Parental responsibility - child custody and contact rights

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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?

In France, parental authority is defined as a set of rights and duties serving the interests of the child.

It rests with parents until a child is of full age or emancipated.

Parents have a duty to protect the safety, health and moral values of children, to educate them and to allow their development, with due respect for them as individuals.

They are responsible for establishing the child's place of habitual residence, particularly if they are separated. They must house the child or, if unable to do so, must arrange for him or her to be housed with a third party.

Mothers and fathers have a right and duty of supervision and must look after children and see to their daily needs. They may oversee or even prohibit children's relationships with third parties in view of their age. They must respect children's rights to a personal relationship with their grandparents.

Parents have a responsibility to ensure that their children are educated. This covers schooling, vocational training, morality and civic life. They are responsible for deciding the child's religious orientation, with due respect for him or her as an individual. They decide on any medical treatment the child is to be given.

Since they exercise parental authority, mothers and fathers are also statutory representatives of their children and, in that capacity, represent them in all civil matters and manage their property.

Whether or not they exercise parental authority, each parent must contribute to the maintenance and education of children in proportion to their means and the needs of the child.

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

Parental authority lies with both parents equally. The notion of parental power was abolished in France in 1970.

Holding parental authority is distinct from exercising parental authority. A parent might hold parental authority without exercising it.

In principle, both parents exercise parental authority jointly except in cases of belated acknowledgment of paternity more than a year after the child's birth (in that case only a joint declaration to a court or a decision by the family court judge (*juge aux affaires familiales*) allows parental authority to be exercised jointly). The mother might therefore exercise parental authority on her own, but the principle is joint exercise by both parents.

Fathers and mothers who jointly exercise parental authority over a child must take joint decisions on all important matters affecting him or her (moving house, change of school, surgical operations, etc.).

Parents who have parental authority but do not exercise it must still be informed of important decisions taken by the other parent in order to exercise their right and duty of 'supervision'. They must be informed in order to be able to alert social services or the court if necessary in the event of major problems.

They still have a duty to contribute to the child's maintenance and education and might therefore have to pay child support. The court may rule that parental authority is to be exercised jointly or exclusively.

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

If parents are temporarily unable to care for their children, they may entrust them to third parties. They may also apply to a court for the exercise of parental authority to be delegated to those third parties. Delegation will then be voluntary.

If parents are placing their child at risk, the children's court to which the case is referred by both parents or one of the parents, the person to whom the child has been entrusted, the guardian of the minor or the minor himself/herself, or the Public Prosecutor may order the child's placement and hand him or her over either to the care of a third party or to the Child Welfare Service (*Aide Sociale à l'Enfance*) under the authority of the President of the Regional Council (*Conseil départemental).*

As a general rule, if parents are clearly uninterested in or incapable of exercising all or part of the parental authority, the individual, institution or Child Welfare Service with which the child was placed or a member of the family may bring an action in court to have the exercise of parental authority delegated to them fully or in part. This is sometimes referred to as enforced delegation of the exercise of parental authority.

When a protective measure is imposed on the parents (e.g. guardianship or curatorship), they are not necessarily deprived of the exercise of parental authority. In certain circumstances, if the conditions are met, the exercise of parental authority or guardianship may still be delegated for the benefit of the child.

If parents have died or been deprived of the exercise of parental authority (particularly a parent who is absent or unable to express his or her wishes), a guardianship is set up. A family council is appointed, composed of at least four people chosen with the child's interests in mind, and a guardian and auxiliary guardian will be selected from its members. The guardianship is monitored by the family court judge, who acts as judge for the guardians of minors.

Parental authority is a public policy function. It is an inalienable right. Parents cannot waive it.

In regard to the exercise of parental authority, they may make certain applications or decide that one of the two parents is to exercise parental authority exclusively, but that must be compatible with the child's interests.

Unless otherwise agreed, a court decision is needed to rule on the exercise of parental authority. Delegation of the exercise of parental authority to a third party is always subject to court supervision.

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

Separation of the parents does not affect the rules on transfer of the exercise of parental authority. They must both continue to care for the children and take joint decisions in the children's interests.

If they are unable to agree, the family court judge will decide on the arrangements for exercise of parental authority in the divorce proceedings or proceedings on the exercise of parental authority, taking account of:

1. the practice the parents previously followed or any agreements they might previously have made;
2. the views expressed by the minor child when heard by the judge;
3. the ability of each parent to carry out his or her duties and respect the other's rights;
4. the result of any experts' reports, having regard particularly to the age of the child;

5. the information obtained from any social services enquiries or counter-enquiries;
6. physical or psychological pressure or violence by one parent against another.

