Izvirna jezikovna različica te strani sk je bila pred kratkim spremenjena. To jezikovno različico trenutno prevajajo naši prevajalci.
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slovaščina

Parental responsibility - child custody and contact rights

Slovaška

Za izbrano jezikovno različico ni uradnega prevoda.
Tukaj je na voljo strojni prevod vsebine. Opozarjamo, da je prevod samo okviren. Lastnik te strani ne prevzema nikakršne odgovornosti glede kakovosti tega strojno prevedenega besedila.

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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?

Under the Slovak Family Act (Act No 36/2005 on the family and amending certain acts) and the case-law, parental responsibility (i.e. parental rights and obligations and custody) comprises primarily care of the child, maintenance obligations, representation of the child and administration of the child's property.

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

The two parents jointly share parental rights and obligations towards a child, irrespective of whether the child was born in or out of wedlock or whether the parents live together or not (whether married, separated or divorced).
Parents may have their parental rights and obligations removed (or restricted) by a court in serious circumstances, as provided for in Section 38(4) of the Family Act.
A court may also grant parental rights and obligations to a parent who is a minor but over the age of 16 as regards custody of a minor child, subject to the conditions set out in Section 29 of the Family Act.

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

Yes. If both parents of a minor child do not have full legal capacity, or the exercise of their parental rights and obligations has been suspended, or they have had their parental rights and obligations removed, or they are dead, the court must appoint a guardian to bring up and represent the minor child and administer that child's property.

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

The court has to decide on the allocation and exercise of parental rights and obligations (even when both parents continue to exercise parental rights and obligations jointly) or it can approve an agreement between them.
Under Section 36(1) of the Family Act '[t]he parents of a minor child living separately may at any time agree an arrangement for the exercise of their parental rights and obligations. If the parents do not reach an agreement, the court may determine how their rights and obligations are to be exercised, even if no application to this effect has been made; in particular the court has to decide which of the parents is to be granted physical custody of the minor child. The provisions of Sections 24, 25 and 26 shall apply *mutatis mutandis*'.

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

Agreements between parents regarding their parental rights and obligations must be approved by a court.

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?

Out-of-court resolution of disputes is possible by mediation under Act No 420/2004 on mediation. This act also applies to family law disputes. Mediation is an out-of-court procedure in which the parties concerned use the assistance of a mediator to resolve a dispute involving a contractual or other legal relationship between them. Any agreement reached through mediation must be made in writing and is binding on the parties to the procedure.

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

The court can, in principle, decide anything except to grant sole custody to one of the parents. Only if one parent has had their parental rights and obligations removed can the other parent be granted sole custody of a child. In practice, however, the court decides which of the parents is to have physical custody of the child, and who is to represent the child and administer the child's property. The court also decides how the parent who was not granted physical custody of the child is to contribute to the child's maintenance or the court approves the parents' agreement on maintenance payments.

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?

The term 'parental responsibility' does not have an exact equivalent in Slovak family law. The term used in Slovak family law is 'parental rights and obligations', which are always shared jointly by the two parents, which means that there can never be 'sole custody' unless the other parent is dead, does not have legal capacity or has had their parental rights and obligations removed. This needs to be distinguished from physical custody. If physical custody is granted to one of the parents, that parent can make decisions on all routine matters relating to the child's everyday life without the consent of the other parent; but all important issues relating to the exercise of parental rights and obligations (administration of the child's property, moving the child abroad, citizenship, giving consent for medical treatment to be provided, vocational training) require the consent of the other parent. If the parents are unable to agree, the decision is taken by a court at the request of one of the parents.

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

The court may grant alternating physical custody (i.e. joint custody) to the parents if they are both fit to raise the child and are interested in physical custody of the child, and if this arrangement is in the child's interest and will better meet his or her needs. If at least one of the parents agrees with joint custody, the court must examine whether joint custody is in the child's interest.
See all previous responses, in particular the response to question 8.

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

The District Court in whose district a minor child resides is the competent court for lodging applications on parental rights and obligations. There are no formalities to be complied with and no documents need to be attached, since this is a procedure which the court may start by its own motion. Which documents need to be submitted depends on the content of the application; usually the child's birth certificate is required.

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

A simplified and less formal procedure applies. There is an option of a provisional order, which takes the form of an urgent procedure.

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

All proceedings for the arrangement of parental rights and obligations are free of court fees. The legal aid system in Slovakia is currently limited to exemption from payment of court fees and provision of a representative free of charge. Very few people choose to be represented by a lawyer, given the non-contentious character of proceedings on parental rights and obligations. However, if a person meets the legal conditions for personal exemption from court fees, the court may, at its discretion, provide a representative free of charge, including a lawyer, if it considers that representation is necessary for the protection of the party's interests.

The court refers all parties requesting the provision of a lawyer and meeting the conditions for exemption from court fees to the Legal Aid Centre. It advises parties of this option. The court may grant a party full or partial exemption from court fees if this is justified by their circumstances and provided the application does not constitute a vexatious or manifestly futile exercise or defence of a right. Unless the court decides otherwise, exemption applies to the entire proceedings and has retroactive effect. However, any fees paid prior to the issue of a decision on exemption are not refunded.

