the reinforcement and replacement of the security provided, and appoint an ad hoc guardian to represent the child out of court;
appoint an ad hoc guardian to represent the minor in all guardianship proceedings;
decide on the reinforcement and replacement of the security given to minor children;
demand and judge the accounts that the parents must provide.

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?

As a rule, no. Even if custody of the minor child is assigned only to one parent, parental responsibility on matters of particular importance to the child's life lies with both parents, unless the ruling determines that it falls exclusively to one of them (Article 1906 of the Civil Code).
As regards the other aspects of the question, the answer has already been covered in detail in the reply to question 4.

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

In practice, joint custody means that:
Parental responsibilities are exercised jointly by both parents, who will decide on matters concerning the life of the child under the same conditions as when they were married;
The child may reside alternately with each of 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?

Procedures for bringing actions relating to parental responsibility

Care and protection procedures

If the minor is in a situation that may jeopardise their safety, health, moral teaching or education, and if the exercise of parental responsibility was limited by application of one of the care and protection measures indicated in the answer to question 3, care and protection proceedings will be instituted, falling within the competence of the Commissions for the Protection of Children and Young People or of the courts, as appropriate.

Civil guardianship procedures

In the other cases indicated in the answer to question 7, concerning regulation of the exercise of parental responsibility, a civil guardianship procedure will be initiated, which falls within the competence of the courts.

Procedures within the competence of the civil registry offices

In cases where there is an agreement concerning regulation of the exercise of parental responsibility, whether or not this is annexed to a legal separation or divorce agreement, a case is filed at the civil registry office. It is incumbent upon the Registrar to ratify the parental responsibility agreement after having heard the opinion of the prosecution office.

Note: *When divorce proceedings are initiated without the consent of the other spouse, the court is competent and the procedure takes the form of special divorce proceedings without the consent of the other spouse. If in the course of the action the parties reach an agreement, the court converts the proceedings into divorce proceedings by mutual consent and ratifies the agreements, including relating to parental responsibilities, if there are minor children.*

Formalities and documents to be enclosed (these vary according to the form of the case and the competent authority):

Promotion and protection procedure within the Committee for the Protection of Children and Young People (Article 97 of the Law on the Protection of Children and Young People in Danger))

The procedure begins with the receipt of the written communication or with the recording of verbal reports or facts of which the committee has knowledge;
High-risk situations may be reported by any person, by the entities with competence in matters of childhood and youth, by the minor themselves, by the parents, legal representative or person who has *de facto* custody of the child.
The Protection Committee procedure includes the collection of information, enquiries and examinations necessary and appropriate to establishing the situation, the reasons for the decision, the application of the respective measure and its implementation;
The procedure is organised in a simplified way, where the acts and enquiries carried out or requested by the Protection Committee that form the basis for implementation of the acts referred to in the previous paragraph are recorded in chronological order.
With respect to each procedure, the decision-making is transcribed in summary form, together with its statement of reasons.

Promotion and protection procedure by the courts (Article 100 et seq. of the *Law on the Protection of Children and Young People in Danger*)

The procedure begins with the receipt of an initial application filed by the prosecution office, by the parents, the legal representative, the de facto guardians, or child over the age of 12;
The procedure consists of the investigation, judicial proceedings, decision and enforcement phases of the measure;

It is not compulsory for either of the parties to appoint a lawyer in the first instance except in the following situations, where the court must mandatorily appoint counsel for the minor: when the interests of the minor conflict with those of their parents, legal representative or guardian; when the minor requests it; in judicial proceedings in which the minor must always be represented by a lawyer or nominated representative.

Civil Guardianship procedure (Articles 12 to 33 of the Legal framework for the civil guardianship procedure)

The procedure begins on the initiative of the prosecution office, the child over the age of 12, the ascendants, siblings or legal representative of the minor.

It is the responsibility of the prosecution office to represent the minor in court, to take action on their behalf, to request the regulation of parental responsibilities, and to defend the best interests of the child.

It is a voluntary jurisdiction procedure that begins with an application filed in court, and where there is an objection.

Where the law does not provide otherwise, it is in the application and the objection that the parties must offer the list of witnesses and request all evidence.

The court is advised by multidisciplinary technical teams.

The child has the right to be heard. For this purpose, the judge assesses, by order, the child's ability to understand the issues, and may rely on technical advice.

During the hearing, the judge hears the child, the parties, the family members and other persons they deem relevant to hear.