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

Parents may agree on all action to be decided in the interests of their child and draw up a parental agreement, on their own or with the help of a mediator and /or their lawyers.

They may then ask the family court judge for approval of the agreement setting out the arrangements for exercise of parental authority and establishing the contribution to the maintenance and education of the child in order to make it enforceable.

The judge cannot amend the agreement and will approve it unless he or she finds that it does not adequately safeguard the interests of the child or the parents have not given their consent freely. The judge may give a decision without a hearing.

In a divorce by mutual consent, the two parents and their lawyers may also determine the arrangements for the exercise of parental authority in their divorce agreement. The agreement is signed by both spouses and their lawyers after a cooling-off period of at least 15 days and the original is filed with a notary, making it enforceable.

Thus, except in the case of a divorce by mutual consent in a deed by lawyer with the original filed with a notary, action by a judge is necessary to make an agreement between parents on the arrangements for the exercise of parental authority enforceable.

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 are unable to reach an agreement and they do not wish to go through the courts they may, on their own initiative, take part in family mediation.

The aim of family mediation is to re-establish communication between parents to enable them to reach agreement together, with due regard to the needs of each parent and more specifically those of the children. It provides a forum for discussion with a view to resolving the conflict, promoting mutual understanding and trust and thus finding practical solutions for both the family arrangements and the financial aspects. If they fail to agree, the parents may refer the case to a judge and, if agreement is reached, they may have their agreement confirmed by a judge or incorporated in the agreement to a divorce by mutual consent.

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

Family court judges are competent to rule on the exercise of parental authority.

They may assign that exercise exclusively to one of the two parents or decide that both parents are to exercise the authority together.

Should the parents disagree, judges can authorise one of them to take a one-off decision that would in principle require the agreement of both, for instance on a child moving house, a change of school or an operation.

Family court judges may also prohibit a minor child from leaving the country without the consent of both parents, particularly if there is a risk of a parent going abroad with the child and not intending to return, breaching the rights of the other parent.

Establishment of the child's habitual residence, either at the address of one of the parents or alternating between their addresses, is generally referred to a judge. If the child's habitual residence is established at the address of one of the parents, the judge also establishes a right of access and accommodation, or a right of daytime access only, for the other parent.

If the child is at risk, the judge may decide that the parent with a right of access will see the child at a meeting place, i.e. a neutral venue that can be overseen by professionals. This is usually a specially designed setting with social workers and psychologists.

The family court judge is also competent to set a contribution for the child's maintenance and education to be paid by the party who does not have daily charge of the child. This is usually monthly child support paid by one parent to the other.

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?

If the judge establishes the child's habitual residence with one of the parents, unless otherwise decided the other parent continues to exercise joint parental authority with the parent having custody, even if the child does not come to his or her home. Both parents must continue to take all important decisions together. If they cannot agree, they must refer the matter to a judge. If it is in the interest of the child, the judge may assign the exercise of parental authority to one of the two parents. That decision might be made if one of the parents is unfit, uninterested, unable to be contacted or consistently obstructive, when it is in the child's interest for the decisions to be taken without delay.

The parent deprived of the exercise of parental authority retains the right to oversee the child's education and is to be informed of major choices affecting the child.

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

The concept of 'child custody' was abolished in French family law in 1987.

The concept of 'joint custody' (*garde conjointe*) in French law may be interpreted in the broad sense, as the joint exercise of parental authority, or in the narrower sense, as establishing that the child's residence will alternate between the home of each parent (sometimes referred to as alternating custody, although that term is legally incorrect: it should be called 'alternating fixed residence').

In principle parents exercise parental authority jointly without the need for any ruling by a judge. The principle of joint parenting is enshrined in French law. It means that each parent plays an equal part in the child's life and education and provides him or her with the necessary daily care.

The joint exercise of parental authority means that the parents take all important decisions affecting the child together.

The child may also stay with parents at their respective addresses in alternate weeks. That requires that the parents live close to each other and communicate well. Alternating residence does not necessarily entail an equal division of time.

Often parents exercise parental authority jointly but the habitual residence of the child is established with one of the parents with a right of access and accommodation for the other.

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?

Family court judges are the judges competent to rule on matters of parental authority, which may be brought before them simply by an application to the registrar, jointly or by one parent only, or by a bailiff's writ.

The proceedings are oral and it is not mandatory to be represented by a lawyer. Parties have the option of being assisted or represented by a lawyer.