The legal aid system and what the aid covers are set out in Act No 327/2005 on the provision of legal aid to persons in material need, which also sets up a Legal Aid Centre to grant the aid to natural persons who do not have the financial means to avail themselves of legal services in order to exercise and protect their rights.

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

Yes, it is possible to appeal against a decision on parental rights and obligations.

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?

For enforcement of decisions in cases relating to minors, territorial jurisdiction lies with the court in whose district the minor resides, as determined by an agreement between the parents or by any other legal means. The procedure followed in enforcing the decision is governed by Act No 161/2015, the Code of Non-contentious Civil Procedure. Details of the enforcement of decisions in cases relating to minors are laid down in Decree No 207/2016 of the Ministry of Justice of the Slovak Republic, which also applies to the enforcement of foreign decisions.

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

Court decisions on parental rights and obligations issued by a court in another Member State are recognised and enforced without special proceedings in the Slovak Republic, in accordance with 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 (Article 21(1)), i.e. without the need to have the decision declared enforceable.

However, an interested party may apply for a decision on parental rights and obligations issued in another Member State to be declared enforceable, and the procedure under Chapter III, Section 2 of the Regulation then applies.

Applications are lodged with the district court in whose district the child resides or, if the child is not resident, to the court in whose district the child is currently living, and if there is no such court, the competent court is the Bratislava I District Court.

The application for recognition of a decision or for a declaration of the enforceability of a decision must be accompanied by a copy of the decision on parental rights and obligations that meets the requirements as regards proof of authenticity and by a document certifying the decision, which is issued at the request of the interested person by the relevant court of origin, i.e. the court that issued the decision on parental rights and obligations.

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?

Jurisdiction for applications for recognition (and also for applications for nonrecognition) of a decision relating to parental rights and obligations lies with the district court in the place where the child resides, or Bratislava I District Court (*Okresný súd Bratislava I*) if the child does not reside in the Slovak Republic.

Jurisdiction for applications for enforcement (and also for applications for refusal of enforcement) of a decision relating to parental rights and obligations lies with the district court in the place where the minor resides, or the district court in whose district the minor is staying if the court having territorial jurisdiction is not known or unable to intervene in time.

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?

Decisions in proceedings on parental rights and obligations are taken by a Slovak court only if the child is habitually resident in the Slovak Republic. If the child is not living in the Slovak Republic but has his or her habitual residence here, or if the parents do not live in the Slovak Republic or are citizens of different countries, the provisions of Slovak law are applied in accordance with the Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children (ref. No 344/2002) (Chapter III of the Convention).

Act No 97/1963 on international private and procedural law states that relationships between parents and children, including the commencement or extinction of parental rights and obligations are governed by the law of the country of the child's habitual residence. In exceptional cases, the court may take into account the law of another country with which the case has a significant link and if this is necessary to protect the child or his or her property. Parental rights and obligations originating in the country of the child's original habitual residence remain valid even if the child's habitual residence changes. If either of the parents lacked the parental rights and obligations that a parent has under Slovak law, they acquire those rights and obligations as soon as the Slovak Republic becomes the child's place of habitual residence. The exercise of parental responsibility is governed by the law of the State of the child's habitual residence.

The provisions of the Act on international private and procedural law apply only in the absence of an international agreement or if an existing international agreement does not contain conflict-of-law criteria for determining the applicable law.

Besides the 1996 Hague Convention, the Slovak Republic is bound by a number of bilateral agreements containing provisions on the applicable law, and these provisions take precedence over the provisions of the Act on international private and procedural law in proceedings on parental rights and obligations. The agreements in question are:

Bulgaria: Agreement between the Czechoslovak Socialist Republic and the People's Republic of Bulgaria on legal assistance and regulation of legal relationships in civil, family and criminal matters (Sofia, 25 November 1976, Decree No 3/1978)

Croatia, Slovenia: Agreement between the Czechoslovak Socialist Republic and the Socialist Federal Republic of Yugoslavia on regulation of legal relationships in civil, family and criminal matters (Belgrade, 20 January 1964, Decree No 207/1964)

Hungary: Treaty between the Czechoslovak Socialist Republic and the People's Republic of Hungary on Legal Aid and Settlement of Legal Relations in Civil, Family and Criminal Matters (Bratislava, 28 March 1989, ref. No 63/1990)
Poland: Agreement between the Czechoslovak Socialist Republic and the People's Republic of Poland on legal assistance and regulation of legal relationships in civil, family, labour and criminal matters (Warsaw, 21 December 1987, Decree No 42/1989)
Romania: Agreement between the Czechoslovak Socialist Republic and the People's Republic of Romania on legal assistance and regulation of legal relationships in civil, family and criminal matters (Prague, 25 November 1958, Decree No 31/1959)

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