Provisional and precautionary decisions may be pronounced at any stage of the proceedings.

At any stage of the procedure, the judge may order the intervention of the public or private mediation services, provided the parties agree to use mediation.

Specifically, in procedures regulating parental responsibilities, a parent meeting is arranged, and if the parents do not reach an agreement at the meeting, the court refers them for mediation (if they accept it) or for specialist technical hearing. Only if agreement is not possible through one of these routes do the statement of facts, the investigation, the hearing and the ruling follow.

The parties have the right to know the information provided in the technical advice and other evidence and opinions included in the proceedings; they may request clarification, add other evidence or apply for information to be requested. The judge can dismiss such applications by an unappealable order if he or she judges them to be unnecessary, impossible to fulfil, or dilatory.

The hearing, when it takes place, is always recorded.

Grounds are provided for the judge's decision.

It is only mandatory to appoint a lawyer at the appeal stage. However, in the first instance, the appointment of a lawyer for the child is mandatory in the following cases: when the interests of the minor and those of their parents, legal representative or guardian are conflicting; when a child with appropriate maturity requests it from the court.

Unless expressly provided otherwise, appeals may be brought against decisions pronounced as final or provisional concerning the application, amendment or termination of civil guardianship measures.

The prosecution office and the parties, the parents, the legal representative, and whoever has *de facto* custody of the child, may appeal.

Appeals are processed and judged as in civil matters, with a time limit for claims and response of 15 days.

The appeals have a purely devolutive effect, unless the court determines otherwise.

Cases falling within the jurisdiction of the civil registry offices (Articles 1775 to 1778-A of the Civil Code; Articles 12 to 14 of Decree-Law No 272/2001 of 13 October 2001— Procedures within the competence of the Prosecutor's Office and the Civil Registry Offices)

In cases where the agreement on parental responsibilities is annexed to a divorce or legal separation agreement, the following documents must be submitted:

The process of legal separation or divorce by mutual consent is initiated by an application signed by the spouses or their representatives at the civil registry office;

The application is examined in relation to common property, the agreement on divorce, maintenance between spouses and the designation of the family home, in addition to the agreement on the exercise of parental responsibility when there are minor children and there is no previous judicial regulation;

Following the application, the civil registry database is immediately and automatically consulted, and the necessary documents are included in the database in order to corroborate the marriage certificate of the interested parties and the conclusion of any pre-nuptial agreement declared before the registrar, except in cases where the property regime is stated in the marriage certificate;

Once the application has been received, the registrar informs the spouses of the existence of family mediation services;

When an agreement is reached on the exercise of parental responsibility in relation to minor children, the case is referred to the prosecution office at the regional court (tribunal judicial de primeira instância) competent to hear the matter within the jurisdiction to which the civil registry office belongs, so that it can issue a decision on the agreement within 30 days;

If the prosecution office takes the view that the agreement does not adequately protect the interests of minors, the applicants may amend the agreement accordingly or submit a new agreement, in which case such agreement will be re-examined by the prosecution office;

If the prosecution office takes the view that the agreement duly safeguards the interests of minors, or if the spouses have amended the agreement as instructed by the prosecution office, the registrar verifies fulfilment of the statutory assumptions, and is able to determine for that purpose the performance of acts and the production of any necessary evidence, and then rules on the merits of the application;

In cases where the applicants do not comply with the amendments instructed by the prosecution office, and continue in their intention to divorce, the case is referred to the court of the district to which the civil registry office belongs.

In cases where the parents, whether or not married, wish to regulate the exercise of parental responsibility over minor children of them both, or to amend an agreement already ratified, they must request this at any time from any civil registry office. To this end, they should include the following documents:

Application for regulation of the exercise of parental responsibility;

Agreement on the exercise of parental responsibility and on liability for minor children, signed by both parents or by their representatives;

The Registrar reviews the agreement and invites the parents to amend it when it does not protect the interests of the minors;

The agreement is then referred to the prosecution office at the regional court with competence on the matter, in the minor's area of residence, so that it can rule within 30 days;

If there is no objection from the prosecution service, the case is referred to the civil registry office and the Registrar ratifies the agreement;

Ratification decisions have the same effect as judicial judgments.

Information on the competence of the Civil Registry Offices can be found here.