The application must state the surname, first name and address of the parties or, if applicable, the last known address of the respondent. It indicates the subject of the application and briefly outlines the grounds. It is to be dated and signed by the person submitting it or his or her lawyer.

The parent referring the case to the judge must produce:

- a full copy of the birth certificate of each child to whom the application relates,
- previous court decisions if any,
- a copy of the parent's identity document,

- proof of address (e.g. rent receipt, electricity bill),

and, depending on the nature of the application, a copy of his or her last tax notice, last tax return, last three payslips, proof of social security benefits received, etc.

The question of the arrangements for the exercise of parental authority can also be dealt with in a divorce. For a divorce by mutual consent, the parents need to be in full agreement. They must each have a lawyer. After a cooling-off period the original divorce agreement is filed with a notary, making it enforceable. If a child asks to be heard, the divorce goes through the court and it will be heard by the judge or a person designated by the judge.

Other divorces are granted by the court. A lawyer is mandatory.

In all cases minors must be heard if they are capable of understanding.

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

If the case is referred by way of an application (*requête*), within 15 days of receipt of the application, the registrar summons the respondent to a hearing by registered letter with acknowledgment of receipt.

However, when the application states that the respondent's address is the last known address, the registrar invites the applicant to use personal service. The registrar notifies the applicant by any means of the place, date and time of the hearing.

The family court judge may also rule on matters of parental authority in divorce proceedings (see 'Divorce').

Family court judges act as interim relief judges in urgent cases. Referral may be made in interim relief proceedings by a summons (*assignation*). The judge investigates the case with the participation of both parties at a hearing and gives a decision in the form of an order which does not constitute res judicata on the merits. Interim relief proceedings allow judges to adopt provisional measures without delay pending a decision on the merits. Thus an application for interim relief proceedings allows them to preserve their rights.

In interim relief proceedings, the family court judge may order any measures to which there is no serious objection or which are justified by the existence of a dispute. Since these are purely provisional measures, the procedure is rarely used.

In cases where urgency is duly justified, family court judges to whom a case has been referred by application may allow summonses to be issued for a hearing date set for the near future. In that event the judge decides on the merits but the timescales are shorter. This course of action is used very frequently.

Cases may also be referred to family court judges in fast-track proceedings on the merits (*procédure accélérée au fond)* in certain instances specified by law (in family matters this concerns the wrongful removal of a child). The case is brought by summons and the judge will then give an immediate decision on the merits. In such cases there is no need to provide supporting evidence for the urgency. The very nature of the proceedings dictates that a date must be set without delay.

In domestic violence cases, family court judges may also be called on urgently to issue a protection order under Article 515-9 et seq. of the Civil Code (*Code civil*). They must now give a decision within six days of the hearing date being set (Law of 28 December 2019). This protection measure is aimed at protecting spouses or ex-spouses who are victims of physical or mental abuse by allowing all contact to be prohibited between them and if necessary between the violent spouse or ex-spouse and the children. In the protection order judges also set out the measures concerning the exercise of parental authority over the children. In particular, they may decide to make the parent suffering the abuse solely responsible for exercising parental authority, deprive the abusive parent of his or her access and accommodation right or allow a restricted access right at a meeting venue.

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

The court costs (lawyer's fees, bailiff's fees, social services enquiries, etc.) may be paid by the French state. Individuals are awarded legal aid depending on their assets. The aid might cover all or only part of the court costs, depending on the applicant's income and number of dependants. The application is to be made to the legal aid office at the court dealing with the case.

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

Decisions by the family court judge are open to appeal within one month, apart from decisions based on Article 481-1 of the Code of Civil Procedure (*Code de procédure civile*) (fast-track proceedings on the merits for wrongful removal), which are open to appeal within 15 days.

Orders by the family court judge are open to appeal within 15 days (interim relief proceedings, protection order).

The appeal is to be lodged in writing and representation by a lawyer is mandatory. It is heard in the Court of Appeal (*Cour d'appel*).

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?

Decisions on parental authority by the family court judge are automatically enforceable.

In the event of failure to comply with a parental authority decision by a family court judge, for instance if one of the parents has a right of access and accommodation and the other parent prevents them from exercising that right, a complaint may be filed with the Public Prosecutor (*procureur de la République*) at the court for the district where the child is resident. Preventing the other parent from exercising his or her right of access and accommodation constitutes a criminal offence of retention of a minor, which carries a penalty of one year's imprisonment and a €15,000 fine.