Entities to which the interested parties must refer (depending on the case, the courts, committees for the protection of children and young people, and the civil registry offices):

Substantive and territorial jurisdiction of the courts

The relevant court for the regulation of parental responsibilities is the family and minors court at the district court (Article 123(1)(d) of the Judicial Systems Organisation Act). In areas not covered by the family and juvenile court, the local civil court of the district court or the general jurisdiction court is competent.

The following rules on territorial jurisdiction apply (Article 9 of the Legal Framework for the Civil Guardianship Procedure):
The court of the child's place of residence at the time the proceedings were instituted has jurisdiction;
If the residence of the child is not known, the court of the place where the holders of parental responsibility reside has jurisdiction;
If the holders of parental responsibilities reside in different places, the court with jurisdiction is the court competent for the place of residence of the person exercising parental responsibility;
In the case of joint exercise of parental responsibility, the court with jurisdiction is the court of the place of residence of the person with whom the child resides or, in the case of joint custody, the court at which the action was first brought;
If any of the actions concern two children, children of the same parents and who are resident in different districts, the court with jurisdiction is the court at which the action was first brought;
If any of the actions concern more than two children, children of the same parents and residents in different districts, the court with jurisdiction is the court where the greatest number of these children reside;
If, when the proceedings are instituted, the child resides abroad and the Portuguese court has jurisdiction internationally, the court competent to hear and decide the case is the court of the place of residence of the applicant and respondent;
When the applicant and the respondent reside abroad and the Portuguese court has jurisdiction internationally, the case is heard by Lisbon Family and Minors Court (*Juízo de Família e Menores de Lisboa*), in the judicial district of Lisbon;
Without prejudice to the rules on related actions and the provisions of a specific law, any changes in fact that occur after the initiation of proceedings are irrelevant.
Substantive and territorial competence of the Commissions for the Protection of Children and Young People (Article 79 of the Law on the Protection of Children and Young People in Danger)
The Commissions for the Protection of Children and Young People are competent in matters relating to procedures concerning the care and protection of children and young people at risk, where there is parental agreement and there is no objection from the minor.
The following rules on territorial jurisdiction apply:
The Commission for the Protection of Children and Young People or the court of the minor's place of residence at the time notification of the situation is received or judicial proceedings commence is competent for the application of care and protection measures.
If the residence of the child or young person is not known and cannot be determined, the Commission for Protection of the place where the child is located is competent.
The Commission for Protection of the place where the minor is located takes the steps considered urgent and the necessary measures for the child's immediate protection.
If, after the application of a non-protective measure, the child or young person changes their residence for more than three months, the case is referred to the Commission for Protection of Children and Young People in the new area of residence.
The implementation of a care and foster protection measure does not entail the change of residence of the child or young person.
The Commission for Protection with territorial jurisdiction in the area of the foster municipality or district of the child or young person will cooperate with the Commission for Protection that applied the care and protection measure as fully as necessary for the effective follow-up of the applied measure as requested for this purpose.
Substantive and territorial competence of the civil registry offices (Articles 6 and 12 to 14 of *Decree-Law No 272/2001 of 13 October 2001 — Procedures within the competence of the prosecution office and the Civil Registry Offices*)
Depending on the matter at issue, civil registry offices are competent to ratify the agreement with respect to parental responsibility, whether submitted in isolation or annexed to applications for divorce or legal separation by mutual consent.
Depending on the matter at issue, civil registry offices are competent to process and decide on divorce or legal separation proceedings by mutual consent, including the ratification of agreements with respect to parental responsibility annexed thereto.
Territorial jurisdiction rules do not apply to civil registry offices. In other words, the parties may refer to any civil registry office.
Related jurisdiction (Article 81 of the Law on the Protection of Children and Young People in Danger)
If, in relation to the same child, a civil guardianship procedure and care and protection procedure, including procedures before the Commission for the Protection of Children and Young People, or educational guardianship procedure, are instituted separately, these must be processed as a joined case, irrespective of their status, and the judge competent to hear the cases will be the judge to whom the procedure was first brought;
The provisions of the previous paragraph do not apply to civil guardianship measures relating to automatic verification of maternity or paternity, or to those that fall within the competence of civil registry offices, or to those that concern more than one child;
In the event of divorce or legal separation proceedings, procedures regulating the exercise of parental responsibility, the provision of maintenance and barring the exercise of parental responsibility are joined to that action.
When the danger concerns more than one child or youth at the same time, a single procedure may be instituted and, where different procedures have been instituted, all of them may be joined to whichever was initiated first, if family relationships or the danger justify this (Article 80 of the Law on the Protection of Children and Young People in Danger).

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

The procedure has already been referred to in the reply to question 10.
Care and protection cases and civil guardianship cases may be treated as emergency procedures when a delay may adversely affect the interests of the child. In this case, they continue to be processed during judicial holidays.
In any event, provisional measures may be applied in emergency situations.
In particular, the following urgent legal proceedings are provided for (Article 92 of the Law on the Protection of Children and Young People in Danger):
At the request of the prosecution office, the court, when informed of situations that pose a danger to the life or physical or mental integrity of the minor, issues a provisional decision within 48 hours, confirming the measures taken for the immediate protection of the child, applying any of the care and protection measures provided for in law or determining what is appropriate for the minor's future;
To this end, the court conducts summary and indispensable investigations and orders the necessary steps to ensure its decisions are enforced, and may make use of the police authorities and allow persons who are responsible for complying with their decisions to enter any house during the day.
In particular, the following urgent legal proceedings are provided for (Article 91 of the Law on the Protection of Children and Young People in Danger):
When there is a danger to the life or physical or mental integrity of the minor, and there is no consent from those holding parental responsibility or from those with *de facto* custody, any authority with competence on child and youth matters, or the child and youth protection commissions, takes appropriate measures for the immediate protection of the minor and requests the intervention of the court or police;

The intervening entity notifies the prosecution office immediately or, if that is not possible, as soon as it becomes possible.
Until such time as the court can intervene, the police removes the child or young person from the danger they are in and ensures they have emergency protection at a foster home, at the facilities of the bodies with competence on child and youth matters, or another suitable place.
The prosecution office, after receiving a notification from any of the above entities, immediately requires the competent court to take urgent legal action.

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

Yes, legal aid is available for proceedings before the court and the civil registry office.

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

Yes, in the manner already indicated in the answer to question 10.

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?

Infringement of a decision on parental responsibility (Article 41 of the Legal Framework for the Civil Guardianship Procedure)

If, with respect to the child's situation, one of the parents or a third party to whom they have been entrusted does not comply with what has been agreed or decided, the court may, of its own motion, on an application from the prosecution office or from the other parent:
Order the steps necessary to ensure enforcement;
Issue a fine of up to 20 units of account (in 2021, the value of a unit of account was EUR 102.00);
And, having verified the respective assumptions, order the defaulter to pay compensation in favour of the child, the requesting parent or both.
If the agreement has been ratified by the court or the court has pronounced its decision, the application is processed as a joinder to the procedure in which the agreement was made or a decision was pronounced, for which the respective court will be petitioned if, according to the rules on competence and jurisdiction, it is the court competent to hear the infringement.
Once the application has been processed or appended to the procedure, the judge summons the parents to a meeting or, in exceptional cases, notifies the respondent to plead as they deem appropriate within five days.
At the meeting, the parents may agree to amend what is established for the exercise of parental responsibility, taking into account the child's interests.
In the case of non-compliance with the visitation regime, if the respondent does not attend the meeting, does not submit pleadings, or if their pleadings are manifestly unfounded, the court may order the surrender of the child so that the visitation regime can be complied with, specifying where the visits should take place and providing for the presence of court technical advisers.
The respondent is notified to release the child in the manner determined, subject to a fine being imposed.
If a meeting is not convened or if the parents fail to reach an agreement, the judge refers the parties for mediation (if the parents agree to use it) or to a specialist technical hearing, and then reaches a decision.
If a fine is imposed and the fine is not paid within ten days, enforcement takes place as a joinder to the procedure.
This is provided for and regulated in the Legal Framework for the Civil Guardianship Procedure, approved by Law No 141/2015 of 8 September 2015, which can be consulted here

Maintenance enforcement

In order to enforce the provision of maintenance, three alternative means may be used: the hearing for infringement of parental responsibility, referred to above; the pre-enforcement hearing for the provision of maintenance, as mentioned below; or the special maintenance enforcement, mentioned below.