Family court judges may impose a periodic penalty payment in addition to the measures they order. They may, even of their own motion, impose a periodic penalty payment to ensure their decision is enforced. If circumstances require, they may also attach a periodic penalty payment to a decision by another judge and the parental agreement recorded in the mutual consent divorce agreement.

When a parent, seriously or repeatedly, deliberately obstructs enforcement of a decision, a mutual consent divorce agreement in the form of a private document countersigned by lawyers and the original filed with a notary, or an approved agreement setting out the arrangements for exercise of parental authority, family court judges may order him or her to pay a civil fine of up to €10,000.

Finally, on application from the family court judge or the parent concerned, the Public Prosecutor may, in exceptional cases, seek the assistance of the police to ensure enforcement of a decision by a judge, a mutual consent divorce agreement or an approved agreement setting out the arrangements for exercise of parental authority, for example enforcement of the right of access and accommodation.

Thus, depending on the circumstances, application should be made to the Public Prosecutor or the family court judge who made the decision.

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?

Parental authority decisions by a court in a Member State are recognised and enforceable in France without the need for an exequatur procedure.

However, not all parental responsibility decisions are enforceable immediately, but only those concerning the right of access and the return of the child. The certificates provided for by Council Regulation (EC) No 2201/2003 of 27 November 2003 **concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility** (Brussels IIa) must be presented. For other decisions on parental responsibility, an enforcement declaration issued on the basis of the relevant certificate is required.

In France, applications for recognition or establishment of enforceability in the territory of France of foreign writs of execution in accordance with Brussels IIa are to be made to the president of the *tribunal judiciaire* (ordinary court) or his or her delegate (Article 509-2 of the Code of Civil Procedure). Applications made before the judge do not require legal representation.

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?

Under Article 21(3) of the Regulation, 'any interested party may … apply for a decision that the judgment be or not be recognised.'

In France, applications for a ruling that a decision on parental authority by a court in another EU Member State is not to be recognised are to be made to the president of the *tribunal judiciaire* or his or her delegate.

Applications may only be accepted for the following reasons:

• non-compliance with the public policy of the Member State in which recognition is sought, taking into account the best interests of the child;

• failure to hear the child, assuming that hearing is a fundamental principle of the procedure of the Member State in which recognition is sought; failure to respect the rights of the defence;

• impediment to the exercise of parental responsibility;

• incompatibility with a later judgment either in the state in which recognition is sought or in another Member State or a third country when that decision fulfils the conditions necessary for recognition in the Member State in which recognition is sought;

• failure to comply with the placement procedure.

The decision by the president of the *tribunal judiciaire* is open to appeal.

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?

When an international element is involved (one of the parties or the child is resident abroad, foreign nationality), it first needs to be determined whether the French court has jurisdiction.

Jurisdiction of the French courts

Pursuant to Article 8 of Council Regulation (EC) No 2201/2003 of 27 November 2003, if the child is habitually resident in France, the French courts have jurisdiction to decide on applications concerning parental responsibility.

Under Article 12(1) of the Regulation, if the French courts have jurisdiction to decide on an application for divorce they also have jurisdiction to decide on applications relating to parental responsibility if the spouses exercise parental authority jointly and they have expressly accepted the jurisdiction of the French courts and that is in the best interests of the child.

Under Article 12(3) of the Regulation, the courts of a Member State also have jurisdiction in relation to parental responsibility in proceedings other than those referred to in Article 12(1) where the child has a substantial connection with that Member State, in particular by virtue of the fact that one of the holders of parental responsibility is habitually resident there or the child is a national of that Member State and its jurisdiction has been accepted expressly or otherwise in an unequivocal manner by all the parties to the proceedings at the time the matter is referred to the court and it is in the best interests of the child.

The jurisdiction of the courts of the child's former habitual residence may also be extended if the child moved to another Member State less than three months before and the dispute relates to a change in access rights.

Finally, pursuant to Article 13 of the Regulation, where a child's habitual residence cannot be established and jurisdiction cannot be determined on the basis of Article 12, the French courts will have jurisdiction if the child is present in French territory and his or her habitual residence cannot be established (child refugees or displaced children).

In certain circumstances a different international agreement or French private international law might also be applicable and lead the French courts to accept jurisdiction.

Applicable law

On this matter France applies Article 15 of the Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children. Thus, the courts with jurisdiction to decide on parental responsibility apply their own law except where the Convention specifies otherwise.

Accordingly, if the French courts have jurisdiction for matters of parental responsibility, they will apply French law (*lex fori*).

As an exception, the law that is closely related to the situation will be applied if required by the protection of the minor.

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