Pre-enforcement hearing to recover maintenance due (Article 48 of the Legal Framework for the Civil Guardianship Procedure)

When the person legally liable to pay maintenance fails to pay the amounts due within 10 days of the date when it became payable, the following shall be observed:
If the person is a public sector worker, the respective amounts are deducted when due, upon the request of the court addressed to their public sector employer;
If the person is a salaried employee, the amounts will be deducted from earnings or salary, for which the respective employer will be notified to process such deductions, and will assume the role of depositary;
If a person receives rent, pensions, allowances, commissions, percentages, emoluments, gratuities, contributions or similar income, the deduction is made from these instalments when they have to be paid or credited, making the necessary requisitions or notifications, with those notified assuming the role of depositaries.
The amounts deducted also cover maintenance accrued beforehand, and are paid directly to those due to receive them.

Special maintenance enforcement

If maintenance is due to minors, the maintenance creditor may, alternatively, bring special maintenance proceedings, as laid down in Article 933 of the Code of Civil Procedure. Thus, in a single action, they may recover in full the amounts due, overdue or to become due. In an enforcement action, the maintenance creditor may make use of broader means of enforcement, such as seizure and pledge of income.
In special maintenance enforcement, the applicant may request: the adjudication of a proportion of the amounts, salaries or pensions the other party receives; or an assignment of income belonging to the maintenance debtor. The adjudication or pledge takes place independently of seizure and is intended to cover the payment of overdue amounts and amounts that will become due.
When the applicant requests the adjudication of amounts, salaries or pensions, the body responsible for paying these or for processing the respective payments will be notified that it is to pay the adjudicated part directly to the applicant. The amount adjudicated must be deposited monthly in the bank account of the applicant, who must give the account number in the initial application.
If the applicant requests a pledge of income, they must specify the property to which this relates, and the enforcement agent must provide this in relation to property deemed sufficient to meet maintenance payments that are either overdue or will become due.
The maintenance creditor may still request the seizure of the maintenance debtor's property. Seizure may involve movable property and immovable property, bank deposits, credit rights, commercial establishments or company shares.
If the seized property is sold to pay off a maintenance debt, the return of the excess to the maintenance debtor should not be ordered unless the payment of maintenance that will become due is ensured to the extent that the judge considers appropriate, unless a security or other suitable guarantee is provided.
The maintenance debtor should only be summoned after the seizure/adjudication/pledge of income has taken place. The maintenance debtor's opposition to the enforcement or seizure does not stay the enforcement.
In the case of a request to amend or terminate maintenance payments while special maintenance enforcement is pending, the request for amendment or termination is joined to the enforcement.
The current version of the Code of Civil Procedure can be found here

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?

Recognition

Recognition of a decision on parental responsibility issued in another Member State bound by Council Regulation No 2019/1111 of 25 June 2019 (hereinafter, the recast Brussels IIa Regulation) is automatic. In other words, there is no need for any special procedure for the decision to be recognised.

In order to enforce in Portugal a decision on parental responsibility within the meaning of the recast Brussels IIa Regulation issued in another Member State, the party concerned must bring an action for a declaration of enforceability of that decision before the court.

There are, however, two cases provided for in Article 42 of the recast Brussels IIa Regulation where an application for a declaration of enforceability is not necessary, and the certificate issued by the court of origin under the recast Brussels IIa Regulation is sufficient to enforce a judgment given in another Member State in Portugal. This occurs in the following decisions: decisions concerning visitation rights; and decisions ordering the return of the child rendered by the court with jurisdiction following a decision of non-return issued under Article 13 of the 1980 Hague Convention on the Civil Aspects of International Child Abduction.

Territorial jurisdiction for the application for enforceability

Territorial jurisdiction for the application for a declaration of enforceability is laid down in the recast Brussels IIa Regulation as follows: the application must be filed with the court of the area of residence of the maintenance debtor; or the area of residence of the child to whom the maintenance is due; or, in the absence of any of these connecting factors, the place of enforcement.

Requirements and documents that must accompany the application for enforceability

The requirements and documents that must accompany the application for enforceability are laid down in the recast Brussels IIa Regulation. In summary, the applicant must attach the following to the application for enforceability: a certified copy of the judgment; the certificate of the decision issued using Annex III to the recast Brussels IIa Regulation; in the case of a decision handed down without the defendant having been present or having contested it, evidence that they were summoned or that they have unequivocally accepted the decision.

Procedure applicable to the application for enforceability provided for in the recast Brussels IIa Regulation

The applicable procedure is governed by the rules laid down in the recast Brussels IIa Regulation, and for any aspect not provided for in that Regulation, by the internal rules of Portuguese civil procedure.

Thus, it follows from the Regulation that the enforceability decision is not preceded by a contradictory procedure, and that the application may be refused only on one of the grounds laid down in that regulation. An appeal against the enforceability decision may be brought by either party within the time limits laid down. The Portuguese court may rule that the foreign judgment is partially enforceable, but cannot review it as to its substance.

Applicable Portuguese rules of civil procedure

The application for enforceability must be submitted to the family and minors court at the district court. Where there is no family and minors court, the application must be submitted to the local civil court at the district court or to the court with generic competence.

The action is in the form of common declarative action, as provided for in the Portuguese Code of Civil Procedure, with the specifications set out in the recast Brussels IIa Regulation.

Since an appeal is always admissible, regardless of value, appointing a lawyer is mandatory.

The prosecution office may take action in defence of the minor's interests.

In the initial application, the applicant must (Article 552 of the Code of Civil Procedure):

nominate the court and respective judge where the action is brought, and identify the parties, indicating their names, addresses or head offices and, where possible, civil and tax identification numbers, occupations and places of work;

indicate the work address of their legal representative;

indicate the type of action;

outline the essential facts which have caused the action and the reasons in law which form the basis for the action;

formulate the application;

declare the value of the claim;

designate the enforcement agent responsible for the summons, or the judicial representative with responsibility for it;

request the taking of evidence, in this case the body of information provided for in the recast Brussels IIa Regulation that must accompany the request;

attach a document proving payment of the court fee due, or the grant of legal aid as a waiver of such payment, including cases where this was waived in the Member State of origin.

The initial application and documents are submitted by legal representatives electronically using the computer system supporting the activity of the courts to the website https://citius.tribunaisnet.mj.pt/.

The same procedure applies when the action is brought by the prosecution office in defence of the interests of the minor. The prosecution office is exempt from costs when acting in defence of the minor's interests.

To access the computer system, lawyers, trainee lawyers and solicitors must be registered with the entity responsible for managing access to the computer system.

Whenever a claim does not involve the appointment of a representative, and the party is not assisted or when the party is assisted by a representative but there is a justifiable reason impeding the latter from carrying out procedural acts electronically, the initial application and documents may be submitted in one of the following ways:

delivery to the court office, with the date the document is delivered being valid for procedural purposes;

by registered delivery post, with the date the document is sent by registered delivery being valid for procedural purposes;

Delivery by fax, with the date of sending deemed the date of the procedural act.

The initial application and accompanying documents, once received in court, are officially recorded and distributed. The judge verifies that all the necessary information is present and that there are no grounds for refusal, as provided for in the recast Brussels IIa Regulation, and declares the enforceability of the decision. The decision on enforceability is then notified to the parties.

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

Article 30 of the recast Brussels IIa Regulation provides for the possibility of an interested party applying in a Member State for a **declaration of non-recognition** of a decision on parental responsibility issued in another Member State.

In that case, the court to which the party should apply in Portugal and the applicable rules of procedure are those indicated in the answer to question 15, with the following clarification: this is a case of a common action for a negative declaration. This has consequences with regard to the rules of the burden of proof, since under Portuguese law, in actions for a negative declaration, it is for the defendant to prove the facts constituting the right claimed (Article 343(1) of the Civil Code).

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 children are governed (Article 57 of the Civil Code):
by the common national law of the parents;
or, failing this,
by the law of the place of common habitual residence of the parents;
or, if the parents habitually reside in different States,
by the personal law of the child.
The personal law is that of the individual's nationality (Article 31 of the Civil Code).
In the case of stateless persons, the stateless person's personal law is that of their place of residence. However, if the stateless person is a minor or disqualified person, their personal law is that of their legal domicile (Article 32(1) and (2) of the Civil Code).

Where to find the applicable legislation

Civil Code
Code of Civil Procedure
General principles of mediation
Family Mediation System (Ministerial Implementing Order No 13/2018 of 22 October 2018)
Legal Framework for the Civil Guardianship Procedure
Law on the Protection of Children and Young People in Danger
Law on the Organisation of the Judiciary
Access to law and to the courts
Procedures within the competence of the prosecution office and the civil registry offices
Regulation (EU) No 2019/1111 of 25 June 2019 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction (recast text)

Warning:

The EJN-Civil Contact Point, the courts or other entities and authorities are not bound by the information contained in this factsheet. It is also still necessary to read the legal texts in force. These are subject to regular updates and evolutionary interpretation of case-law.

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Last update: 21/02/2024
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